

# ***Provisional Record***

106th Session, Geneva, June 2017

# **5C**



**Date:** Friday, 16 June 2017

## **Reports on credentials**

### **Second report of the Credentials Committee**

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## Composition of the Conference

1. Since 7 June 2017, when the Credentials Committee adopted its first report (*Provisional Record* No. 5B), there have been no changes in the composition of the Conference and, therefore, at present a total of 169 member States are accredited at the International Labour Conference. In addition, since the adoption of its first report, two member States, Democratic Republic of Congo and Kyrgyzstan, have regained the right to vote.
2. To date, there are 6,092 persons accredited to the Conference (as compared to 5,982 in 2016, 5,912 in 2015, 5,254 in 2014, and 5,593 in 2013), of whom 4,941 are registered (as compared to 4,875 in 2016, 4,842 in 2015, 4,457 in 2014, and 4,569 in 2013). The attached lists contain more details on the number of delegates and advisers accredited and registered.
3. The Committee wishes to indicate that 162 ministers, vice-ministers, and deputy ministers have been accredited to the Conference.

## Monitoring

4. The Committee was seized of three monitoring cases, pursuant to article 26quater of the Standing Orders of the International Labour Conference, by virtue of a decision of the Conference taken at its 105th Session (2016).

## *Djibouti*

5. At its 105th Session (2016), the Conference decided, by virtue of articles 26quater and 26bis(7) of the Conference Standing Orders, and upon the unanimous recommendation of the Credentials Committee, to renew the monitoring measures concerning Djibouti (*Provisional Record* No. 6C(Rev.), 105th Session, 2016, paragraph 13) and it therefore requested the Government to submit for the next session of the Conference, at the same time that it submits its credentials for the delegation of Djibouti, a detailed report, substantiated with relevant information:
  - (a) concerning the concrete measures undertaken with respect to the establishment of criteria for the independent representation of workers in the country, in conformity with freedom of association principles; and
  - (b) on the procedure followed for the nomination of the Workers' delegate and advisers, in consultation with representative workers' organizations, specifying the organizations consulted and according to which criteria, their numerical importance, the date and place of these consultations, the names of the individuals nominated by the organizations during these consultations and the positions they hold within those organizations.
6. The credentials of the delegation of Djibouti were submitted online on 15 May 2017. On 23 May 2017, the Office acknowledged receipt of the credentials submitted by the Government and reminded it of the reinforced monitoring measures decided in 2015 and of its obligation to submit a detailed report.
7. In a brief report dated 30 May 2017, the Government explained that it had engaged in the revision of the Labour Code of 2006 with a view to introducing new provisions on "trade unions representativeness". The Government stressed however that, pending determination of "clear and objective criteria on trade unions representativeness" that would allow

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“transparent social elections”, the four main organizations of employers and workers had agreed upon a rotation mechanism allowing social partners to be represented at the Conference through the alternated designation of either a delegate or an adviser.

8. These four organizations –the Union Générale des Travailleurs Djiboutiens (UGTD), the Union Djiboutienne du Travail (UDT), the Confédération Nationale des Employeurs de Djibouti (CNED) and the Fédération des Entreprises de Djibouti (FED) – had all been consulted before the credentials of the delegation of Djibouti were submitted. The Government stated that formal invitations to designate their representatives within the delegation were sent to all workers’ and employers’ organizations by letters dated 9 February 2017. In a communication dated 19 February 2017, the UDT designated its President, Mr Mohamed Youssouf Mohamed, as adviser within the Workers’ delegation, while in a communication dated 11 May 2017, the UGTD nominated its Secretary-General, Mr Said Yonis Waberi, as titular delegate and its Secretary for Foreign Relations, Mr Hassan Omar Rirache, as adviser. With regard to the comparative numerical importance of each organization, the Government attached to its report a list of 25 organizations affiliated with the UDT as well as a list of 20 organizations affiliated with the UGTD, as communicated to it by the two organizations. Finally, the Government requested technical assistance from the Office in the implementation of the necessary reforms on trade unions representativeness.
9. *The Committee regrets that the detailed report requested by the Conference was only provided after the Government had submitted its credentials. The Committee notes with concern that no progress has been made as compared to last year with regard to the reform of the national legislation on the representativeness of workers’ and employers’ organizations. The Committee also notes that, although the Government asserts that workers’ and employers’ organizations can “freely choose” their representatives and members of the delegation to the International Labour Conference, again nothing removes doubts concerning the persistence of the phenomenon of “clone” trade union organizations, whether of the UDT or of the UGTD. Taking into consideration its examination of the objection lodged against the Government concerning the designation of the Workers’ delegation, the Committee considers that the situation warrants the renewal of monitoring, once again (see paragraph 48).*
10. *By virtue of articles 26quater and 26bis(7) of the Conference Standing Orders, the Committee therefore unanimously proposes that the Conference request the Government of Djibouti to submit for the next session of the Conference, at the same time that it submits its credentials for the delegation of Djibouti, a detailed report, substantiated with relevant information:*
  - (a) *concerning the concrete measures undertaken with respect to the establishment of criteria for the independent representation of workers in the country, in conformity with freedom of association principles; and*
  - (b) *on the procedure followed for the nomination of the Workers’ delegate and advisers, in consultation with representative workers’ organizations, specifying the organizations consulted and according to which criteria, their numerical importance, the date and place of these consultations, the names of the individuals nominated by the organizations during these consultations and the positions they hold within those organizations.*

## **Somalia**

11. At its 105th Session (2016), the Conference decided, by virtue of article 26quater and 26bis(7) of the Conference Standing Orders, and upon the unanimous recommendation of the Credentials Committee, to ensure the monitoring of the situation raised in an objection

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concerning the nomination of the Workers' delegation (*Provisional Record* No. 6C, 105th Session, 2016, paragraph 88). Consequently, it requested the Government to submit for the next session of the Conference, at the same time that it submitted its credentials for its delegation, a detailed report substantiated with relevant documentation on:

- (a) the names of the representative workers' organizations in Somalia, together with figures indicating their comparative importance; and
  - (b) information as to which of those organizations were consulted on the designation of the Workers' delegation, as well as the date(s) and place(s) of such consultation(s).
12. The credentials of Somalia for the current session of the Conference were initially submitted on 16 February 2017 via an official communication from the Office of the Permanent Secretary, Ministry of Labour and Social Affairs who modified them subsequently with respect to the Government delegation on 5 May 2017. The Workers' delegation as reflected on the February 2017 list was comprised of Messrs Omar Faruk Osman Nur, Ahmed Osman Said and Mohamed Mohamud of the Federation of Somali Trade Unions (FESTU). Another modification occurred on 15 May 2017 via an official communication from the Office of the Minister, Ministry of Labour and Social Affairs with respect to the Workers' delegation, substituting the aforementioned names with those of Messrs Haji Ali and Moalim of the Somali Congress of Trade Unions (SOCOTU) and Messrs Isak and Mohamed Ibrahim Nur (FESTU).
  13. The Government did not provide the written report requested by the Conference, despite a written reminder sent on 24 May 2017 and several verbal reminders.
  14. In an oral statement to the Committee on 9 June 2017 in reply to its invitation, Mr Salah Ahmed Jama, Minister of Labour and Social Affairs, indicated that it was difficult to determine the representativeness and comparative importance of workers' organizations in Somalia, as the only source of information in this regard was the membership figures provided by the respective organizations themselves. On this basis, SOCOTU and FESTU each indicated that they represented some 12,000 workers. The Minister indicated that he was aware that there were two "factions" of FESTU and noted that it was challenging in the specific country context to determine the legitimacy of organizations and their representatives due to the absence of an appropriate legal framework and the overall institutional weakness in the country.
  15. With regard to the changes made to the accreditation of the Workers' delegation between February and May 2017, the Minister explained that there had been a change in Government following the elections in February 2017, and that he had only taken office in April 2017. Whilst he did not have any information as to any consultations on the list submitted by the previous Government in February 2017, the Minister stated that FESTU and SOCOTU had been consulted on 10 May 2017 with respect to the designation of the Worker representatives accredited on 15 May 2017. The Minister clarified in this regard that no consultations had taken place with the faction of FESTU under the leadership of Omar Faruk Osman Nur.
  16. *The Committee regrets that the Government did not provide the reports requested by the Conference, despite a written reminder and several verbal reminders, which demonstrates little regard for the decisions of the Conference. The Committee also regrets that the elements with which it was provided orally do not enable it to remove doubts concerning representativeness of workers' organizations in the country, and concerning the observance by the Government of its obligations under the ILO Constitution.*
  17. *The Committee also observes that, once again, objections were submitted concerning the nomination of the Workers' delegation (see paragraphs 100 and 106 below), and that as on*

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*previous occasions, the question has turned to the legitimacy of workers' organizations' designated representatives.*

- 18.** *The Committee notes the Government's statements as to its inability to determine the legitimate leadership within FESTU. Referring to its previous observations the Committee considers that, in selecting as the FESTU's representative to the Conference the leader of one faction over that of another, the Government has interfered in FESTU's internal matters, contravening article 3(5) of the ILO Constitution.*
- 19.** *The Committee wishes to recall in this connection its conclusions and recommendations from 2015 and 2016, including the general principle that the right of 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. As emphasized by the Committee on Freedom of Association in Case No. 3113 on Somalia, for this right to be fully acknowledged, it is essential that the public authorities refrain from any intervention which might impair the exercise of this right, whether it be in determining the conditions of eligibility of leaders or in the conduct of the elections themselves (see ILO: Committee on Freedom of Association, 376th Report, Case No. 3113, October 2015, paragraph 986).*
- 20.** *As regards the broader issue of the consultation process for the nomination of the Workers' delegation and the relative importance of the various trade union federations appointed to the delegation, the Committee still lacks the reliable information necessary for it to discharge its mandate, and considers that it is necessary to renew the monitoring measures. It therefore unanimously recommends to the Conference that it request the Government of Somalia, by virtue of article 26quater and 26bis(7) of the Conference Standing Orders, to submit for the next session of the Conference, at the same time that it submits its credentials, a detailed report, substantiated with relevant information on:*

  - (a) the names of the representative workers' organizations in Somalia, together with figures indicating their comparative importance;*
  - (b) information as to which of those organizations were consulted on the designation of the Workers' delegation, as well as the dates, places and outcomes of such consultations; and*
  - (c) the names of the individuals nominated by the organizations during these consultations and the positions they hold within those organizations.*

### **The Bolivarian Republic of Venezuela**

- 21.** *At its 105th Session (2016), the Conference decided, by virtue of article 26bis(7) of the Conference Standing Orders, and upon the unanimous recommendation of the Credentials Committee, to ensure the monitoring of the situation raised in an objection concerning the nomination of the Workers' delegation (Provisional Record No. 6C, 105th Session, 2016, paragraph 111), and consequently, it requested the Government to submit for the next session of the Conference, at the same time that it submits its credentials, a detailed report substantiated with relevant documentation on:*

  - (a) the procedure followed for the nomination of the Workers' delegation, specifying the organizations consulted and the time(s), place and nature of those consultations; and*
  - (b) copies of all up-to-date information available from the National Trade Union Registry regarding affiliation of the various workers' confederations and membership of their respective trade unions.*

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22. The credentials of the Bolivarian Republic of Venezuela for the current session of the Conference were submitted on 15 May 2017 on line and on 16 May 2017 in writing.
  23. In the report submitted by the Government, it stated that the following six workers' organizations were recognized as being the most representative in the country and so they were consulted regarding the nomination of the Worker representative for the present session of the Conference: the Central Bolivariana Socialista de Trabajadores y Trabajadoras de la Ciudad, el Campo y la Pesca (CBST), the Confederación General de Trabajadores (CGT), the Organización Sindical ASI de Venezuela, the Confederación de Sindicatos Autónomos de Venezuela (CODESA), the Central Unitaria de Trabajadores de Venezuela (CUTV) and the Confederación de Trabajadores de Venezuela (CTV).
  24. On 3 May 2017, CODESA, CBST and CUTV met with the Government concerning the designation of the Workers' delegate. CGT and ASI excused themselves over the phone for not being able to attend, yet they received the same information as the other organizations attending the meeting and were requested in writing to nominate their delegates. The Government was not able to contact any representative of CTV at the time. Following this meeting and due to the fact that not all organizations invited were able to attend, on 8 May 2017 the Government reiterated, by an electronic communication, its request to all organizations to provide the Government in writing with their list of their proposed representatives to be included in the Workers' delegation. Additionally, on 11 May 2017, the Government sent official written reminders to ASI, CUTV and CTV, whereupon all workers' organizations invited submitted their designations.
  25. In its report, the Government mentioned that, upon a written request submitted by CBST reiterating its status as the largest and most representative trade union in the country and in accordance with article 3 of the ILO Constitution, it refrained from interfering in the designations of delegates from minority workers' organizations and proceeded with the accreditation of the Workers' delegation as communicated by the CBST. The Government stressed that the delegation comprised at least one representative of the organizations which submitted their designations. The report was accompanied by copies of supporting documentation of the information provided in it as well as copies of up-to-date information available from the National Trade Union Registry (NTUR) pertaining to CBST, CTV, CODESA, CUTV, CGT and ASI, the latter of which is in the process of being registered. The Government did not provide information concerning the number of workers affiliated to CTV, CUTV, CGT and ASI.
  26. *The Committee deeply regrets that the Government's report confirms that the composition of the Workers' delegation is not the result of a consensus among all the workers' organizations consulted, but the final decision of one organization. The Committee also regrets that in the absence of such an agreement, the Government did not establish objective and concrete criteria for determining precisely the representativeness of each of such workers' organizations for the purposes of the nomination of the Workers' delegation. The Committee notes that the Government has failed to provide objective evidence regarding the representativeness of all workers' organizations concerned and that the NTUR's updated tables annexed to the Government's report indicate the number of workers affiliated to only certain workers' organizations.*
  27. *In light of the foregoing, the Committee considers that it is necessary to renew the monitoring measures; consequently, it unanimously recommends to the Conference that it requests the Government of the Bolivarian Republic of Venezuela, by virtue of article 26quater and 26bis(7) of the Conference Standing Orders, to submit for the next session of the Conference, at the same time that it submits its credentials for its delegation, a detailed report substantiated with relevant documentation on:*

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- (a) *objective evidence regarding the representativeness of all workers' organizations in the country, including copies of all up-to-date information available from the NTUR regarding affiliation of the various workers' confederations and membership of their respective trade unions, including the number of workers affiliated; and*
- (b) *the procedure followed to attempt to reach an agreement among the most representative workers' organizations and, if such an agreement was not reached, the objective and verifiable criteria established for the nomination of the Workers' delegation.*

## **Objections**

- 28.** The Committee has received 29 objections this year. These relate both to the credentials of delegates and their advisers who were accredited to the Conference, as reflected in the *Provisional List of Delegations* published as a *Supplement to the Provisional Record* of 5 June 2017 and the *Revised Provisional List of Delegations* published on 9 June 2017, as well as to incomplete delegations. The Committee has completed the examination of all objections, which are listed below in the French alphabetical order of the member States concerned.

### **Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Armenia**

- 29.** The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of an incomplete delegation on the employers' and the workers' side by the Government of Armenia. The ITUC submitted that the Government had not fulfilled its obligation under article 3(1) of the ILO Constitution to accredit a complete delegation to the Conference. It requested the Committee to call upon the Government to provide explanations about this situation and that it recommend to the Government that it fulfil its constitutional obligations.
- 30.** *The Committee regrets that the Government neither furnished the information requested nor provided an explanation as to its inability to do so. Such a lack of cooperation curtails the Committee's ability to discharge its mandate under article 5(2)(a) of the Conference Standing Orders. The Committee further regrets that the Government has not accredited a fully tripartite delegation. The Committee reminds member States of their obligation under article 3(1) of the ILO Constitution, specifically that they are required to nominate tripartite delegations to the Conference. The Government has not therefore met its obligations by sending a delegation that is exclusively governmental. In so doing, the Government deprives the employers and workers of the country of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employer and Worker representatives, the Conference cannot function properly or attain its objectives.*
- 31.** *The Committee urges the Government to send a fully tripartite delegation to the Conference next year.*

### **Objection concerning the nomination of the Workers' delegation of Botswana**

- 32.** The Committee received an objection submitted by Mr Gadzani Mhotsha, Secretary-General of the Botswana Federation of Trade Unions (BFTU) regarding the nomination of the Workers' delegation. The author of the objection and titular Workers' delegate of Botswana,

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submits that the BFTU was not consulted with regard to the nominations of either the adviser and substitute delegate, Mr Motshegwa or the advisers Messrs Rari, Tshukudu and Somolekae all with the Botswana Federation of Public Sector Unions (BOFEPUSU) or Mr Kesebonye of the Botswana Landboard, Local Authorities and Health Workers Union. The author of the objection also alleged that he had been threatened with physical harm by a member of the other workers' organization present at the Conference.

33. In a written communication addressed to the Committee at its request, the Government clarified that since the establishment of BOFEPUSU in 2015, Botswana has two federations of trade unions, BFTU and BOFEPUSU. The Ministry of Labour and Home Affairs has been communicating with both federations to request them to work out an arrangement for their participation in the social dialogue structures and in the International Labour Conference. In respect of last year's session of the Conference, the Government and the two federations agreed to send a Workers' delegation consisting of representatives from both, with a representative from BFTU being nominated as the delegate and a representative of BOFEPUSU being nominated as adviser and substitute delegate. The BFTU delegate was accompanied by five advisers, the BOFEPUSU adviser and substitute delegate was accompanied by four advisers, from their respective federations. The Government submitted that it had followed up with both federations in March 2017 in preparation for the present session of the Conference and that a similar understanding was initially reached with BFTU and BOFEPUSU. The Government stated that its efforts to seek agreement were made in good faith and since it was unable to determine the most representative of the two organizations. Noting that it had now become apparent that the two federations were not prepared to cooperate, the Government recognized the need to establish processes to determine the representativeness of the trade unions.
34. *The Committee notes the information provided by the Government, including with regard to efforts made to foster agreement between BFTU and BOFEPUSU. However, it observes that the information furnished in this regard is incomplete and, in particular, lacking material detail as concerns consultations undertaken for the present session of the Conference. In this regard, the Committee recalls that where there are several representative organizations in a country, such duty goes beyond the mere dispatch of a letter to each of them asking for their designations, and includes efforts to encourage the organizations concerned to reach an agreement between themselves. Where such an agreement does not prove possible, the Government would require the consent of the most representative organization.*
35. *In situations where it is not clear which is the most representative organization, the Committee recalls that the Government should establish and apply objective and verifiable criteria for determining their representativeness, and it notes the Government's commitment expressed in this regard towards establishing the relevant processes. The Committee trusts that the application of objective and verifiable criteria will provide reliable information on the relative representativeness of the organizations concerned. The Committee further trusts that this will enable the Government to ensure that the nomination of the Workers' delegation to future sessions of the Conference will be in full compliance with article 3(5) of the ILO Constitution.*
36. *Finally, the Committee notes with concern the allegations of threats of physical harm and urges the Government to call on all social partners to engage in a spirit of constructive and peaceful dialogue.*

### **Objection concerning the nomination of the Workers' delegation of Cameroon**

37. The Committee received an objection from representatives of the Confédération Syndicale des Travailleurs du Cameroun (CSTC) concerning the nomination of six individuals as part of the delegation of Cameroon, Ms Tsoungui, Mr Beyala, Mr Walla, Mr Malloum, Mr Hamadou, and Mr Zambo Amougou. Recalling an earlier communication CSTC had

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submitted in the context of last year's Conference, the authors of the communication submitted that Mr Zambo Amougou no longer had the capacity to represent the CSTC. In support, they provided a judicial decision, ordering Mr Zambo Amougou to cease to utilizing the name and title of president of CSTC.

38. *The Committee first examined the receivability of the objection. It recalls that the mandate of the Credentials Committee is set out in article 5 of the Conference Standing Orders. Objections may be lodged in relation to credentials of delegates and their advisers or to the failure to deposit credentials of an Employers' or Workers' delegate. The Committee notes that five of the individuals have been appointed in accordance with the provisions of article 2(3)(i) of the Standing Orders of the Conference and as other persons attending the Conference, whereas Mr Zambo Amougou has not been nominated as a member of the delegation. The Committee considers therefore that the objection is irreceivable.*

### **Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Cook Islands**

39. The Committee received two objections presented separately by the Employers' group of the Conference and the International Trade Union Confederation (ITUC), concerning the nomination of an incomplete delegation on the employers' and the workers' side by the Government of Cook Islands. The Employers' group viewed the case as a serious violation of the Government's obligation to nominate non-government delegates and advisers in agreement with the most representative industrial organizations in the country under article 3(5) of the ILO Constitution. The ITUC submitted that the Government had failed to fulfil its obligation under article 3(1) of the ILO Constitution as it had not accredited a complete delegation to the Conference. They requested the Committee to call upon the Government to provide explanations about this situation and to recommend that the Government fulfil its constitutional obligations.
40. In a written communication addressed to the Committee at its request, the Government clarified that it had been unable, despite its efforts, to send an Employers' and a Workers' delegate this year to the Conference due to financial constraints. It regretted that the amount of travel and subsistence expenses for a full tripartite delegation was disproportionate in comparison to its annual operational budget. In this regard, it provided information as to the cost and its budget proposals for 2017–18. It added that it had sought consensus at the national level to participate every two years to the Conference, as did other Pacific micro-states. The Government explained that its attendance this year was possible only due to exceptional circumstances, namely the nomination of a Permanent Representative in Geneva and because the attendance of the Director of Labour, a Swiss national, did not give rise to accommodation costs. While the Government had offered alternative solutions to attending the Conference, such as representation by proxy or exceptional self-funding options, the employers' and workers' organizations had declined. The Government confirmed that it was aware of its constitutional obligation to send a full tripartite delegation and expressed its commitment to honour such obligation.
41. *The Committee expresses its concern that the country is not represented by a delegation that includes Employer and Worker representatives. It emphasizes that whereas a government has the ability to assure its representation through a diplomatic mission, the same cannot be said for employers' or workers' organizations. While noting the explanation of the Government and its effort made in respect of the previous sessions of the Conference as well as its mindfulness, in principle, of its constitutional obligations, the Committee remains concerned in view of the fact that the Government has still not secured financing for the next session of the Conference, as indicated in its submission and has proposed solutions incompatible with its obligations. The Committee recalls the importance of respect for the*

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*principles of tripartism which requires a balanced representation of employers and workers so as to permit their effective participation at meetings and urges the Government to ensure annual funding for an Employers' and Workers' delegate to the Conference, thus permitting it to act in accordance with its obligations as set out under articles 3(1) and 13(2)(a) of the ILO Constitution. Without the participation of Government, Employer and Worker representatives, the Conference cannot function properly or attain its objectives.*

### **Objection concerning the nomination of Workers' advisers of Côte d'Ivoire**

42. The Committee received an objection presented by Mr François Ade-Mensah and Mr Vouandé Gue, respectively Secretary-General and National Secretary in charge of the Administration of the Union générale des travailleurs de Côte d'Ivoire (UGTCI), against the participation of Workers' adviser and substitute delegate, Mr Joseph Leon Ebagnerin and Workers' adviser, Mr Paul Gnelou, as representatives of the UGTCI. Mr Gue and Mr Ade-Mensah stated that following internal elections and as a result of the judgment of the national Supreme Court attached to their objection, Mr Ade-Mensah was the official Secretary-General of the UGTCI. The authors of the objections further alleged that the Government had consulted and eventually appointed in the Workers' delegation representatives of the "losing team".
43. In a written communication addressed to the Committee at its request, the Government stated that by a letter dated 28 February 2017, it had invited all employers' and workers' organizations, including the UGTCI through its registered address, to freely designate their representatives within the delegation of Côte d'Ivoire. As the oldest central union in the country, the UGTCI participated in all platforms designed to facilitate social dialogue and was currently represented by Mr Ebagnerin. In September 2012, Mr Ebagnerin had been elected Secretary-General of the UGTCI since the former Secretary-General, who is one of the signatories of the present objection, was suspended by a decision of UGTCI's general council. In its communication, the Government stated that Mr Ebagnerin had requested the review of the decision of the Supreme Court attached to the objection. It further noted that the Ministry of Labour had no mandate to ensure the enforcement of judicial decisions and that Mr Ebagnerin remained in place until new elections were organized, in accordance with the judicial decision that cancelled the UGTCI's congress of 2012.
44. *The Committee considers that the representativeness of the UGTCI is not called into question, but the persons representing it, in this instance Mr Ebagnerin, accredited as adviser and substitute delegate, and Mr Gnelou, accredited as adviser. The Committee notes that there appears to be an internal conflict within the organization, which has been brought before the national judicial system. In the absence of any review, the Committee notes that the national judicial system has taken a final and enforceable decision and therefore hopes that next year the nomination of the Workers' delegation will be made in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of Côte d'Ivoire**

45. The Committee received an objection presented by Mr Felix Kra Koffi Kouame, Secretary-General of the Fédération des Syndicats Autonomes de Côte d'Ivoire (FESACI) against the nomination of the Workers' delegation. The author of the objection alleged that the Government had arbitrarily designated the representatives of the Workers' delegation and excluded the legitimate representatives of the FESACI.

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46. In a written communication addressed to the Committee at its request, the Government stated that the FESACI was one of the five confederations that participated in all national platforms designed to facilitate social dialogue. By a letter dated 28 February 2017, the Government had invited all employers' and workers' organizations, including the FESACI through its registered address, to freely designate their representatives within the delegation of Côte d'Ivoire. The Government stated that following internal strife, a judicial decision of March 2013 had confirmed the election of the Workers' adviser, Mr Dohia Mamadou Traore, as Secretary-General of the FESACI. The Government stressed that Mr Traore, whose election was not challenged before the national courts, had been re-elected in 2016 and that the relevant Ministry had on several occasions gathered the parties involved in order to foster a solution. In the absence of a contrary judicial decision, the Government considered Mr Traore as the legitimate Secretary-General of the FESACI.
47. *The Committee considers that the representativeness of the FESACI is not called into question, but the persons representing it, in this instance Mr Traore and Mr N'Dri Yio, nominated as Workers' advisers. The Committee notes that there appears to be an internal conflict within the organization, but the Government states that there is no pending judicial review. In the absence of information to the contrary, the Committee considers that the nomination of the Workers' delegation complies with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of Djibouti**

48. The Committee received an objection concerning the nomination of the Workers' delegation of Djibouti presented by Mr Adan Mohamed Abdou, Secretary-General of the Union djiboutienne du travail (UDT), and Mr Kamil Diraneh Hared, Secretary-General of the Union générale des travailleurs djiboutiens (UGTD). The authors of the objection alleged that the Government had, once again, nominated representatives from the "clone unions" to participate in the present session of the Conference and, thus, the Government continued to usurp the name of the UTD and the UGTD. They requested the Committee to take an effective and definitive decision with respect to the delegation of Djibouti.
49. Through an additional communication transmitted to the Committee on 1 June 2017, the objecting organizations submitted a report describing the historical background and political rationale of the phenomenon of "clone unions", as well as the current state of their relations with the Government. Since April 2017, the Minister of Labour had organized "working sessions" with the representatives of the two objecting organizations and while an agreement was close to conclusion and the authors of the objection were supposed to be included in the workers' delegation, this failed to happen. The author of the report reasserted that the Government had created the UDT and UGTD "clone unions" through a so-called "congress" held in July 1999. From then on, multiple congresses were held, including with the objective of purportedly complying with the recurring conclusions of the Credentials Committee. In this regard, the Committee later received an unsolicited communication from the UDT stressing that a so-called congress of the UDT clone union was being organized and that the International Trade Union Confederation (ITUC) and relevant departments of the ILO had been approached.
50. In a written communication addressed to the Committee at its request, the Government recalled that there was no Intersyndicale UDT-UGTD and that the authors of the objection possessed no legitimate union mandate. Trade unions had been consulted and as a result, in a communication dated 19 February 2017, the UDT designated its President, Mr Mohamed Youssouf Mohamed, as adviser, while in a communication dated 11 May 2017, the UGTD designated its Secretary-General, Mr Said Yonis Waberi, as titular delegate and its Secretary for foreign relations, and Mr Hassan Omar Rirache, as adviser. The Government had engaged in the revision of the Labour Code with a view to introducing provisions on trade

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unions representativeness but pending determination of clear and objective criteria on representativeness allowing transparent social elections, the main workers' organizations had agreed upon a rotation mechanism for the designation of the Workers' delegation. Finally, the Government stressed that to solve this question, the Ministry of Labour had accepted the terms of an ILO assessment mission which should begin in the near future.

- 51.** Additional information requested by the Committee was provided verbally on behalf of the objecting organizations by Mr Hassan Cher Hared, Secretary for foreign relations of the UDT. Concerning the possibility of reaching an agreement with the Government, he stated that several attempts had come close to achieving a positive result, and although most Ministers of Labour had tried to solve this problem in good faith, this systematically failed due to the ongoing enmity of the President towards trade unions. Turning to the current situation of the trade union movement, he informed the Committee that most primary trade unions were defunct and that the phenomenon of “clonage” was increasing. Two UGTD clone unions were now in conflict and “fake” primary trade unions allegedly affiliated with the UDT and UGTD were proliferating. As the Committee sought concrete examples of his organization’s infrastructure and activities, he explained that, unlike the UGTD, the UDT somehow managed to resist and remain influential, although it was impossible for them to retrieve their premises as the authorities refused to return their deeds. Mr Cher submitted additional documentation, including the activity report issued after the 2010 UDT congress as well as a list of the 20 primary unions affiliated with UDT and six affiliated with the UGTD, together with the names of the persons in charge.
- 52.** *The Committee observes with serious concern that, notwithstanding its consistent conclusions and the monitoring measures renewed by the Conference at its last sessions, for the 15th consecutive year, an objection was lodged against the Government of Djibouti by the UDT and the UGTD concerning the nomination of the Workers’ delegation.*
- 53.** *The Committee notes that, to a large extent, the information provided by the Government in its reply merely reproduces its report submitted pursuant to the monitoring measures (see paragraph 5). The Committee regrets that, contrary to the commitment made last year to introduce in its legislation clear and objective criteria with regard to trade unions representativeness, the Government has continued to fail to do so. Once again, the Committee notes that nothing in the reply of the Government enables it to remove doubts concerning the persistence of the phenomenon of “clone” trade unions, whether the UDT or the UGTD. While the Committee takes note of the summary list of primary unions affiliated with the organizations taking part in the Conference, it also notes that a similar list of unions affiliated with the objecting organizations was provided to it, together with the names of the persons in charge.*
- 54.** *Therefore, the Committee once again expresses very serious doubts as to the independent nature of the nomination of the representatives of the UDT and the UGTD, as well as the representative nature of the Workers’ delegation to the present session of the Conference.*
- 55.** *The Committee observes that this year, as requested in previous instances, the objecting organizations have presented specific allegations, supported by relevant documentation (see Provisional Record No. 5C, 2014). The information submitted to the Committee indicates that the situation of trade unions has deteriorated and that the phenomenon of “clone unions” now also affects primary unions.*
- 56.** *The Committee notes that confusion continues to reign over the trade unions landscape in Djibouti and considers that the objection raises questions that go beyond those concerning exclusively the nomination of the Workers’ delegation to the Conference. Some of these questions have already been presented before the different supervisory bodies of the ILO, and were at the origin of the direct contacts mission of January 2008, the report of which*

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*the Committee has relied on in the past to fulfil its mandate. Nearly ten years after having been issued, this report no longer enables the Committee to take the informed and definitive decision that the allegations submitted would otherwise warrant. The Committee calls upon the ILO and its supervisory bodies to take all necessary measures so as to provide, before the next session of the Conference, a reliable, comprehensive and up-to-date assessment of the situation of trade union movements and freedom of association in Djibouti. In this regard, the Committee trusts that, as indicated in its report, the Government would provide its full support. The Committee also notes that the ITUC has confirmed that a mission would be sent to Djibouti in the near future.*

57. *The Committee unanimously agrees that if such assessment confirms the grave allegations repeated again this year by the objecting organizations, the Committee should seriously consider all appropriate measures, including recommending invalidation of the credentials of the Workers' delegation.*

### **Objections concerning the nomination of the Workers' delegation of Ecuador**

58. The Committee received an objection presented by the Confederación Ecuatoriana de Organizaciones Clasistas Unitarias de Trabajadores (CEDOCUT), a member of the Frente Unitario de Trabajadores (FUT), as well as one presented by the Confederación de Trabajadores del Sector Público del Ecuador (CTSPE), the Central Ecuatoriana de Organizaciones Clasistas (CEDOC-CLAT), the Confederación Ecuatoriana de Trabajadores y Organizaciones de la Seguridad Social (CETOSS), the Confederación Sindical de Trabajadores/as del Ecuador (CSE), members of the Parlamento Laboral Ecuatoriano (PLE), and the Confederación de Servidores Públicos del Ecuador (CONASEP), alleging that the Government had, unilaterally and without consultation, nominated the Workers' delegate to the present session of the Conference in violation of its constitutional obligations. The objecting organizations alleged that they had not been individually invited to participate in the nomination process concerning the present session of the Conference and that the Government had breached the requirement of the ILO Constitution to nominate those designated by the most representative workers' organization. The objecting organizations considered that the Government's failure was driven by the conclusions of the Committee on the Application of Standards concerning Ecuador and of the report of the ILO Special Technical Mission in March 2016, which highlighted difficulties, in particular, the respect for freedom of association and collective bargaining.

59. In written communications to the Committee at its request, with respect to demonstrating representativeness, the Government submitted copies of convocation letters sent in January 2016 seeking nominations for an electoral college that would elect members of the Consejo Nacional del Trabajo y Salarios (CNTS). These convocations were addressed to the five most representative workers' organizations of the public and private sectors, the Central Unitaria de Trabajadores del Ecuador (CUT), the FUT, the PLE, the Asociación de Trabajadoras remuneradas del Hogar and the Confederación Unitaria de Trabajadores y Trabajadoras Autónomas del Ecuador (CUTTAE). The Government attached copies of refusals by the FUT and the PLE, including their members' organizations, to participate in the electoral college due to claims by the FUT and the PLE that there was a continuous failure by the Government to comply with international labour standards and to recognize the independent legal nature of the organizations brought together under the PLE. The Government also enclosed copies of its credentials submitted in previous sessions of the Conference (2010–15), with a view to demonstrating that it had applied the principle of rotation among the most representative workers' organizations as embedded in its national Constitution.

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60. *In accordance with the conclusions of the Committee on previous occasions, namely that a rotation system cannot be imposed by governments and can only serve as a criterion for the nomination of the Workers' delegation in agreement with the most representative organizations, in the absence of such an agreement the Government should have limited itself to a nomination in conformity with the provisions of article 3(5) of the ILO Constitution.*
61. *In this specific case, the Committee notes that it has not received information concerning the representativeness of the workers' organizations, any consultation process or evidence of a rotation agreement. Such information would be expected if an agreement did exist. Rather, the Committee notes that the Government limited itself to stating that the CUT is the workers' organization to be consulted this year pursuant to a system of rotation applied by the Government. While the Committee observes that in recent years the Workers' delegate has been nominated from different organizations, there has been no evidence submitted that there is a rotation agreement in place. Therefore, the Committee wishes to reiterate that a system of rotation can only serve as a method for nominating the Workers' delegation if the most representative organizations in the country have so decided in agreement among themselves. The Committee further recalls, that in the absence of a rotation agreement, the Government has to apply pre-established objective and verifiable criteria to determine the relative representativeness of workers' organizations so as to ascertain which ones are the most representative ones that it has to consult regarding the nomination of delegates and advisers to the International Labour Conference. The Committee therefore expects that the Government will take all necessary measures to ensure that the nomination of the Workers' delegation to future sessions of the Conference will be made in compliance with article 3(5) of the ILO Constitution.*

### **Late objections concerning the nomination of the Workers' delegation of Ecuador**

62. The Committee received two objections presented separately by the Frente Unitario de Trabajadores del Ecuador (FUT) and the Unión General de Trabajadores del Ecuador (UGTE). Both objecting organizations alleged that the Government had, unilaterally and without consultation, nominated the Workers' delegate to the present session of the Conference. They submitted that they had neither been invited to participate in the nomination process nor had they been approached with a view to discussing the composition of a tripartite delegation to the Conference. Both organizations considered that the Government had breached the requirement of the ILO Constitution to nominate those individuals designated by the most representative workers' organizations.
63. *Both objections were not received by the Credentials Committee until 8 June 2017, at 10.21 a.m., well after the expiry of the time limit established for the present session of the Conference (48 hours from the publication in the Provisional List of Delegations of the names of the persons whose credentials are challenged, that is 5 June 2017 at 10 a.m.). The Committee notes that these objections would have been late even had the usual 72-hour time limit established by article 26bis(1)(a) of the Standing Orders of the Conference been applicable (this deadline would have expired on 8 June 2017 at 10 a.m.). The Committee therefore considers that the objections are not receivable by virtue of the deadline fixed for this year's Conference.*

### **Late objection concerning the nomination of the Workers' delegation of Gabon**

64. The Committee received an objection presented by the Confédération syndicale dynamique unitaire (CSDU), concerning their exclusion from the Workers' delegation of Gabon,

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submitting that the Government had not organized the relevant trade union elections for the purpose of determining trade union representativeness.

65. *This objection was received by the International Labour Office on 10 June 2017, well after the expiry of the time limit established for the present session of the Conference (48 hours from the publication of the names of the persons whose credentials are challenged in the Provisional List of Delegations, which was published as a Supplement to the Provisional Record on 5 June 2017). The Committee notes that this objection would have been late even had the usual 72-hour time limit established by article 26bis(1)(a) of the Conference Standing Orders been applicable, and that the composition of the delegation of Gabon as reflected in the Provisional List of Delegations remained unchanged, so that the additional new time limit of 48 hours following publication of the Revised Provisional List of Delegations does not apply. The Committee therefore considers that the objection is not receivable by virtue of the abovementioned provision of the Standing Orders.*

### **Objection concerning the nomination of the Workers' delegate of Haiti**

66. The Committee received an objection concerning the nomination of the Workers' delegate of Haiti submitted by the Confédération des Travailleurs -euses des Secteurs Public et Privé (CTSP), the Coordination Syndicale Haïtienne (CSH), the Centrale Nationale des Ouvriers Haïtiens (CNOHA) and the Confédération des Travailleurs Haïtiens (CTH). The objecting organizations alleged that the nomination of the Workers' delegate from the Union des Travailleurs Libres (UTL) had been made without consulting them, the most representative workers' organizations in the country. With regard to their representativeness, the objecting organizations explained that they are the only organizations with presence in all regions and sectors representing the vast majority of working people. Nonetheless, the Government ignored their joint designation for the Workers' delegation of 22 May 2017 which was notified to the Government. Instead, as part of the strategy to dismantle representative and democratic organizations, the Government nominated a Workers' delegate from an organization present in only one enterprise in the textile sector and with less than 50 members. The objecting organizations consider that by unilaterally imposing the nomination of the Workers' delegate, the Government ignored the recommendations of the Credentials Committee made in response to an objection concerning the nomination of the Workers' delegate of Haiti at the 104th Session of the Conference (see *Provisional Record* No. 5C, 104th Session, Geneva, June 2015, paragraph 51).
67. *The Committee regrets that the Government has not responded to its request for information. As the Committee has often recalled, in the absence of a reply, the Committee can decide to examine the objection and to give credence to the allegations of the objecting organizations. Based on those allegations, the Government nominated a Workers' delegate deriving from a workers' organization representing less than 50 workers in one enterprise rather than accepting a joint proposal of three organizations representing the workers in all sectors in all regions of the country. The Committee considers that this situation could have possibly justified a recommendation to the Conference to invalidate the credentials of the Workers' delegate. However, as of 11 June 2017 when this case was examined by the Committee, the Workers' delegate had still not registered.*
68. *In situations where it is not clear which is the most representative organization, the Committee recalls that governments should establish and apply objective and verifiable criteria for determining their representativeness and, in this regard, reiterates its call made to the Government in 2015.*
69. *The Committee deplores that the nomination of the Worker representative is not, once again, in compliance with article 3(5) of the ILO Constitution. It repeats its earlier request that the*

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*Government strengthen its efforts to promote social dialogue and to clarify the situation of the trade union movement in the country in order to guarantee that the Workers' delegations to future sessions of the Conference are nominated in compliance with article 3(5) of the ILO Constitution, as well as in independence from public authorities and in a spirit of cooperation with the organizations involved (see Provisional Record No. 5C, 104th Session, Geneva, June 2015, paragraph 54). Should the above matters be brought yet again to its attention, the Committee considers that it would warrant taking further measures available at its disposal.*

### **Objections concerning the nomination of the Workers' delegation of India**

70. The Committee received an objection submitted by Mr Chandrasekharan Vice-President of the Indian National Trade Union Congress (INTUC), concerning the nomination of the Workers' delegation. Recalling an earlier communication submitted in June 2016 in the context of the 105th Session of the Conference, the objecting organization alleged that the Government had arbitrarily excluded it from the list of delegates attending the present session of the Conference, despite INTUC being the largest trade union organization in the country with a membership of 33.3 million. INTUC stated that the Government had delayed the verification process which serves to determine the strength of trade unions in the country. The objecting organization considered that on completion of the verification process, which was ongoing, INTUC would be confirmed as the most representative workers' organization in the country. The Committee was requested to take the necessary steps in order to ensure the inclusion of an appropriate number of INTUC representatives in the Workers' delegation for the present session of the Conference.
71. The Committee also received a second objection from INTUC submitted by its President, Mr Sanjeeva Reddy, reiterating that it was the largest trade union organization in the country and that it was provided with appropriate status and representation to all tripartite bodies including international forums until 4 January 2017.
72. In a written communication addressed to the Committee at its request, the Government explained that internal legal disputes were currently ongoing between the various factional groups within INTUC, all of which claimed to be its legitimate representatives. The matter was currently pending before the relevant courts, and the Government had therefore decided to exclude INTUC from representation in any meetings convened by the Ministry of Labour and Employment, including in any tripartite bodies and international forums, as there was no means for the Government to identify the appropriate and legitimate representative group of INTUC until this legal dispute was resolved. INTUC had been informed of the Government's decision in January 2017 and had challenged it before the High Court of Delhi, where the matter is currently pending decision. The Government added that prior to the current session, INTUC had always been part of the Workers' delegation to the Conference.
73. With regard to representativeness, the Government submitted that the last completed process on the status of verification of membership of trade unions had started in 2002 and was concluded in 2008. Based on the results of that process, the Government informed the Committee that as at 31 December 2002, the Workers' organization Bhartiya Mazdoor Sangh (BMS) had the largest verified membership, consisting of 6,215,797 members, followed by INTUC with a verified membership of 3,954,012, All India Trade Union Congress (AITUC) with a verified membership of 3,442,239, Hind Mazdoor Sabha (HMS) with a verified membership of 3,338,491, and the Centre of Indian Trade Union (CITU) with a verified membership of 2,678,473. Other, less representative organizations had a verified membership below 2 million members. The currently ongoing verification process had started in 2011 and was restarted in 2015, following court orders. The Government explained

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that as per the agreed policy of the Government and tripartite groups, seats for Employers' and Workers' delegations were allotted proportionately based on a formula, on the basis of their respective numerical strength, as established through the verification process. Consultations with regard to the designations of members to the Workers' delegation to the Conference were conducted in April 2017, and the various trade unions were requested to designate their members for the Workers' delegation for the Conference. The tripartite delegation was then established on the basis of designations received from the respective Employers' and Workers' groups.

74. *The Committee notes the Government's response that it consulted the most representative workers' organizations, requesting their nominations for the Workers' delegates' and advisers' positions in the Indian Conference delegation, distributed among them according to a formula based on membership figures. The Committee further notes that the Government's nomination of the Workers' delegation this year was based on verified membership data reflecting the status as at 31 December 2002, and that INTUC claims a much higher membership than was recognized for 2002. Noting that the information about the membership of the representative workers' organizations in India may well be outdated, which appears to be partly due to the duration of the verification process, as well as the legal challenges, the Committee urges the Government to complete the ongoing verification process and to seek to improve the functioning of the verification system so as to in the future have at its disposal more up-to-date data on the membership figures of the workers' organizations in the country.*
75. *Turning to INTUC, the Committee notes the reasons provided by the Government for its exclusion from participation in any tripartite bodies including international forums. Considering that internal leadership issues within workers' organizations do not fall within the scope of the Committee's mandate, falling instead within the jurisdiction of the national courts, the Committee therefore hopes that the ongoing legal process can be concluded expeditiously and that it will provide the necessary clarity on the situation. The Committee trusts that the Government will ensure that the nomination of the Workers' delegation to future sessions of the Conference will be in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Employers' delegate of Kazakhstan**

76. The Committee received an objection concerning the nomination of the Employers' delegate deriving from the National Chamber of Entrepreneurs of Kazakhstan (NCE) submitted by the Employers' group of the Conference. The Employers' group alleged that the NCE could not be considered as "most representative of employers" in Kazakhstan within the meaning of article 3(5) of the ILO Constitution since it did not independently represent member enterprises, but was rather an entity created and virtually managed by the Government. In this regard, the Employers' group referred to the Law on National Chamber of Entrepreneurs of 4 July 2013 that provided, inter alia, that the Government was the NCE co-founder and had representatives on the NCE Presidium, as well as the right to veto in the NCE Conference. Referring to the observation of the ILO Committee of Experts on the Application of Conventions and Recommendations (Report III (Part 1A), 106th Session of the International Labour Conference), the Employers' group considered that the establishment of the NCE infringed the Employers' freedom of association under Convention No. 87, ratified by Kazakhstan, because of its compulsory membership, all-encompassing mandate to represent enterprises and exclusive competence to provide "accreditation" to employers' organizations. The Employers' group considered those practices inconsistent with the principle of tripartism in the International Labour Conference.

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77. In a communication addressed to the Committee at its request, the Government provided information concerning the Confederation of Employers of the Republic of Kazakhstan (CERK), the NCE and accredited associations of the CERK and NCE. The Government informed the Committee that the Employers' delegation had been formed in accordance with article 3(5) of the ILO Constitution in consultation with the most representative employers' organizations. In this regard, the Government provided a letter dated 17 April 2017 from the Deputy Chairman of the NCE Board, Mr Yeldar Zhumagazyev, to the Government designating, in agreement with the employers' associations, Mr Talgat Doskenov, Chairman of the Committee of Social Sphere and Social Dialogue of the NCE, as the delegate, and Ms Valentina Breussova from the CERK, as adviser. In a second letter dated 4 May 2017 to the NCE, the association of mining and metallurgical sector conveyed its agreement to those designations. In a third letter dated 3 May 2017 to the NCE, the CERK proposed Ms Breussova as the adviser. The Government also provided a list of 125 associations accredited with the NCE, covering 20,000 members.
78. *The Committee is concerned regarding the serious implications that the Law on the National Chamber of Entrepreneurs has on the autonomy and independence of employers' organizations and takes note that the Committee on the Application of Standards has considered during the current session of the Conference that the law infringed their freedom of association. In this regard, the Committee observes that the Law provides for mandatory affiliation to the NCE and during the transitional period lasting until July 2018 for the Government's participation therein and its right to veto NCE's decisions. Furthermore, the Law provides that international level interaction with international organizations is to be exclusively carried out by the NCE.*
79. *The Committee has in the past considered the link between freedom of association and the nomination of the non-government delegates and found that such a link was in keeping with the spirit of the ILO Constitution and the fundamental principle of tripartism. In this regard, the Committee considers that it is difficult to conceive a proper nomination through an organization that is neither free from government interference nor whose membership is voluntary. Since compliance with the Law obliges the Government to receive the designation to the Conference through the NCE, it fails to comply with its constitutional obligation to nominate the Employers' delegate and advisers in agreement with the most representative employers' organizations. The Committee recalls that the implementation of national legislation should not be in contradiction with a State's international obligations. Therefore, the Committee considers that the NCE cannot be considered as a genuinely representative employers' organization within the meaning of article 3(5) of the ILO Constitution.*
80. *The Committee notes that the Conference Committee on the Application on Standards and the Committee of Experts on the Application of Conventions and Recommendations have urged the Government to amend, without delay, the Law on the National Chamber of Entrepreneurs in a manner that would ensure full autonomy and independence of the free and independent employers' organizations (Provisional Record No. 16(Rev.) Part II, 105th Session of the International Labour Conference; Report III (Part 1A), 106th Session of the International Labour Conference) and that this matter is again before the Conference. The Committee calls on the Government to amend the Law as urged by the Conference Committee and the Committee of Experts, so as to allow it to nominate the Employers' delegations to future sessions of the Conference in accordance with article 3(1) and (5) of the ILO Constitution. Should this matter be brought again to its attention, the Committee would have to consider all measures at its disposal.*

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### **Objection concerning the nomination of the Workers' delegate of Maldives**

81. The Committee received an objection presented by the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF), concerning the nomination of the Workers' delegate of the Republic of Maldives, Mr Abdulla Waheed, Member, Advisory Committee, Maldives Hospitality Workers. The objecting organization alleged that its affiliate, the Tourism Employees Association of Maldives (TEAM), had not been consulted regarding the nomination of the Workers' delegate and was unaware of the trade unions consulted by the Government. The objecting organization further alleged that the Government had decided to exclude the TEAM and had rather created a "paper union" to give the semblance of workers' participation at the Conference.
82. In a written communication addressed to the Committee at its request, the Government informed the Committee that it required additional time in order to consult with other stakeholders in the Government and so as to submit a more informed response.
83. *The Committee regrets that it has not received any substantive reply to its request for information. This curtails the Committee's ability to discharge its mandate under article 5(2)(a) of the Conference Standing Orders. As the Committee has often recalled, in the absence of a reply, the Committee can decide to examine the objection and to give credence to the allegations of the objecting organization.*
84. *The Committee observes that for the 101st (2012), 102nd (2013), 103rd (2014) and 104th (2015) Sessions of the Conference, members of TEAM had been accredited to the Workers' delegation, twice as Workers' delegate and twice as adviser and substitute delegate. Recalling the deep concerns it had expressed at last year's session of the Conference with regard to the absence of consultation and the Government's failure to appoint a workers' delegate, the Committee urges the Government to clarify the legislative framework in the country and, in the meantime, to continue consulting existing workers' organizations when nominating the country's delegation to the Conference. The Committee also calls upon the Government to clarify the situation of the trade union movement in the country and to ensure that the Workers' delegation at future sessions of the Conference is nominated in consultation with the most representative organizations based on objective and verifiable criteria, as well as in independence from the public authorities, in accordance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegate of Morocco**

85. The Committee received an objection concerning the nomination of the Workers' delegate of Morocco, submitted by Mr Mohamed Noubir Elamaoui, Secretary-General of the Confédération Démocratique du Travail (CDT), Mr Mohamed Kafi Cherrat, Secretary-General of the Union Générale des Travailleurs du Maroc (UGTM), and Mr Abdelilah Hallouti, Secretary-General of the Union Nationale du Travail au Maroc (UNTM).
86. The authors of the objection alleged that the nomination of the Workers' delegate, Mr El Miloudi El Mokharek, Secretary-General of the Union Marocaine du Travail (UMT), had been made without consulting three of the most representative workers' organizations, in violation of the principle of neutrality, and had disregarded the rotation agreement concerning the chairing of the Workers' delegations at regional, Arab and international conferences, applied since 1999. In doing so, the Government had discarded: the rotation agreement concluded between the CDT, UGTM and UNTM in February/April 2017; the

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outcome of the 2015 worker representative elections that had resulted in the existence of four most representative workers' organizations; and the decision of three of these organizations to designate a representative of the CDT as the Workers' delegate to the present session of the Conference, which had been conveyed to the Government by letter dated 28 April 2017. The authors submitted that the UMT had led the Workers' delegations to the ILO African Regional Meeting in 2015, Arab Labour Conference in 2016, International Labour Conference in 2016 and Arab Labour Conference in 2017. They requested that the Committee remedy the situation and confirm the return to the rotation methodology applied since 1999.

- 87.** In an unsolicited communication received by the Committee, the Workers' delegate affirmed that the 2015 worker representative elections had established the UMT as the most representative workers' organization. With respect to the rotation agreement, the Workers' delegate confirmed that the Ministry had discussed the questions of rotation and designation of the Workers' delegate prior to the opening of this year's Conference with the concerned organizations. However, as no agreement had been reached, the Government then proceeded to nominate the most representative workers' organization, the UMT.
- 88.** In a written communication addressed to the Committee at its request, the Government stated that, as a result of the worker representative elections of June 2015, the UMT, the CDT, the UGTM and the UNTM had been qualified as the most representative workers' organizations in accordance with article 425 of the Labour Code. The detailed results were as follows: UMT (17.67 per cent), CDT (9.27 per cent), UGTM (7.57 per cent) and UNTM (7.36 per cent). At a meeting organized by the Government on 15 February 2017 with the concerned organizations, no agreement was reached, despite the Government's efforts, with respect to the designation of the Workers' delegate. While the UMT considered itself entitled on the basis of the June 2015 election results to designate the Workers' delegate, the other organizations sustained their position to maintain the previous rotation system while taking into account those results.
- 89.** The Government acknowledged that a rotation agreement for the designation of the Workers' delegate was concluded in 1998 between the CDT and UGTM and later joined by the UMT. In 2002, the Fédération Démocratique du Travail (FDT) adhered to rotation. As a result of the June 2015 elections, the UNTM replaced the FDT while the UMT reserved the right to designate the Workers' delegate. As a consequence, on 25 April 2017, the CDT, the UGTM and the UNTM signed a new rotation agreement. In light of the persisting and increasing disagreement between the organizations and to avoid the absence of a Workers' delegation at the Conference, the Government nominated a member of the most representative organization, the UMT, as the Workers' delegate. On 8 May 2017, the Government organized, at the request of the objecting organizations, new consultations at which it expressed its understanding as to rotation and undertook to find an agreeable solution to the issue at the earliest. Following the meeting, the Government invited the objecting organizations to designate their representatives to the Conference.
- 90.** *The Committee notes that one of the three authors of the objection, Mr Abdelilah Hallouti (UNTM), is listed as an adviser in the Revised Provisional List of Delegations of 9 June 2017 and he has also registered at the Conference. However, since he submitted the objection with two other individuals who are not serving advisers, the Committee considers the objection receivable in accordance with article 26bis(1) of the Standing Orders of the Conference.*
- 91.** *While the respective representativeness of the organizations concerned is not contested, what is in question is whether or not the Government should have considered a joint proposal of three organizations for the nomination of the Workers' delegate.*

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92. *The Committee notes that the Government sought to consult with the most representative organizations with regard to the nomination of the Workers' delegate at the Conference and to facilitate agreement between them. In the absence of agreement, the Government proceeded, relying on the results of the 2015 worker representative elections, to nominate the most representative workers' organization, the UMT, as the Workers' delegate. In those situations where there are two or more representative workers' organizations, the Government is obliged to actively seek an agreement between them for the purpose of nominating the Workers' delegation. This obligation is not fulfilled where a government extends a mere invitation to some of the largest organizations, nor can one organization claim for itself the right to appoint the Workers' delegate without even attempting to reach an agreement with the other workers' organizations. Failing an agreement among most representative organizations, the Government must assess, based on objective and verifiable criteria, which organization (or group of organizations that have agreed on a common proposal) is the most representative.*
93. *The Committee encourages the Government to take into consideration its conclusions so that the nomination of the Workers' delegation at future sessions of the Conference will be in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of a Workers' adviser of Morocco**

94. The Committee received an objection concerning the nomination of individuals among the Workers' delegation, including a Workers' adviser deriving from the Union Générale des Travailleurs du Maroc (UGTM) from Mr Enaan Mayara, Secretary-General of the UGTM. He recalled that, following the Ministry's deposit of the credentials of the delegation of Morocco, the UGTM had elected its new representatives on 7 May 2017. As a result, certain individuals currently accredited as UGTM representatives at the Conference were no longer entitled to represent the organization, of which the Government had been informed. The author of the objection requested that necessary measures be taken so that these advisers would not act on behalf of the UGTM at the Conference.
95. In a written communication addressed to the Committee at its request, the Government informed it that the UGTM had designated its representatives to the Conference following the consultative meeting of 8 May 2017 concerning the nomination of the Workers' delegation. However, UGTM's members challenged the election of its new Board on 7 May 2017 before a national court which is scheduled to review the matter on 14 June 2017. Following the deposit of the credentials of the delegation of Morocco on 13 May 2017, the newly elected Board requested on 16 May 2017 that the Government replace three UGTM representatives designated by the former Board with representatives belonging to the new Board. The Government could not however accede to that request pending court judgment.
96. *The Committee notes that the objection calls into question the capacity of certain persons purporting to represent the UGTM as a result of an internal conflict within that organization. The Committee recalls that it lacks jurisdiction to adjudicate upon the differences within a workers' organization and that these questions are within the domain of the relevant national authorities, including the judiciary. According to the information provided, a national court would take a final decision on this matter on 14 June 2017. The Committee therefore trusts that next year the nomination of the Workers' delegation will be made in full compliance with article 3(5) of the ILO Constitution. Under these circumstances, the Committee decides not to uphold the objection.*

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**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Papua New Guinea**

97. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of an incomplete delegation on the employers' and the workers' side by the Government of Papua New Guinea. The ITUC submitted that the Government had not fulfilled its obligation under article 3(1) of the ILO Constitution to accredit a complete delegation to the Conference. It requested the Committee to call upon the Government to provide explanations about this situation and that it recommend to the Government that it fulfil its constitutional obligations.
98. In a written communication addressed to the Committee at its request, the Government informed the Committee that from the publication of the *Provisional List of Delegations* on 5 June 2017, it had in the meantime updated its delegation list and accredited a full tripartite delegation. The revised credentials were deposited on the opening day of the Conference.
99. *The Committee notes with satisfaction that the Government has in the meantime accredited a full tripartite delegation. The objection has therefore become moot and requires no further action on its part.*

**Objection concerning the nomination of the Workers' delegation of Somalia**

100. The Committee received an objection concerning the nomination of the Workers' delegation of Somalia presented by the Somali Congress of Trade Unions (SOCOTU) alleging that neither the Workers' delegate, Mr Mohamed Osman Haji Ali, nor one of his advisers, Mr Abdalkarim Mohamed Moalim, were bona fide representatives of SOCOTU. The objecting organization explained that Mr Haji Ali who had been accredited as the "Chairman of the Somali Congress of Trade Unions" had been impeached on 19 May 2017 for mismanagement of funds. On 20 May 2017, SOCOTU officially conveyed the names of the Workers' delegation to the Ministry of Labour and Social Affairs. However, the Government continued to accredit Mr Haji Ali even though he no longer represented SOCOTU. With respect to the Workers' adviser, Mr Moalim, the objecting organization stated that he was neither an official nor a member of SOCOTU, but rather that he was related to a former SOCOTU representative that had been appointed to office in the Government. The objecting organization alleged that due to maneuvering within the Government and nepotism, Mr Haji Ali, remained the Workers' delegate despite SOCOTU's independent decision to remove him from office and that Mr Moalim had never been associated with SOCOTU. As a result, the objecting organization requested that the Committee invalidate the credentials of the concerned Workers' delegation since the Government was disregarding the ILO's Constitution concerning the independent nomination of the Workers' delegation to the Conference.
101. The Government did not respond to the Committee's request for written information on the matters raised in the objection.
102. In an oral statement to the Committee on 9 June 2017 in reply to its invitation of monitoring measures under article 26bis(7) of the Standing Orders (see also paragraph 11, above), the Government stated with respect to the matters raised in the two objections that it had not previously been aware of the allegations of impeachment against SOCOTU and did not have any information or comments to provide in this regard. It informed the Committee that both the Federation of Somali Trade Unions (FESTU) and SOCOTU had been consulted on

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10 May 2017 with respect to the designation of the Workers' representatives accredited on 15 May 2017.

- 103.** *The Committee regrets that the Government has not provided the detailed information requested by the Committee concerning this objection. The Committee notes the Government's statements that the accreditations of the revised delegation in May 2017 followed consultations with FESTU and SOCOTU. At the same time, in the absence of the detailed information repeatedly requested on the broader issue of the consultation process for the nomination of the Workers' delegation and the relative importance of the various trade union federations in the country, the Committee lacks the reliable information necessary for it to discharge its mandate. It cannot therefore make a determination that objective and verifiable criteria were used for the determination of the most representative organizations, nor that the Government complied with its constitutional obligations under article 3(5) of the ILO Constitution.*
- 104.** *On the issue of the legitimacy of SOCOTU's representatives, the Committee notes that internal leadership issues within workers' organizations do not fall within the scope of its mandate, falling instead within the jurisdiction of national courts.*
- 105.** *The Committee expects that the Government will ensure that the nomination of the Workers' delegation to future sessions of the Conference will be made in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of Somalia**

- 106.** The Committee received a second objection concerning the nomination of the Workers' delegation of Somalia presented by the International Trade Union Confederation (ITUC). The objecting organization alleged that the Government had failed to comply with article 3(1) and (5) of the ILO Constitution in that it had prevented the legitimate and most representative workers' organization, Federation of Somali Trade Unions (FESTU), from being nominated as Workers' delegate to the Conference. It recalled that on 23 January 2017, the Deputy Minister of Labour and Social Affairs, Mr Osman Libah, had confirmed that FESTU was a registered organization as per the Somali Labour Code and that its General Secretary was Mr Omar Faruk Osman. On 16 February 2017, the Ministry of Labour and Social Affairs had officially accredited a tripartite delegation to the present session of the Conference. In so doing, FESTU had been consulted and it had independently appointed its delegates. In March, a new Minister of Labour was appointed and he took office in early April. On 26 April 2017, FESTU wrote to the new Minister of Labour and Social Affairs, Mr Salah Ahmed Jama, requesting a meeting as it had been informed that the Minister was planning on modifying the Workers' delegation. The ITUC alleged that not only did the Minister not respond to FESTU's request, but during the second half of May 2017, his Ministry unilaterally withdrew the tripartite delegation agreed in February 2017 and accredited instead Mr Mohamed Osman Haji Ali of the Somali Congress of Trade Unions (SOCOTU) as Workers' delegate. The ITUC recalled that at last year's session of the Conference, Mr Haji Ali had been designated as Workers' delegate, albeit associated with a different organization, Somali Congress of Trade Unions (SCTU). It considered that SOCOTU was not a genuine and representative workers' organization but rather an organization established by the Government and persons associated with it in order to undermine the independent and representative trade unions in the country. With respect to the two individuals included in the Workers' delegation that purportedly represented FESTU, the ITUC explained that neither was associated with it. Indeed, for a second year the Government had nominated Mr Mohamed Ibrahim Issak and specified that he was "Secretary-General" of FESTU. In reality, Mr Issak had never been a member of FESTU, let alone its Secretary-General. He did not even live in the country, since he had sought

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asylum for alleged persecution. Turning to Mr Mohamed Ibrahim Nur, “member” of FESTU, the ITUC explained he had never been a FESTU member but was rather associated with the Government and sought to destabilize the independent trade unions. Similarly, Mr Abdalkarim Mohamed Moalim, “Chairman of Hotel Workers’ Union and International Relations, SOCOTU”, had never been a union representative.

- 107.** The ITUC considered that the nomination of the Workers’ delegation to the Conference took place in a context of continuous acts of harassment and destabilization of the FESTU which have been duly reported to the Committee on Freedom of Association. In this context it cited a report of 11 May 2017 that had been prepared by the Somali State Attorney-General, at the request of the Ministry of Labour and as part of the follow-up to Case No. 3113 that was before the Committee on Freedom of Association.
- 108.** The ITUC recalled the monitoring case before the Credentials Committee and trusted that the Government had replied. It was confident that the report would show that the Government, once again, had failed to comply with its constitutional obligations of consulting FESTU. In summary, the ITUC considered that the foregoing demonstrated that the nomination of the Workers’ delegation of Somalia had not been made in conformity with the ILO Constitution and requested that the Government be called upon to provide clarifications for its repeated breaches of the ILO Constitution and to take the necessary action so that it would fulfil its constitutional obligations.
- 109.** The Government did not respond to the Committee’s request for written information on the matter.
- 110.** In an oral statement to the Committee on 9 June 2017, in reply to its invitation in the context of monitoring measures under article 26bis(7) of the Standing Orders (see also paragraph 11 above), the Government indicated that it was challenging to determine the representativeness of workers’ organizations in Somalia, with the membership figures provided by the respective organizations themselves being the only source of information. In this regard, SOCOTU and FESTU had each indicated to represent some 12,000 workers.
- 111.** With regard to the changes made to the accreditation of the Workers’ delegations between February and May 2017, the Minister explained that there had been a change in Government following the elections in February 2017, and that the Minister had only taken office in April 2017. While he did not have any information as to any consultations on the list submitted by the previous Government in February 2017, he clarified that the organizations FESTU and SOCOTU had been consulted on 10 May 2017 with respect to the designation of the Worker representatives accredited on 15 May 2017. The Government clarified in this regard that no consultations had taken place with the faction of FESTU under the leadership of Omar Faruk Osman Nur.
- 112.** With regard to the allegation that the Government had prevented the legitimate and most representative workers’ organization, FESTU, from being designated as Workers’ delegate to the Conference, the Government indicated that it was aware of there being two “factions” of FESTU and noted that it was challenging in the specific country context to determine the legitimacy of organizations and their representativeness due to the absence of an appropriate legal framework and the overall institutional weakness in the country.
- 113.** *The Committee regrets that the Government has not provided the detailed information requested by the Committee on this objection. The Committee observes that it is once more seized with an objection concerning the nomination of the Workers’ delegation of Somalia involving questions of the legitimacy of leadership within FESTU. While the Committee notes the Government’s statements concerning institutional weakness and a change in Administration, it observes that there should be continuity of Government. In this regard,*

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*the Committee notes that the Government had accredited a tripartite delegation in February 2017. However, a later list was subsequently sent in May 2017, substituting the earlier Workers' delegation with one composed of Messrs Haji Ali and Moalim (SOCOTU) and Messrs Isak and Mohamed Ibrahim Nur (FESTU).*

- 114.** *The Committee notes the Government's statements that the accreditations of the revised delegation in May 2017 followed consultations with FESTU and SOCOTU. However, in the absence of the detailed information repeatedly requested on the broader issue of the consultation process for the nomination of the Workers' delegation and the relative importance of the various trade union federations appointed to the delegation, the Committee cannot make a determination that the Government complied with its constitutional obligations under article 3(5) of the ILO Constitution. The Committee considers that the unilateral withdrawal of the tripartite delegation agreed in February 2017 and its unilateral replacement with another nomination in May 2017 demonstrates interference, in breach of the requirements set out in article 3(5) of the ILO Constitution. The Committee recalls its conclusions and recommendations issued in relation to previous, similar objections received concerning the Workers' delegation of Somalia, as outlined in the context of the monitoring measures (see paragraph 11, above), including the right of workers' organizations to elect their own representatives freely and the importance that the public authorities refrain from any intervention which might impair the exercise of this right. The Committee urges the Government to ensure that the nomination of the Workers' delegation to future sessions of the Conference will be made in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of Sri Lanka**

- 115.** The Committee received an objection presented by the Ceylon Federation of Labour (CFL) concerning the nomination of the Workers' delegation. The objecting organization submitted that the Government had failed to seek agreement for the purposes of designating the Workers' delegation, including the Workers' delegate, Mr L. Shelton Devendra of Sri Lanka Nidahas Sevaka Sangamaya (SLNSS). Further, it alleged that it had been made in breach of the principles of consultative decision making. In this regard, the objecting organization submitted that in April 2017, the Ministry of Labour and Trade Union Relations convened a consultation meeting with the trade union members of the National Labour Advisory Council (NLAC) regarding the composition of the Workers' delegation to the present session of the Conference. The authors of the objection submit that the 14 workers' organizations present, which included, inter alia, the objecting organization, SLNSS and the Inter-Company Employees Union, unanimously endorsed CFL's proposal that Mr Wasantha Samarasinghe of the Inter-Company Employees Union be designated as titular delegate of the Workers' delegation. Therefore, the objecting organization considered that the subsequent nomination of Mr Shelton Devendra of SLNSS as titular Workers' delegate was contrary to the consensus resulting from the trade union consultation. Recalling a similar objection filed in 2010, CFL submitted that Mr Devendra served under the President as the Director of Trade Unions and that this gave rise to a conflict of interest as his position as public official was incompatible with that of trade unionist. The objecting organization requested that the Committee invalidate the credentials of the workers' delegate as improperly nominated.
- 116.** In a written communication addressed to the Committee at its request, the Government confirmed that consultations with the above-listed workers' organizations were held in April 2017, and that the criteria used in this process included membership strength, sectors covered and submission of annual returns by workers' organizations, as well as active engagement in trade union activities. The Government explained that due to the multiplicity of the workers' organizations in the country, it was not always possible to reach agreement among the workers' organizations in relation to the Workers' delegation. In those cases, the

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Government relied on the information submitted by the respective workers' organizations to the Trade Union Registrar of the Department of Labour. The Government stated that the Workers' delegate represented the union with the largest membership and sectoral coverage in both the private and the public sector.

- 117.** *The Committee notes that despite being requested, the Government did not provide the information the Committee sought concerning the representativeness of the organizations involved or the genuine character of the Workers' delegate.*
- 118.** *With respect to representativeness, where several representative organizations exist, Governments must take them all into consideration when proceeding to the nomination of a delegation and actively seek to obtain the agreement of all the most representative ones among them. In this regard, the Committee observes that the Government has provided it with the participation list of a meeting convoked on 21 April 2017, but has not provided the results of said meeting. Therefore, the Committee remains unconvinced that the nomination of the Workers' delegation to this session of the Conference has been done in agreement with the most representative workers' organizations of the country, as is required pursuant to the terms of article 3(5) of the ILO Constitution.*
- 119.** *Turning to the Workers' delegate, the lack of information by the Government on this point only exacerbates the Committee's doubts that the concerned individual, already brought to its attention in 2010, is not a genuine Worker representative. In this regard, the Committee recalls that Worker representatives nominated by governments should satisfy three conditions: they should be true workers; they should have been chosen freely by workers; and they should be as representative as possible of the workers in the country concerned. On the basis of the information before it, that the individual nominated as a Workers' delegate holds a public office, the Committee is not convinced that the nomination of the Workers' delegate has been made in conformity with article 3(5) of the ILO Constitution.*
- 120.** *Therefore, the Committee urges the Government to take into consideration the Committee's conclusions and, in particular, that it observe the conditions of impartiality, transparency and predictability so as to ensure that the nomination of the Workers' delegation at future sessions of the Conference is in full compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of Swaziland**

- 121.** The Committee received an objection from the Trade Union Congress of Swaziland (TUCOSWA) alleging that the Government had failed to nominate the Workers' delegation in agreement with it, the most representative workers' organization. On the one hand, the Government had imposed the inclusion of a minority labour centre, the Federation of Swaziland Trade Unions (FESWATU), in the Workers' delegation, and on the other hand, the Government had unilaterally replaced a person it had designated. Furthermore, the Government included two additional FESWATU advisers in the Workers' delegation who also appeared as registered although they were not attending the Conference. The objecting organization requests that the Committee instruct the Government to nominate the Workers' representatives in agreement with the most representative workers' organization as provided in the ILO Constitution.
- 122.** In a written communication addressed to the Committee at its request, the Government informed the Committee that TUCOSWA had always been considered the most representative workers' organization since it was the oldest and thus more representative. However, a formal determination to that effect had yet to be made since the Government had no numerical information as to the membership of either TUCOSWA or FESWATU, since they had failed to submit annual returns required by the Industrial Relations Act.

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Furthermore, the criteria for determining the most representative organization was yet to be agreed by the tripartite National Steering Committee on Social Dialogue. As concerns consultations with the representative organizations, the meeting of 16 February 2017 concluded that each organization would designate one representative, the legality of which TUCOSWA questioned subsequently. With regard to the alleged unilateral replacement of TUCOSWA's designation, the change had been done at the verbal request of the TUCOSWA's acting Secretary-General. With respect to the two additional FESWATU advisers, the Government considered that the Workers were responsible for the registration of their delegates and affirmed that it had not registered any Workers' adviser. Finally, the Government acknowledged a compelling need to facilitate agreement among the representative workers' and employers' organizations with regard to criteria for determining the most representative organization and the designation of the Workers' and Employers' delegation to the Conference.

- 123.** *The Committee observes that it is not disputed that TUCOSWA is the most representative workers' organization in the country even though the Government indicates that no reliable data or objective and verifiable criteria for its establishment exist. What is at issue is whether the Workers' delegation was nominated in agreement with the most representative Workers' organizations as required by article 3(5) of the ILO Constitution, as well as whether there has been governmental interference.*
- 124.** *The Committee notes that the Government had requested each organization to designate one representative whose travel costs and subsistence expenses would be covered by the Government, while allowing the designation of further individuals whose expenses would be covered by the designating organization (see complaint concerning the non-payment of travel costs and subsistence expenses of the Workers' delegation by the Government of Swaziland, below paragraph 173). The Government thereby sought to impose a certain composition which TUCOSWA subsequently requested to be reviewed in line with the representativeness of the organizations.*
- 125.** *The Committee notes that the Government consulted the most representative organizations with regards to the nomination of the Workers' delegation, but the Committee considers that the Government should have made further efforts to facilitate agreement between them. Since TUCOSWA now seems to disagree with the nomination, objective and verifiable criteria for determining such organizations' representativeness needs to be established and applied without delay. The Committee trusts that the Government will strive to nominate the Workers' delegation for future sessions of the Conference in agreement with the most representative Workers' organizations as required by article 3(5) of the ILO Constitution.*
- 126.** *Concerning the additional FESWATU advisers who had allegedly been added by the Government to the delegation, the Committee notes that FESWATU had designated them and the allegation is therefore unfounded. As to the registration of those advisers who were allegedly absent from the Conference, the Committee has been informed that a third Workers' adviser from FESWATU registered them, on their behalf, at the Conference on 4 June 2017. As to whether a registered participant is actually attending the Conference or not, the Committee is unable to confirm because such information is not available unless the person has registered in the work of a committee or has been scheduled to speak. Concerning the allegations that the Government unilaterally replaced an adviser, which if founded would constitute serious interference, the Committee has been unable to verify the allegation. Nevertheless, the Committee considers that the lack of documented evidence corroborating the Government's statement that the delegate had been replaced on the basis of a verbal statement, give rise to doubts as to whether the Government interfered with trade union designations. The Committee urges the Government to put in place a clear, secure, written, transparent and documented procedure for the designations of delegates and*

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*advisers, and any subsequent changes thereto, so that the Government will be in a position to meet its constitutional obligations.*

**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Timor-Leste**

127. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of an incomplete delegation on the employers' and the workers' side by the Government of Timor-Leste. The ITUC submitted that the Government had not fulfilled its obligation under article 3(1) of the ILO Constitution to accredit a complete delegation to the Conference. It requested the Committee to call upon the Government to provide explanations about this situation and to recommend that the Government fulfil its constitutional obligations.
128. *The Committee regrets that the Government has neither furnished the information requested nor provided an explanation as to its inability to do so. Such a lack of cooperation curtails the Committee's ability to discharge its mandate under article 5(2)(a) of the Conference Standing Orders. The Committee further regrets that the Government has not accredited a fully tripartite delegation to this session and notes that the Government had only accredited a fully tripartite delegation to two of the last four sessions of the Conference. The Committee reminds member States of their obligation under article 3(1) of the ILO Constitution, specifically that they are required to nominate tripartite delegations to the Conference. The Government has not therefore met its obligations, by sending a delegation that is exclusively governmental. In so doing, the Government deprives the employers and workers of the country of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employer and Worker representatives, the Conference cannot function properly or attain its objectives.*
129. *The Committee urges the Government to send a fully tripartite delegation to the Conference next year.*

**Objection concerning the nomination of the Workers' and the Employers' delegations of Tunisia**

130. The Committee received a communication submitted jointly by the workers' organization Confédération Générale Tunisienne du Travail (CGTT) and the employers' organization Confédération des Entreprises Citoyennes de Tunisie (CONNECT), objecting to their exclusion from the Workers' and the Employers' delegation, respectively, for a seventh consecutive year. The authors of the objection submitted that their respective organizations had not been consulted on the nomination of the Workers' and Employers' delegation, contrary to article 3 of the ILO Constitution. Recalling the recommendations of the Committee on Freedom of Association in its report presented to the 327th Session of the Governing Body in respect of Case No. 2994 (GB.327/INS/4/1), the organizations stated that they had not only been excluded by the Government from participating in the Conference, but also raised a number of issues such as their exclusion from collective bargaining and social dialogue, which constituted manifest violations of freedom of association and trade union pluralism. The objecting organizations also submitted excerpts of the Code du travail Tunisien, and a copy of a judgment rendered by the Administrative Tribunal of Tunisia in June 2015 concerning the system of collection of union dues from the CGTT members.
131. In a written communication addressed to the Committee at its request, the Government submitted that the Union générale tunisienne du Travail (UGTT) and the Union tunisienne

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de l'Industrie, du Commerce et de l'Artisanat (UTICA) were the most representative organizations based on their membership figures, and consequently, both organizations had been consulted, in accordance with article 3(5) of the ILO Constitution. The Government also provided information on measures envisaged to establish objective and verifiable criteria to determine representativeness and on the development of trade union pluralism in the country.

- 132.** *The Committee notes the Government's statements that it consulted the workers' organization UGTT and the employers' organization UTICA, which it considered to be the most representative organizations, implying a criterion based on membership figures. The Committee considers that the Government's affirmation that UGTT and UTICA, respectively, are the most representative organizations, without providing membership figures, did not facilitate its task. It cannot therefore make a determination that objective and verifiable criteria were used for the determination of the most representative social partners' organizations in the country.*
- 133.** *While the Committee recalls that, pursuant to article 5(2)(a) of the Conference Standing Orders, it is only competent to examine objections relating to the credentials of delegates and their advisers, it wishes to note the long-standing recommendation by the Committee on Freedom of Association to the Government to set clear and pre-established criteria for trade union representation in consultation with the social partners (see ILO: Committee on Freedom of Association, 378th Report, Case No. 2994, paragraph 773). The Committee also observes that the Committee on Freedom of Association has stated in the same report that it "... expects the Government to prioritize inclusive social dialogue in respect of the determination of criteria to establish trade union representation, ensuring that it extends the scope of its consultations to include all Tunisian trade union and employers' organizations concerned to enable it to take the various points of view into consideration. The Committee expects that the Government will continue to benefit from the support of the ILO and requests it to keep it informed of any progress in this regard." (see ILO: Committee on Freedom of Association, 378th Report, Case No. 2994, paragraph 774(b)). The Committee encourages the Government to continue its efforts towards the development of objective and verifiable criteria and it trusts that their application, once established, will help provide reliable information for determining the representativeness of the organizations concerned.*
- 134.** *The Committee urges the Government to establish objective and verifiable criteria so as to enable a true picture of the trade union situation in the country on the basis of reliable figures and in order to remove existing doubts concerning the representative character of the Workers' and the Employers' delegation of Tunisia. In addition, it trusts that the Government will actively seek agreement among the employers' and workers' organizations to ensure a nomination process for the next session of the Conference that is transparent and fully consultative, in compliance with article 3(5) of the ILO Constitution.*

### **Objection concerning the nomination of the Workers' delegation of the Bolivarian Republic of Venezuela**

- 135.** The Committee received an objection concerning the nomination of the Workers' delegation, presented by the Confederación General de Trabajadores (CGT). The objecting organization alleged that the Government, unilaterally and without consultation, nominated as the Workers' delegate a representative of the Central Bolivariana Socialista de Trabajadores y Trabajadoras de la Ciudad, el Campo y de la Pesca (CBST), an organization composed of public sector workers wholly associated with and dependent upon the Government.
- 136.** On 2 May 2017, the objecting organization provided the Government with the names of the CGT's representatives to be accredited to the present session of the Conference: Ms Juana María Chireno García as the Workers' delegate and Mr Heberto José Ferrer Castellano as

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adviser. However, the credentials showed that Ms Chireno Garcia was accredited as adviser and Mr Ferrer as another person attending the Conference. Moreover, no payment of travel and subsistence expenses had yet been made by the Government to Ms Chireno and by not accrediting Mr Ferrer as an adviser the Government had undermined the participation of other workers' organizations.

- 137.** In a written communication addressed to the Committee at its request, the Government stated that the objection was not receivable since its author was serving as an adviser to the delegate whose nomination was challenged. The Government considered that the fact that public officials were affiliated to the CBST was no reason to question its independence. With regard to the CBST's representativeness, the Government recalled that the Organic Labour Law had established the National Trade Union Registry (NTUR), in which all employers' and workers' organizations were required to be registered. The Government considered that the NTUR provided objective and verifiable criteria on the basis of which a reliable and accurate database establishing the representativeness of all of the employers' and workers' organizations in the country was compiled, in accordance with prior recommendations of the Credentials Committee. The Government noted that, according to its records, while the CBST was the largest and most representative workers' organization in the country with 42 workers' confederations affiliates, the objecting organization represented only six workers' federations.
- 138.** The Government had received designations for the Workers' delegation from the six most representative workers' organizations, the CBST, the CGT, the Organización Sindical ASI de Venezuela, the Confederación de Sindicatos Autónomos de Venezuela (CODESA), the Central Unitaria de Trabajadores de Venezuela (CUTV) and the Confederación de Trabajadores de Venezuela (CTV). The CBST had reiterated its status as the most representative workers' organization, and noting past decisions of the Committee, the Government had refrained from interfering with the designations from minority workers' organizations and proceeded with the accreditation of the Workers' delegation as communicated by the CBST. The Government stressed that the delegation was comprised of at least one representative of each of the six organizations which had submitted designations to the Government.
- 139.** In relation to the allegations of failure to pay travel and subsistence expenses, it had been agreed with the delegation members that due to budgetary constraints the Government would cover the expenses of three Government members and two members of the Workers' and the Employers' delegations respectively, identified by the most representative organizations. In the case of the Workers' delegation, the Government had paid the expenses of the Workers' delegate, Mr López, and one adviser, Mr Díaz, both representing the CBST.
- 140.** *Concerning receivability, the Committee considers that the objection can be examined as it was submitted by Mr Antonio María Rodríguez, President of CGT, and not Ms Juana Chireno Garcia, Workers' adviser who also derives from the CGT.*
- 141.** *The Committee deeply regrets that the Government has failed to provide objective evidence regarding the representativeness of all the workers' organizations concerned. Despite its reference to the existence of the NTUR since 2012, the Government has still not provided the number of workers affiliated to CTV, CUTV, CGT and ASI. The absence of this information, repeatedly requested by the Committee, gives rise to deepening concerns regarding the conformity of the nomination of the Workers' delegation with the provisions of article 3(5) of the ILO Constitution. In the absence of sufficient and reliable information, the Committee can come to no conclusion on this particular case. In those situations where there are two or more representative workers' organizations, the Government is obliged to actively seek an agreement between them for the purpose of nominating the Workers' delegation. This obligation is not fulfilled where a government extends a mere invitation to*

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*some of the largest organizations, nor can one organization claim for itself the right to appoint the Workers' delegate without even attempting to reach an agreement with the other workers' organizations. Failing an agreement among most representative organizations, the Government must assess, based on objective and verifiable criteria, which organization (or group of organizations that have agreed on a common proposal) is the most representative.*

**142.** *Concerning the payment of travel and subsistence expenses by the Government, the Committee recalls that when a Government decides to cover the expenses of only part of a delegation, the distribution of payments cannot ignore the relative representativeness of the organizations whose representatives compete for them. However, the Committee wishes to recall that its mandate to examine complaints under article 26ter(1)(b) of the Standing Orders of the Conference is to assess whether there is a serious and manifest imbalance as between the number of advisers in the Government, Employers' and Workers' delegations whose expenses have been covered. Therefore, while the Government has explained that it has covered the expenses of three members of its delegation, two members of the Workers' and the Employers' delegations respectively (including the Workers' and Employers' delegates), according to the Revised Provisional List of Delegations of 9 June 2017, the Government delegation has accredited five advisers (three from the capital and two from the Permanent Mission). In comparison, the expenses of only one adviser of the Workers' delegation have been covered by the Government. While the participation of advisers from the Permanent Mission entails no additional cost to a government, it has little bearing in assessing the nature of the imbalance between the number of Government advisers and those in the Workers' delegation whose expenses are fully funded. In the instant case, the Committee observes that while there is an imbalance between the number of Government and Worker advisers whose participation costs are borne by the Government, it cannot be considered serious and manifest.*

**143.** *In light of the foregoing, the Committee considers that it is necessary to renew the monitoring measures (see paragraph 27 above).*

**Late objections concerning the nomination of  
the Workers' delegation of the Bolivarian Republic  
of Venezuela**

**144.** The Committee received two objections presented by the Unión Nacional de Trabajadores de Venezuela (UNETE) and the Confederación de Trabajadores de Venezuela (CTV) concerning the nomination of the Workers' delegation of Venezuela. Both objecting organizations alleged the reiterated inobservance by the Government of prior recommendations and conclusions of the Credentials Committee, in particular the Government's failure to establish objective and concrete criteria to facilitate an accurate determination of the relative representativeness of each trade union confederation.

**145.** *Both objections were not received by the Credentials Committee until 7 June 2017, at 7.15 p.m. and 7:21 p.m. respectively, well after the expiry of the time limit established for the present session of the Conference (48 hours from the publication in the Provisional List of Delegations of the names of the persons whose credentials are challenged, that is, 5 June 2017 at 10 a.m.). The Committee therefore considers that the objections are not receivable by virtue of the deadline fixed for this year's Conference.*

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**Objection concerning the failure to deposit credentials of an Employers' and a Workers' delegate by the Government of Yemen**

146. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of an incomplete delegation on the employers' and the workers' side by the Government of Yemen. The ITUC submitted that the Government had not fulfilled its obligation under article 3(1) of the ILO Constitution to accredit a complete delegation to the Conference. It requested the Committee to call upon the Government to provide explanations about this situation and to recommend that the Government fulfil its constitutional obligations.
147. In a written communication addressed to the Committee at its request, the Government stated that it had not been able to send an Employers' and a Workers' delegate this year, as it had not received any nominations, either from the workers' or the employers' side, despite the Government's request. It added that the current armed conflict in the country has led to absence of embassies to apply for visas.
148. *The Committee observes that at the 2015 and 2016 sessions of the Conference, Yemen was not represented by a full tripartite delegation, and notes the explanations provided by the Government, including with regard to the ongoing armed conflict and the resulting challenges with regard to travel. In this context, the Committee notes UN Security Council Resolutions No. 2342 of 23 February 2017 and No. 2216 of 14 April 2015 calling for an end to the armed conflict in the country. The Committee hopes that the situation in Yemen will be resolved soon and that it will be able to be represented by a complete tripartite delegation again at future sessions of the Conference, in accordance with article 3(1) of the ILO Constitution.*

**Complaints**

149. The Committee also received and dealt with seven complaints, which are listed below in the French alphabetical order of the member States concerned.

**Complaint concerning the partial payment of subsistence expenses of the Workers' delegate and non-payment of travel and subsistence expenses of the Workers' adviser by the Government of Afghanistan**

150. The Committee received a complaint submitted by the International Trade Union Confederation (ITUC) concerning the non-payment of subsistence expenses of the Worker's delegate, Mr Maroof Qaderi, and his adviser, Ms Sweeta Azimi, both from the National Union of Afghanistan Workers and Employees (NUAWE). With respect to the Workers' delegate, not only had the Government limited itself to providing him a subsistence allowance for only one week, but the amount was inferior to that received by the Government's delegates. As a consequence, the Workers' delegate was unable to participate in the full work of the Conference and it would lead to his replacement by representatives of the Central Council of Labour Union of Afghanistan (CCLUA), who had been designated as persons appointed in accordance with article 2(3)(i) of the Conference Standing Orders. In this regard, the ITUC recalled that at last year's session of the Conference there had already been questions surrounding the legitimacy of CCLUA's Director, Mr Kakojan Niazi, who was an employer and owner of two companies and had no trade union background. Concerning the Workers' adviser, the ITUC stated that her travel and subsistence expenses

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were currently borne by NUAWAWE. The ITUC requested that the Committee call upon the Government to cover the subsistence allowances for the Workers' delegate for the second week and the travel and subsistence costs of his adviser.

- 151.** *The Committee regrets that the Government has failed to respond to its request for information. In the absence of a reply, the Committee can decide to examine the complaint giving credence to the allegations of the complaining organization.*
- 152.** *With regard to the Workers' delegate, the Committee recalls that payment of subsistence expenses of non-governmental delegates for less than the entire length of the Conference is incompatible with article 13(2)(a) of the ILO Constitution, which requires the Government to cover the expenses of a tripartite delegation for the entire duration of the Conference. The Committee is even more concerned since, in the event of his departure, the delegate may be replaced by a person whose representativeness is questioned.*
- 153.** *The Committee further recalls that the competence conferred to it to examine complaints on the non-observance of article 13(2)(a) of the Constitution also includes, in accordance with article 26ter(1)(b) of the Conference Standing Orders, cases of serious and manifest imbalance as between the number of Employers' or Workers' advisers whose expenses have been covered in the delegation as compared to the number of advisers appointed for the Government delegates. The purpose is to ensure that the financial means available for the participation of a tripartite delegation to the Conference are distributed between the Government, the Employers' and the Workers' delegations at least in a proportion similar to that envisaged in the Constitution for the composition of delegations to the Conference. The Committee observes that according to the Revised Provisional List of Delegations of 9 June 2017, the Government has accredited six advisers (including three from the Permanent Mission in Geneva) as opposed to one for the Workers' delegate. In the absence of information to the contrary, the Committee considers that a manifest imbalance exists with respect to the number of advisers in the Government and those in the Workers' delegation whose expenses have been covered. Therefore, to the extent that the Government has not met its obligations to cover the Workers' delegate's subsistence expenses for the whole duration of the current session of the Conference, the Committee urges the Government to do so quickly and it trusts that it will meet its obligations in this regard for future sessions of the Conference.*
- 154.** *As regards the allegations concerning the CCLUA's Director appointed in accordance with article 2(3)(i) of the Conference Standing Orders, they could not be treated as an objection since he is not, at this time, serving as a delegate or adviser as required under article 5(2)(a) of the Conference Standing Orders.*

**Complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegation by the Government of Albania**

- 155.** The Committee received a complaint presented by the International Trade Union Confederation (ITUC) alleging the non-payment of travel and subsistence expenses for the Workers' delegate, as well as for the adviser and substitute delegates, in breach of article 13(2)(a) of the ILO Constitution. The ITUC alleged that despite having duly accredited a Workers' delegate and three Workers' adviser and substitute delegates, the Ministry did not proceed with tendering for the purchase of their air tickets. The ITUC requested that the Committee call upon the Government to provide further clarifications and to fulfil its constitutional obligations.

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156. *The Committee regrets that the Government has not responded to its request for information. As the Committee has often recalled, in the absence of a reply, the Committee can decide to examine the complaint and to give credence to the allegations of the complainant.*
157. *The Committee recalls that article 13(2)(a) of the ILO Constitution imposes on its Members an obligation to pay the travel and subsistence expenses of the delegates and their advisers nominated to the Conference. The Committee notes with concern that, while the Government confirmed in its credentials form that it would cover the expenses of the whole Workers' delegation, it failed to do so. The Committee observes with great concern that only two Workers' advisers and substitute delegates were registered as of 14 June 2017. In contrast, the two Government delegates and six advisers and substitute delegates, which were from the capital, had registered, whereas the Workers' delegate or one adviser had not. The Committee is particularly concerned over the absence of the Workers' delegate. In light of the information available to it, the Committee considers that the Government has failed to meet its obligations under article 13(2)(a) of the ILO Constitution. The Committee urges that, in the future, the Government will comply with its obligation to pay the travel and subsistence expenses of the delegates and their advisers nominated to the Conference.*

**Complaint concerning an act or omission by the Government of Bahrain by which an accredited delegate or adviser has been prevented from attending the Conference**

158. The Committee received a complaint on 5 June 2017 presented by the International Trade Union Confederation (ITUC), alleging that in respect of the Workers' delegation of the Bahrain, the Workers' delegate Mr Abdulqader Shehab, Deputy Secretary-General of General Federation of Bahrain Trade Unions (GFBTU) had been prevented from attending the present session of the Conference. The ITUC submitted that on 3 June 2017, Mr Shehab had been prevented by the authorities at Manama airport from boarding the plane to Geneva, without any reasons being provided. It was further submitted that as Mr Shehab was unable to travel, his advisers (Messrs Mohamed and Almusaad (GFBTU)), refrained from travelling in solidarity and protest. The ITUC expressed its concerns that in the absence of the Workers' delegate and his two substitutes, the Workers' delegation at the present session of the Conference would only be composed of individuals affiliated with the Bahrain Free Labour Unions Federation (BFLUF), which the ITUC considered to be a Government-established, non-independent and non-representative organization. It stated that this issue had also been brought to the attention of the Committee on Freedom of Association. It requested that the Committee call upon the Government to fulfil its constitutional obligations by removing immediately any travel ban and ensure that all accredited GFBTU delegates can travel to Geneva without delay to take part in the Conference. The ITUC further requested, should the Committee not be able to resolve the matter, that it be referred to the Officers of the Conference in accordance with the provisions of article 26ter(5) of the Standing Orders of the Conference.
159. In an oral statement to the Committee on 6 June 2017 in reply to its invitation, Mr Jameel Humaidan, Minister of Labour and Social Development, indicated that the decision prohibiting Mr Shehab from travelling came as a surprise to the Ministry in view of the measures taken to facilitate the Workers' delegation's participation. The Government had covered travel and subsistence expenses and had provided air tickets for the entire Workers' delegation. They had no information as to the reasons why Mr Shehab had been stopped at the airport, but assured the Committee that the incident was unrelated to any workers' activities, and that the travel ban extended to all Mr Shehab's travel out of the Kingdom of Bahrain, but was not aimed at preventing him from attending the Conference. The Government also clarified that the other members of the Workers' delegation were free to

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travel and participate in the Conference. The Government assured the Committee that enquiries into the matter were ongoing.

- 160.** In a subsequent written communication addressed to the Committee at its request, the Government reiterated the statements provided orally, indicating that despite ongoing enquiries, it had been unable to find out the reasons for the travel ban. The Ministry of Labour and Social Development assured the Committee that it would continue to follow up with the concerned Government authorities as to the reasons for the travel ban. In a further written communication, the Ministry informed the Committee that, following the necessary consultations with the concerned authorities, Mr Shehab was now authorized to travel to Geneva.
- 161.** *The Committee recalls that, in accordance with article 26ter(3) of the Conference Standing Orders, it may consider complaints alleging that an accredited delegate or adviser has been prevented from attending the session of the Conference due to an act or omission of a government. In view of the urgency of the matter and following the oral comments provided by the Government, the Committee unanimously decided to refer the matter to the Officers of the Conference on 8 June 2017. However, the same day it was informed that Mr Shehab had been authorized to travel. Pending confirmation of Mr Shehab's itinerary or actual arrival, the Committee decided to defer its decision which became moot on 10 June 2017 with the actual arrival of Mr Shehab. The Committee considers that this complaint calls for no further action on its part.*

**Complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegation by the Government of Comoros**

- 162.** The Committee received a complaint presented by the Confédération des Travailleuses et Travailleurs des Comores (CTC), to which the International Trade Union Confederation (ITUC) associated itself, alleging the non-payment of travel and subsistence expenses for the Workers' delegation, in breach of article 13(2)(a) of the ILO Constitution. To this end, the complainant provided the extract of the minutes of the Governing Council dated 10 May 2017 during which the Council "agreed to cover the participation of the governmental delegation" and requested the Minister of Youth, Employment, Vocational Integration, Culture and Sports "to engage discussions with the civil society and the private sector so that they cover their participation". The complainant requested that the Committee call upon the Government to provide explanations about this situation and to recommend that the Government fulfil its constitutional obligations.
- 163.** In a late and incomplete reply to the Committee's request for information, the Government stressed that a tripartite organization had been established to ensure resource mobilization and strengthen the delegation. The Government asserted that it had complied with its constitutional obligation and had covered the expenses of four delegates, including the Employers' and Workers' delegates.
- 164.** *The Committee recalls that article 13(2)(a) of the ILO Constitution imposes on its Members an obligation to pay the travel and subsistence expenses of the delegates and their advisers nominated to the Conference. The Committee notes with regret that it has not received a complete reply from the Government. It further notes that even though the Government has asserted both in its credentials form and its reply that the expenses of the Workers' and Employers' delegates have been covered, none of them have registered as of 12 June 2017. Consequently, the Committee cannot confirm that the Government has met its constitutional obligations regarding the payment of delegate expenses. The Committee expects that next year the Government will fully meet its constitutional obligations under article 13(2)(a) of the ILO Constitution.*

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***Complaint concerning the non-payment of travel and subsistence expenses of the Workers' advisers by the Government of Spain***

- 165.** The Committee received a complaint submitted by Mr Jesús Gallego García of the Unión General de Trabajadores (UGT), Workers' delegate, and Ms Cristina Faciabén Lacorte of the Confederación Sindical de Comisiones Obreras (CCOO), Workers' adviser, concerning the non-payment of travel and subsistence expenses of the Workers' advisers. The complainants submitted that the CCOO and the UGT were the two most representative workers' organizations in the country (with 36.1 per cent and 32.9 per cent representation, respectively), followed by two less representative organizations: the Solidaridad de los Trabajadores Vascos (ELA-STV) and the Confederación Intersindical Gallega (CIG) (with 3.1 per cent and 1.6 per cent representation, respectively). The complainants maintained that, for the sixth consecutive year, the Government continued to pose obstacles to the adequate participation of the Workers' delegation to the Conference. While the Government had increased in 2017 the funding of expenses from four to six members of each delegation, this reduced number of representatives still did not allow the Workers' delegation to cover all of the items on the Conference agenda adequately for its full duration. The complainants also challenged the Government's continued imposition of conditions on the allocation of funding, requiring that the four most representative workers' organizations reach consensus regarding those members of the delegation whose expenses would be covered. The complainants alleged that this requirement subjected them to unfair treatment compared with the less representative organizations, and resulted in an imbalance in the delegation. The complainants also contested the Government's repeated modification of criteria for travel and lodging arrangements, as well as the Government's requirement for the delegates to advance all costs for their participation at the Conference.
- 166.** In a written communication addressed to the Committee at its request, the Government submitted that it had funded six members of the Workers' delegation (the delegate and five advisers) in accordance with the request of the objecting organizations. It noted that the Employers' delegation only requested funding for five of its members as the amount was considered sufficient for the group to be adequately represented at the Conference. It confirmed that the amounts allocated to cover the expenses of the non-governmental delegations continued to be fixed pursuant to Royal Decree No. 462/2002. It explained that for Switzerland, the daily subsistence allowance paid to the Worker's delegation was €243.41, which corresponded to the highest payable allowance in accordance with internal regulations. In this respect, it mentioned that two out of the three advisers of the governmental delegation had received a lower daily allowance (€209.75). The Government noted that, advance payment of travel and subsistence expenses was only applicable to public officials and hence not to the Employers' and Workers' delegations. The Government maintained that the funding of the participation of six of its members did not prevent the Workers' delegation from covering the expenses of additional advisers, up to the maximum stipulated in the rules of the Conference or sharing these grants where there was no overlap in terms of days. The Government confirmed its intention to consider for the future the Workers' organizations' request to gradually increase such funding if the circumstances allow it.
- 167.** *As the complainants implicitly allege the non-payment of travel and subsistence expenses of accredited Workers' advisers on their behalf, the Committee considers the complaint to be receivable in accordance with article 26ter(3)(b) of the Standing Orders of the Conference.*
- 168.** *As regards the possible existence in the delegation of a serious and manifest imbalance as between the number of Employers' or Workers' advisers whose expenses have been covered by the Government and the number of advisers appointed for the Government delegates, in accordance with 26ter(1)(b) of the Standing Orders, the Committee notes that the*

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*Government has agreed to cover the expenses of five Workers' advisers while it has accredited six Government advisers. The Committee does not consider this to be a serious and manifest imbalance, nor does it consider that this number of advisers is unreasonably low for a Conference with seven items on its agenda, two of which were to be dealt with in no more than two or three committee sittings. The Committee therefore decides not to uphold the complaint.*

- 169.** *The Committee notes with satisfaction the increase by the Government in the funding of the non-governmental delegations and its intention to consider a gradual increase in the future. As stated last year, the Committee recalls that with regard to the conditions under which the payment of travel and subsistence expenses are effected, the Committee believes that the spirit, if not the letter of the ILO Constitution requires member States to facilitate the participation of its tripartite delegations on conditions that, without necessarily being equal, would give the Government, the Employers' and the Workers' delegations similar capacities to actively take part in the Conference. This obligation concerns not only the funding of participation costs for a balanced number of participants in each of the groups, but also the conditions of such funding. In this connection, the Committee's precedents establishes that a system providing only for reimbursement of expenses, in particular in respect of the Workers' representatives, may effectively impede the latter from participating in the Conference where they are unable to advance the costs of attendance.*

### **Complaint concerning insufficient subsistence expenses of the Employers' delegation of Serbia**

- 170.** The Committee received a complaint concerning the insufficient subsistence expenses of the Employers' delegation of Serbia presented by the Employers' group of the Conference. The Employers' group alleged that the Government of Serbia provided to each member of its tripartite delegation a daily subsistence allowance of €15 on the basis that this was the amount established by national law, even though this limit was applicable only to state officials. As employers' representatives are not government officials, the Employers' group considered that such limits could not be applied to the Employers' delegation. Moreover, this prevented their attendance for the full duration of the Conference since delegates were required to cover the shortfall. Considering the cost of living and conditions required for decent accommodation and meals in Geneva, the Employers' group submitted that the Government had failed to comply with its obligations under article 13(2)(a) of the ILO Constitution.
- 171.** In a written communication addressed to the Committee at its request, the Government stated that the travel and subsistence expenses (including lodging) allocated to its tripartite delegation for 2017 was 1,437,942 Serbian dinars (RSD) (approx. CHF 13,000), as this was the amount established for this year's Conference in the national budget. It provided a detailed breakdown that showed participation for one week of the Conference per individual. The Government explained that in accordance with the applicable regulation on compensation and severance costs of civil servants and employees, participants to this year's Conference were entitled to the reimbursement of cost incurred in connection with their work in the amount of €15 for every 24 hours spent abroad and stays for less than 24 hours were paid on a pro-rata basis.
- 172.** *The Committee notes that the information provided by the Government does not clarify the reasons why its national regulations are applied to non-civil servants. The Committee considers that the subsistence expenses allocated by the Government are insufficient for attendance for the full duration of the Conference and that their level does not meet the requirement of subsistence expenses that is a clear constitutional requirement, since those offered are evidently below a liveable minimum for Geneva, Switzerland and its surrounding vicinities. The Committee notes that whereas the Government has the ability to assure its*

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*representation through a diplomatic mission (three persons have been nominated from the Permanent Mission), the same cannot be said for employers' or workers' organizations. While noting the explanation of the Government, the Committee remains concerned that the Government will not secure sufficient financing to permit full participation at the next session of the Conference. Therefore, the Committee recalls the importance of respect for the principles of tripartism which requires a balanced representation of employers and workers so as to permit their effective participation at meetings, and it urges the Government to ensure that its budget covers adequate funding for the full duration of the Conference, thus ensuring its compliance with its obligations as set out under articles 3(1) and 13(2)(a) of the ILO Constitution. Without the participation of Government, Employer and Worker representatives, the Conference cannot function properly or attain its objectives. Therefore, the Committee urges the Government to act accordingly so as to meet its obligations.*

**Complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegation by the Government of Swaziland**

- 173.** The Committee received a complaint from the Trade Union Congress of Swaziland (TUCOSWA) alleging non-payment of travel and subsistence expenses for the Workers' advisers and substitute delegates, in breach of article 13(2)(a) of the ILO Constitution. Noting the high number of Government advisers accredited to the Conference, the TUCOSWA alleged that the travel and subsistence expenses of a proportionately corresponding number of Workers' advisers should have been covered by the Government and this irrespective of the fact that three of the Government advisers came from its Permanent Mission in Geneva. It further alleged that the Government had not complied with the 2016 conclusions of the Credentials Committee recommending that the Government reimburse the Workers' advisers' expenses and ensure a more balanced distribution of resources between the three groups in the delegation in future sessions of the Conference (see *Provisional Record* No. 6C, 105th Session of the International Labour Conference, Geneva, May–June 2016, paragraph 143). The TUCOSWA requested that the Committee order the Government to abide by the 2016 conclusions within two months following the closure of the present session of the Conference.
- 174.** In a written communication addressed to the Committee at its request, the Government informed it that it had paid all the travel and subsistence expenses of the Workers' delegate and one adviser. As regards the 2016 conclusions of the Committee, the Government was delayed in their implementation mainly due to its reimbursement policy requiring submission of receipts which the Workers' advisers had not kept. The Government intended to request an exception to the policy to ensure re-imbursement. Concerning the Government's advisers at the current session, the Government contended that the staff of the Permanent Mission should not be taken into consideration since they were not accredited as advisers to the Government delegates but present to cater for the general welfare of the whole delegation, including the Workers. Further, the three advisers from the Swaziland National Provident Fund (SNPF) were stakeholder representatives and not those of the Government. Their travel and subsistence expenses had been paid by the SNPF.
- 175.** *The Committee regrets that it is seized for the second consecutive year with a complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegation by the Government of Swaziland.*
- 176.** *With respect to the outstanding payments, the Committee regrets that the Government has not yet processed the reimbursements in spite of last year's Committee conclusions.*
- 177.** *For the present session of Conference, the Committee notes that it is not disputed that the expenses of the Workers' delegate and one adviser have been met. The matter before it in*

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*accordance with article 26ter(1)(b) of the Standing Orders of the Conference is to assess whether there is a serious and manifest imbalance as between the number of advisers in the Government and Workers' delegations whose expenses have been covered. According to the Revised Provisional List of Delegations of 9 June 2017, the Government delegation has nine accredited advisers, of whom six are from the capital and three are officials of the Permanent Mission in Geneva. In comparison, the expenses of only one adviser of the Workers' delegation, in addition to those of the Workers' delegate, have been covered by the Government. The Committee recalls its 2016 conclusions stating that "the fact that travel and subsistence expenses of three Government advisers are covered by a public undertaking such as the SNPF and not directly by the Government, or that the participation of three additional Government advisers from the Permanent Mission entails no additional cost to it have little bearing in assessing the nature of the imbalance between the number of Government advisers and those in the Workers' delegation whose expenses are fully funded" (Provisional Record No. 6C, 105th Session, Geneva, May-June 2016, paragraph 143). The Committee considers that this too applies to advisers who do not deal with technical matters in Conference committees. As at the preceding Session, the Committee finds that there is a manifest imbalance as regards the number of advisers in the Government and the Workers' delegations whose expenses have been covered. The Committee further considers that diplomats in the Permanent Mission accredited as advisers count as such and if they were truly dealing with logistics they should not have been nominated as advisers whose functions are set out in article 3 of the ILO Constitution.*

- 178.** *To ensure a balanced composition of its delegation at future sessions of the Conference, the Committee encourages the Government to carefully consider the composition of its delegation, including the function and designation of each individual. On the matter of non-payment of advisers' expenses in 2016, while noting the Government's explanations, it calls upon the Government to take the necessary measures immediately to ensure prompt reimbursement, as the purpose is to ensure that the financial means are available for participation.*

## **Communication**

- 179.** The Committee received one communication this year.

### **Communication concerning the Employers' delegation of El Salvador**

- 180.** The Committee received a communication presented by the Employers' group of the Conference, drawing the attention of the Committee to a manifest imbalance between the size of the Employers' delegation of El Salvador as compared to the Government and Workers' delegations. The Employers' group explained that whereas the Government's delegation was composed of six individuals and the Workers' delegation was composed of four workers, the Employers' delegation was limited to its titular delegate.
- 181.** In a written communication addressed to the Committee at its invitation, the Government stated that its delegation was led by the Minister of Labour and Social Security and a person accompanying her, along with other persons from the capital and the Permanent Mission in Geneva who held the function of titular delegates, advisers and substitute delegates, and advisers. In respect of the Workers' delegation, the Government explained that it had accredited four representatives, including the titular delegate for whom it had paid the travel and subsistence expenses in accordance with its constitutional obligations. It further informed the Committee that the three other individuals paid for their own expenses, since the Government considered that it could not deny their request to be included in the Workers' delegation, as it would be incompatible with its constitutional obligations. In respect of the

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Employers' delegation, the Government explained that it also paid for the Employers' delegate and added that it had not received any request to include any other names in the Employers' delegation.

**182.** *The Committee notes the explanations provided by the Government, according to which it has met its minimal constitutional obligations and has limited itself to nominating the representatives designated by the employers and workers. The Committee further notes that, had the Employers' group requested the Government that any other names be included in the Employers' delegation, the Government would not have denied such a request as it would be incompatible with its constitutional obligations. The Committee considers that the very principle of tripartism and the composition of the delegations to the Conference as envisaged by article 3 of the ILO Constitution requires Members to accredit delegations which do not present serious and manifest imbalance as between its three parts.*

## **Other matters**

**183.** As the ILO nears its centenary, the Credentials Committee recalls that it has been the custodian of the tripartite structure of the ILO since its inception. The Committee wishes to recall that the core of its work concerns the respect by Governments of two fundamental constitutional obligations; first the obligation to nominate the Employers' and Workers' delegates and advisers in agreement with their most representative organizations and second the obligation to pay the travel and subsistence expenses of delegates and their advisers, including those of the employers and workers attending the Conference. Those obligations are provided for in articles 3(5) and 13(2)(a) of the ILO Constitution and have thus been formally accepted by all member States upon becoming ILO Members. The Committee stresses that full respect of these obligations is a condition for tripartism and permits the genuine representatives of the governments, employers and workers of member States to be brought together and fully participate in the important work of the Conference.

**184.** Despite these fundamental constitutional obligations the Committee continues to face a consistent level of cases. The Committee expresses its concern that some member States appear routinely before it for failure to comply with these obligations.

**185.** The Committee considers that its labours merit more visibility, given the increasing number of cases that it annually receives. In this connection, the Committee considers that it may be useful if more accessible information could be made available to constituents with a view to assisting them to meet their constitutional obligations. In addition, the Committee considers that wider distribution of its reports and background materials could assist the coherence of the supervisory system.

**186.** The Committee recalls that its mandate has adapted over the past two decades (for example, permitting it to receive objections for the failure to deposit credentials, complaints for serious and manifest imbalance of delegations, complaints where an accredited delegate or adviser has been prevented from attending the Conference). In this regard, the Committee also notes that it has been seized of an interesting case that has called into question, once again, the insufficiency of the Conference Standing Orders as to tripartite imbalance within delegations (see paragraph 180 above). The Committee notes that the Governing Body has already been seized of this matter in the past and deferred it pending future developments, but the Committee considers that it would be desirable to re-examine the matter in the foreseeable future. In addition, as noted in its First Report, the Committee proposes through the Conference that the Governing Body consider in the context of its discussion of this matter, whether any steps may be taken to achieving fuller participation.

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**187.** Finally, the Committee observes that the accreditation statistics show an important increase in recent years. Over the past ten years, the total number of accredited persons has risen from 4,663 in 2007 to 6,092 in 2017. This increase may have been facilitated by the creation through practice of new categories of accredited persons, often without clear or specific institutional role or function, such as “Other persons attending the Conference” or “Persons accompanying the Minister”. For instance, the number of persons accredited under “other persons attending the Conference” has increased from 555 in 2007 to 1,244 this year.

**188.** While the number and size of accredited delegations may well attest to the increasing interest of tripartite constituents in the work of the Conference, the Committee considers that it is within its remit to draw attention to this situation which could potentially affect the efficient functioning of the Conference. The Committee accordingly considers that an in-depth analysis of all current accreditation arrangements and practices should be undertaken with a view to assessing their implications and identifying possible needs for improvement.

**189.** The Credentials Committee adopts this report unanimously. It submits it to the Conference in order that the Conference may take note of it and adopt the proposals contained in paragraphs 10, 20 and 27.

Geneva, 15 June 2017

*(Signed)* Mr Michael Hobby,  
Chairperson

Mr Fernando Yllanes Martínez

Mr Jens Erik Ohrt



