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Ninth sitting, 11 June 2021, 1 p.m.**Neuvième séance, 11 juin 2021, 13 heures****Novena sesión, 11 de junio de 2021, 13 horas**

Chairperson: Ms Mvondo

Présidente: M^{me} Mvondo

Presidenta: Sra. Mvondo

Work of the Committee*PV.4 and PV.5 are adopted, as amended.***Travaux de la commission***La commission a adopté le PV.4 et le PV.5, tels qu'amendés.***Trabajos de la Comisión***Las actas del PV.4 y del PV.5 se adoptaron, en su tenor modificado.*

Présidente – Notre séance, comme annoncé dans le programme de travail de notre commission, sera consacrée à l'examen de deux cas individuels: celui de la Chine, pour la Région administrative spéciale de Hong-kong, concernant la convention (n° 87) sur la

liberté syndicale et la protection du droit syndical, 1948, et celui de la Namibie pour la convention (n° 111) concernant la discrimination (emploi et profession), 1958.

Avant de donner la parole au représentant gouvernemental de la Chine et pour que nos discussions puissent se dérouler dans les meilleures des conditions, je vous invite à bien vouloir envoyer la copie de vos discours à standardsinterpret@ilo.org.

Autre information digne d'intérêt, en prélude à l'examen de son cas, la Chine, pour la Région administrative spéciale de Hong-kong, a envoyé des informations écrites le 20 mai et un complément d'information le 8 juin 2021. Toutes ces informations se trouvent dans la section «Discussion des cas individuels» de la page Web de notre commission.

À la lumière du nombre d'orateurs inscrits pour la discussion du cas concernant la Chine, pour la Région administrative spéciale de Hong-kong, et comme prévu dans les méthodes de travail, le bureau de la commission a décidé de réduire le temps de parole à deux minutes pour tous les délégués intervenant à titre individuel. Eu égard au nombre élevé des orateurs et afin de permettre que les débats se déroulent de manière idoine, je vous saurais tous gré de bien vouloir respecter le temps de parole qui vous est attribué et qui est affiché sur l'écran. Cela m'évitera, d'une part, d'avoir à vous couper la parole, chose très désagréable aussi bien pour vous que pour moi, et, d'autre part, d'interrompre le cours de votre intervention.

Discussion of individual cases (cont.)
Discussion des cas individuels (suite)
Discusión de los casos individuales (cont.)

Chine – Région administrative spéciale de Hong-kong (ratification: 1997)

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

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

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

Interpretation from Chinese: **Government representative (Mr HAO)** I would like to congratulate you on your election as the Chair of this Committee. We have noted that the Committee of Experts on the application of Convention No 87 in Hong Kong SAR has made its observations. I will now give the floor to the Representative of Hong Kong SAR to make detailed remarks.

Interpretation from Chinese: **Government representative (Mr SUN)** – The Government of Hong Kong SAR would like to thank the Committee on the Application of Standards for the opportunity here to address the Committee of Experts' observations in 2019 and 2020 on the Hong Kong SAR's application of the Convention. This Convention has been applied to Hong Kong with modifications in respect of Articles 3, 5 and 6 since 1963. All along, the Hong Kong SAR Government has been fully committed to taking measures to protect employees' rights to form and join trade unions, and to participate in trade-union activities.

The Basic Law of the Hong Kong SAR of the People's Republic of China, known as Basic Law, protects the right and freedom of association and the right and freedom of Hong Kong residents to form and join trade unions.

The Hong Kong bill of rights ordinance also provides for such rights. However, as in other jurisdictions, these rights are not absolute and are subject to restrictions provided by law for the protection of national security, public order, etc.

The Convention clearly stipulates that “one shall respect the law of the land in exercising the rights provided for in this Convention”. The Committee of Experts also pointed out in its observations that workers’ and employers’ organizations should have the right to organize their activities in full freedom, while respecting the law of the land.

The authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order.

The Hong Kong SAR Government has been committed to promoting sound trade union administration and trade unionism. Trade union members and officers enjoy a range of rights under the Hong Kong SAR’s law on trade unions, including the immunity from civil suits for certain acts done in relation to trade disputes. Although the purposes of a trade union may be involved in restraint of trade, trade union members are not liable to criminal prosecution for conspiracy.

Over the past decade, the number of trade unions registered in the Hong Kong SAR increased steadily, and recorded a sharp rise in 2020. Specifically, the number of registered employee unions increased more than half, from 866 at end 2019 to 1,355 at end 2020. These figures demonstrate that the right and freedom of association and the right and freedom to form and join lawful trade unions are fully enjoyed by Hong Kong residents. Moreover, the visits to trade unions conducted by the Labour Department have not found any acts of interference of employee and employer organizations by each other in their establishment, functioning or administration.

No complaint from trade unions about interference was received. Fully upholding the protection of the right of our workforce to join trade unions, we have put in place a series of safeguards to protect employees against anti-union discrimination under Hong Kong’s labour law. Our law stipulates that an employer shall not prevent or deter an

employee from exercising his rights to be or to become a member or an officer of a trade union, to take part in the union activities at any appropriate time, to associate with other persons to form a trade union, etc.

Furthermore, the law does not allow an employer to dismiss, penalize, or discriminate against an employee by reason of his exercising the above rights, otherwise, offenders, including employers, or persons acting on their behalf, may incur a criminal sanction.

On the alleged dismissal of a group of coach drivers by the employer before a strike raised by the ITUC in 2016, referred to in a Committee of Experts' observation, the Hong Kong SAR Government carried out a prompt investigation after receiving complaints on alleged anti-union discriminatory acts. While there was insufficient evidence to substantiate an anti-union discriminatory offence, the Government took out prosecution against the employer on late payment of wages and a conviction was secured.

The Government does not and will never tolerate abuses of law by employers and will promptly take out impartial and in-depth investigation into complaints on suspected anti-union discriminatory acts. Subject to sufficiency of evidence, prosecution will be taken out against the employers and/or persons acting on employers' behalf.

Hong Kong is a society respecting and upholding the rule of law. Any arrest and prosecution is directed against the criminal acts according to the law, and has nothing to do with the political stance, social background or trade union membership of the persons concerned.

The police arrest actions must be based on facts and evidence and conducted in strict accordance with the law. The Department of Justice oversees criminal prosecution free from any interference. There is an independent judicial with the power of final adjudication in Hong Kong. Everyone will receive a fair and just trial. It is hypocritical

argument of politics openly overriding legal justice for anyone to advocate the privilege for certain groups of people, such as labour representatives and to contend that they can violate the law without facing legal sanctions. The court, which enjoys independent judicial power has, in accordance with the law, judged and convicted individual unionists in contravention of criminal offences after trial.

The fair and transparent legal proceedings and court rulings prove that the prosecution actions were fully justified in fact and in law. In these criminal cases, prosecutions of the persons concerned were made because of their criminal offences, and had completely nothing to do with their trade union membership. As the judicial proceedings of the other related cases are still ongoing, it is inappropriate for the Hong Kong SAR Government to make comment further in this occasion.

In respect of the alleged arrest of a trade unionist by the police in December 2015, we are unable to locate the alleged case based on the information provided. However, we must hereby stress again that all the prosecutions were made having regard to the person's acts, which violated the law and had nothing to do with their personal background, including their trade union membership or activities.

The Hong Kong SAR will continue to handle every case in a fair, just and impartial manner in accordance with the law.

As regards the Committee of Experts' concern about the law of the People's Republic of China on safeguarding national security in the Hong Kong SAR or NSL, we must point out that safeguarding national security through legislation is in line with the international practice. Countries all have their own legislation and relevant enforcement mechanisms to safeguard their own national security.

The Hong Kong SAR has a duty to enact laws on national security under the article 23 of the Basic Law, but 23 years after the reunification, has still not been able to

legislate to prohibit acts and activities endangering national security as required by the Basic Law.

Given the political situation in Hong Kong at that time, this task could not be completed in the foreseeable future. The legal vacuum exposed Hong Kong to serious threats to national security, which was illustrated by the series of riots since June 2019.

In view of the grave situation in Hong Kong at that time, with protesters becoming increasingly violent and growing signs of separatism and terrorism seriously affecting the lawful rights and interests of Hong Kong residents.

The central authorities must take immediate steps to introduce a legal system and enforcement mechanisms to safeguard national security. As such, the standing committee of the NPC of China adopted a National Security Law of Hong Kong on 30 June 2020, with a promulgation and implementation by the Hong Kong SAR Government on the same day.

We also hope that the Committee of Experts can appreciate that the NSL did not demand any provision of the Basic Law. All human rights-related provisions remain untouched. The Hong Kong SAR Government will continue to ensure the enjoyment by the Hong Kong residents of human rights and freedoms provided under the Basic Law. In fact, the Hong Kong NSL clearly stipulates that the human rights shall be respected and protected in safeguarding national security in Hong Kong. The rights and freedoms, including freedoms of speech, of the press, publication, association, assembly, procession, demonstration, and others, that the Hong Kong SAR residents enjoy under the Basic Law, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights as applied to Hong Kong, shall be protected in accordance. Any measures or enforcement action taken under the Hong Kong NSL must comply with the above principles.

On the other hand, when exercising these rights, one must respect the laws, refrain from contravening the fundamental provisions of the Basic Law, or endangering national security, public safety, public order, or rights or freedoms of others. The NSL further lays down many legal principles for the protection of defendants, including the presumption of innocence, prohibition of double jeopardy, the right to defend in judicial proceedings. Any measures or enforcement action taken under NSL must observe these principles, together with strict procedural requirements, including those on the request of investigation, authorization.

The above features have put the Hong Kong NSL on a par with, if not superior to, similar national security laws in other jurisdictions. And the law enforcement actions by the Government are based on evidence, strictly according to the law, directed at the criminal acts committed by the persons or entities concerned. They have absolutely nothing to do with people's political stance, social background, occupation or trade union activities. Therefore, every law enforcement action under the NSL targets acts endangering national security, with a view to fulfilling the purpose of the law, which includes preventing, suppressing, and punishing offences endangering national security and maintaining the prosperity and stability of the Hong Kong SAR.

It is definitely not related to labour issues or whether the concerned entity or person is a labour union or unionists. The implementation of the NSL has immediate results resulting in Hong Kong emerging from chaos into stability, with a significant reduction in violent acts.

The number of cases of arson, and the criminal damage dropped by 75 per cent and 40 per cent. Advocacy of Hong Kong independence subsided substantially. The society largely resumed its normal life. Lawful rights of people, including workers and trade unions, are protected, free from the risk of being attacked based on their opinions. This

is conducive for the trade unions and workers to voice their opinions and defend their rights and interests. On top of which, economic and the people's livelihoods could revive.

We hope that the above could address the Committee of Experts' concern on the Hong Kong NSL.

Finally, we must stress that the rights of the trade union of the employees to take part in trade union activities in Hong Kong are adequately protected by the trade union and labour laws. Their rights and freedoms and been maintained intact, and have not been affected in any way by the implementation of the Hong Kong NSL.

We wish to assure the Committee that Hong Kong will continue to comply with the obligation...

Worker members – This is the first time our Committee is examining China – Hong Kong Special Administrative Region and its application of the Convention, but the acute decline of respect for civil liberties and freedom of association raises extremely serious concerns. Trade union rights are seriously under attack. Trade unionists are being persecuted for defending the hard-won rights of workers and for carrying out legitimate trade union activities. The authorities are violating their obligations under the Convention.

First, on the situation of civil liberties and respect for trade union rights. Brother Lee Cheuk Yan, General Secretary of the HKCTU and long-time participant in our Committee on the Application of Standards was prosecuted for participating in unauthorized protests on 18 August 2019, 31 August 2019, 1 October 2019 and 4 June 2020. Brother Lee has been convicted for the August and October 2019 charges. Today, the trial for the June 2020 charges has commenced.

The Government alleges that Brother Lee's participation had nothing to do with his trade union activities and therefore his arrest and detention are justified. The Government is wrong on this. The supervisory bodies of the ILO, including the Committee of Experts have stated that the exercise of civil liberties by trade unionists relating to the Government's economic and social policies and in defence of socio-economic and occupational interests are covered by the Convention.

The Committee has further noted that where workers' and employers' organizations deem that they do not enjoy the fundamental liberties necessary to fulfil their mission, they are justified in resorting to peaceful protests to realize such fundamental liberties. Such peaceful actions are bona fide trade union activities. We note that the district court in its verdict concluded that the demonstration he participated in was peaceful.

In its examination of this case, the Committee of Experts has again indicated that peaceful strikes and demonstrations by trade unionists should not give rise to arrests and detentions. The supervisory bodies are clear that among those civil liberties essential for the normal exercise of trade union rights are freedom of expression, freedom of assembly, freedom from arbitrary arrest and detention, and the right to a fair trial by an independent and impartial tribunal. The authorities in China – Hong Kong Special Administrative Region must guarantee civil liberties and freedom of association in law and practice. No one should be deprived of their freedom or be subject to penal sanctions for peacefully participating in protest strikes or demonstrations.

Second, on the Public Order Ordinance. This regulation provides for broad discretionary powers to prohibit public assemblies. The police authorities have the power to disqualify public assemblies as "unlawful" without the obligation to show any evidence of their efforts to facilitate the exercise of the right to assemble freely. Organizers and participants of unauthorized assemblies face penalty of imprisonment

for up to five years. Police authorities tend to crackdown instead of guarantee and facilitate peaceful protests. If an assembly is qualified by the authorities as a “riot” – based on vaguely defined criteria – the penalty can be as severe as 12 years’ imprisonment. It is impossible to freely exercise the right of freedom of assembly in this context.

Now, I would like to move to the drastic crackdown on civil liberties and surveillance that came with the adoption of the National Security Law on 30 June 2020. Under the National Security Law, offences related to national security such as “subversion”, “terrorism” and “collusion with foreign forces” incur maximum penalties of life imprisonment. But these offences are so broadly defined that virtually anything could be deemed a threat to “national security”.

We will reiterate the comments of the Committee of Experts with respect to Article 8 of the Convention. The law of the land shall not be such as to impair or applied in a manner that impairs the guarantees provided by the Convention. The authorities must ensure that trade unions have the right to organize their economic and social activities in full freedom.

Several trade union leaders were charged in February 2021 with the offence of “conspiracy to commit subversion” under the National Security Law for merely taking part, in connection with their trade union functions, in the primary polls organized in 2020. They face life imprisonment if convicted.

We recall that in its latest observations on the application of the Convention by China – Hong Kong Special Administrative Region, the Committee of Experts categorically confirmed that the right to engage in certain political activities, including expressing support for a political party considered more able to defend the economic, social and occupational interests of trade union members, is protected under the

Convention. The Committee on Freedom of Association has also issued numerous observations supporting the rights of trade unions to express publicly their opinion regarding the Government's economic and social policy or to express support, at the decision of their members, to a political party, as a means towards the advancement of their economic and social objectives.

The Committee of Experts have also emphasized that international trade union solidarity constitutes one of the fundamental objectives of any trade union movement and expects the Government to ensure that normal trade union interactions and activities are indeed protected in law and practice.

We must also point out that the COVID-19 measures adopted in March 2020 under the Prevention and Control of Disease (Prohibition on Group Gathering) Regulation, to prohibit all public gatherings of more than four persons under a penalty of six months' prison and fine is disproportionate and was adopted without any prior tripartite consultation.

The situation in the Special Administrative Region is further compounded by numerous and important gaps in the national legislation that effectively deny fundamental labour rights to workers in Hong Kong, including denying civil servants the right to organize.

The turn of events in Hong Kong is serious and threatens the free exercise of trade union rights. The extent of surveillance, pressure and attacks on the trade union movement in Hong Kong under the National Security Law is unprecedented. Democracy and respect for civil liberties are essential for the exercise of fundamental right of workers' and employers' organizations. We call on the authorities responsible for China – Hong Kong Special Administrative Region to take action without delay to ensure full compliance with the international standards on freedom of association.

Employer members – This case concerns the application in law and practice of the Convention by the Hong Kong Special Administrative Region of the People's Republic of China, a fundamental Convention that was ratified in 1997.

We note that this is the first time that the Committee on the Application of Standards discusses this case. At the outset, we would like to express our gratitude to the Government representatives for the comprehensive oral and written information on this case provided to the Committee.

On the issue of dissuasion of workers from exercising a right to peaceful assembly, we note that the Committee of Experts in 2020 observed that the Government has not provided information on the 2016 International Trade Union Confederation (ITUC) observations concerning the application of the Convention.

We also note that in its 2020 report, the Committee of Experts noted allegations made by ITUC and the Hong Kong Confederation of Trade Unions concerning issues relating to the September 2020 public protests, and also allegations on the use of the National Security Law.

The Employers must take due note that the Government has responded to these allegations in its comprehensive oral submission to the CAS today, and also in its written information dated 20 May and 8 June 2021. We thank the Government for the provision of this information and the clarification it has afforded.

Given the fundamental importance of the principle of freedom of association at the core of ILO values, the Employers invite the Government to continue to provide full information regarding the outcomes of procedures to examine police action and arrests made in connection with the protests, and to take all necessary measures to guarantee the right of employers' and workers' organizations to organize their activities, including peaceful public meetings.

I would now like to turn to the second issue highlighted by the Experts regarding the National Security Law and its relation to Articles 2, 3, 5 and 8 of the Convention.

The Employers take note from the Experts' observations of the various allegations and concerns expressed by ITUC and the Hong Kong Confederation of Trade Unions, on the scope and impact of the National Security Law, which entered into force on 30 June 2020. The Employers' group notes that the Government has responded to these allegations in its written information submitted to the Committee on the Application of Standards on 20 May 2021.

The Employers take note and thank the Government for its submission regarding the provisions of the National Security Law. The Employers' group would like to point out that the contents of Article 8 of the Convention sets out that, in exercising the rights provided for in the Convention, workers and employers and their respective organizations, like other persons or organized collectives, shall respect the law of the land and that the law of the land shall not be such as to impair nor shall it be so applied as to impair the guarantees provided for in the Convention.

The rights provided for in the Convention referred to in Article 8 include the rights of workers' and employers' organizations to organize their activities in full freedom and to formulate their programmes with a view to defending their occupational interests, in particular the right for workers and employers and their respective organizations to hold meetings and peaceful protests to freely express support for a political party, to have close contact and communication with international organizations of workers and employers. In that regard, it is important that public authorities avoid interference with these rights and also that the exercise of these rights does not cause a serious and imminent threat to public order. Public order must be maintained.

The Employers trust that the Government will continue to undertake efforts so that the rights of employers and workers and their organizations under the Convention are fully protected in the implementation of the National Security Law.

The Employers request the Government, in consultation with the social partners, to monitor the application of the National Security Law and provide information to the Committee of Experts on the impact that the law has on the application of this Convention according to the regular reporting cycle.

Worker member, China (Mr TANG) – As a trade union worker in the largest trade union organization in Hong Kong – the Hong Kong Federation of Trade Unions (FTU), which has over 410,000 members in Hong Kong – I have been elected by trade unions as employee representative of the Labour Advisory Board for the third time. Over decades, local employees have always been able to participate or organize any trade unions in the way they want. My speech represents the voice of local Hong Kong employees to ILO and this Committee.

The implementation of the Hong Kong National Security Law is strongly supported by majority of the local employees. The primary objective of the Law is to maintain social stability by protecting the safety of every single Hong Kong resident. Such stability is the foundation of the livelihood of our people. Hong Kong has suffered from social riots and extreme political actions in recent years. The GDP of Hong Kong fell by 3 per cent in 2019, even before COVID-19. Such downfall of the economy is a direct consequence of the manmade disasters created by the rioters. Those agitators aimed at paralysing Hong Kong by breaking what we called in Chinese “the rice bowl” of employees of various industries, which includes catering, tourism, hospitality, retail, aviation and transportation.

During the 2019 riot, can you imagine taxi drivers and truck drivers being dragged out of their vehicles and beaten, and being lynched, just because they were not happy with the blockage of traffic created by the rioters?

Can you imagine local eateries and shops being burnt down by rioters only because they support the police? Can you imagine an old janitor, Mr Cheng(?), being killed by the rioters who randomly threw bricks at him? Can you imagine that the rioters could trace the location of Hong Kong police on a real-time basis using a mobile app called "HKmap.live"? The rioters occupied universities, they paralysed the Cross Harbour Tunnel and they made more than 10,000 petrol bombs to attack our police force. The social riot in 2019 was a nightmare for most of us here in Hong Kong.

How despicable to say that the rioters are acting in the name of peace and democracy. The implementation of the National Security Law is tackling the root cause of the issue which restores the safety and stability that our people deserve. We no longer have to worry about the random blockage of travel, the petrol bombs, or being randomly attacked simply because of having a different political opinion. Unfortunately, not only do Western media turn a blind eye to the riots, they also demonize the National Security Law.

In fact, the freedom of association, under the National Security Law is still being enjoyed by all of us regardless of our different political stands. For example, Hong Kong Confederation of Trade Unions successfully organized a strike for Coca-Cola employees last month, whereas our FTU has also organized over 50 activities like petitions, press conferences, protests for minimum wage and unemployment assistance as usual since the implementation of the National Security Law.

Furthermore, there has been an increasing number of newly formed trade unions. It is agreed that any social actions for rights must abide by the law and must not pose

any threat to society. The National Security Law helps to create a secure environment, which facilitates the development of trade unions. The Law also promises our original labour rights without harm. The Law assures international cooperation and involvement of trade unions will continue as usual, as I am doing now.

Finally, I must mention what happened on 1 October 2019. On that day, it was our 70th anniversary of Chinese National Day but that day the rioters paralysed Hong Kong and attacked the police everywhere. Very terrible! If you are a Hong Kong resident like me, you would support the enactment of the National Security Law.

Employer member, China (Mr KWOK) – It is my honour to speak on behalf of the employers in Hong Kong today.

The right and freedom of association, and the right and freedom to form trade unions in the Hong Kong Special Administrative Region are guaranteed under the Basic Law of the Hong Kong SAR of the People's Republic of China. As employers, we fully respect and recognize employees' right to form trade unions and organize their activities. We maintain open and constructive dialogue with workers' organizations to discuss and resolve matters of mutual concern.

Through tripartite dialogue between workers' and employers' organizations and the Government, the employee rights and benefits in the Hong Kong SAR have been improving over the years. To name a few: statutory paternity leave has been extended from three days to five days since January 2019 and statutory maternity leave has been extended from 10 weeks to 14 weeks since last December. Besides, proposals on progressively increasing the number of statutory holidays from 12 days to 17 days a year; abolishing the arrangement of using employers' mandatory contributions under the Mandatory Provident Fund System to offset severance payment and long service

payment; and raising the maximum penalty for violating the occupational safety and health legislation are in the pipeline.

While fully respecting employees' freedom of association, we firmly believe that no one is above the law. Every person must observe the law in force and respect the others in exercising his or her rights and freedom. In respect of the arrests of certain Hong Kong people mentioned in the Committee of Experts' observations, it so happened that a small number of trade unionists were involved. To my understanding, their arrests had nothing to do with their participation in trade union activities.

The rule of law, underpinned by our independent and impartial judiciary, has all along been the cornerstone of Hong Kong's continued success as a world-class city and an international financial centre. Please rest assured that all the accused will have access to impartial, fair and open trial before the courts.

As many of you know, between June 2019 and early 2020, the Hong Kong SAR was haunted by a series of violent protests and public disorder. Many shops, restaurants and businesses were targeted by extremists and vandalized, while thousands of the others were forced to close. Rioters' disregard of the rule of law not only damaged Hong Kong's reputation as a safe city, an international financial and business centre, but also affected many small businesses and threatened the livelihoods of innocent citizens.

It is against such background that the Hong Kong National Security Law implemented in Hong Kong. Many jurisdictions have national security laws in place. We welcome the implementation of the Hong Kong National Security Law, which has helped restore the stability and sustain the Hong Kong SAR's future development. We trust that with a safe and stable environment, the Hong Kong SAR will continue to attract investment, businesses and tourists from around the world. The Hong Kong National Security Law clearly stipulates that human rights shall be respected and protected. The

rights and freedoms, including the freedom of association, provided under the Basic Law have remained intact and have not been affected in any way upon the enactment of the Hong Kong National Security Law. We have no doubt that employees in the Hong Kong SAR will continue as before to enjoy and exercise their rights to freedom of association to the fullest extent. For employers, we will continue to enjoy the freedom to communicate and cooperate with other international employer groups.

Government member, Slovenia (Ms DRAKSLER) – Just to clarify, I have the honour to speak on behalf of the following 26 countries: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden, which are also members of the European Union, as well as Norway.

We are committed to the promotion, protection, respect and fulfilment of human rights, including labour rights, the right to organize and to freedom of association. We actively promote the universal ratification and implementation of fundamental international labour standards, including ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). We support the ILO in its indispensable role to develop, promote and supervise the implementation of ratified international labour standards and of fundamental Conventions in particular.

We regret that the fundamental freedoms, democratic principles and the political pluralism, including fundamental principles and rights at work that are central to Hong Kong's identity and prosperity, are under increasing pressure.

In line with the observations of the Committee of Experts, we call on the authorities to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation, without the threat of police repression or arrest, and within

the framework of a system that protects and guarantees the effective respect of fundamental rights and civil liberties and refrains from any interference which would restrict these rights and liberties.

In this regard, the imprisonment of pro-democracy figures, including trade unionist, Lee Cheuk-yan, for non-violent acts when exercising protected civic rights is a troubling development.

As identified by the Committee of Experts, we note the possible negative effects that the application of the National Security Law may have on the rights enshrined in the Convention, and the need to monitor and provide information on the impact that the Law has already had, and may continue to have, on the application of the Convention.

In this context, we reiterate their grave concerns following the enactment of the National Security Law, both to the substance of the new legislation and to the process by which it was adopted, without any meaningful prior consultation of Hong Kong's Legislative Council and social partners. We remain unsettled about the conformity of the new law with Hong Kong's Basic Law and with China's international commitments.

We similarly reiterate our grave concerns over the reform of the electoral system, which will have significant impact on democratic accountability and political pluralism in Hong Kong. We call upon China to uphold its international commitments also in this respect. We consider it essential that the existing rights and freedoms of Hong Kong's residents are fully protected, including freedom of association, of assembly, of procession and of demonstration.

We are committed to the social stability and prosperity of Hong Kong and we will continue to follow the developments closely.

Miembro Gubernamental, Cuba (Sr. QUINTANILLA ROMÁN) — Cuba toma nota de las informaciones proporcionadas por el Gobierno de China referidas a que, ante actos de violencia, cualquier Gobierno responsable o agencia de aplicación de la ley, estaría obligado a intervenir de manera legal, a fin de proteger a los ciudadanos y su derecho a reanudar la vida normal.

El ejercicio de los derechos dispuestos en el Convenio núm. 87 por los trabajadores, los empleadores y sus respectivas organizaciones, así como por otras personas o colectividades organizadas, exige el pleno respeto a la legislación del país.

La información suministrada por el Gobierno asegura que no existen pruebas de que se hayan realizado detenciones, perseguido, monitoreado o procesado a alguna persona por el desempeño de su labor sindical, y que los acusados en este caso gozan de similares garantías procesales y tienen acceso a un juicio justo y abierto.

Igualmente ha informado que la Ley de Seguridad Nacional de Hong Kong está en consonancia con la práctica internacional y estipula específicamente que se respetarán y protegerán los derechos humanos al salvaguardar la seguridad nacional.

Como sucede en todos los Estados, la promulgación de leyes nacionales se adecua en estrecha consonancia con las obligaciones internacional contraídas y se establecen los mecanismos de acción pertinentes conforme a sus realidades. Al igual que en otros países, para el enfrentamiento y el control de la COVID-19, se han adoptado medidas restrictivas para reducir los contagios en las comunidades, incluyendo la prohibición de reunirse en grupos, lo que no debe entenderse como una prohibición del ejercicio de la libertad de reunión o de asociación pacífica.

Mi delegación reitera la importancia del diálogo y el tripartismo en aras de promover los derechos sindicales, y agradece las informaciones suministradas.

Employer member, Pakistan (Mr SUTTAR) – It is the fundamental right of every worker organization to protest and lodge complaints against any violation of ILO Conventions.

The representatives of employer organizations also possess this inalienable right to respond by presenting details, evidence and realities.

The case against Hong Kong SAR is in the list of the cases that is already truncated due to the work full mode as well as the shortened daily time figured. Without sounding condescending, are the deliberations on this case more crucial than other cases that are more vital and imperative?

Certain principal points must be taken into consideration that is essential in determining the complaint.

Firstly, it does not make practical sense that the Hong Kong SAR Government would violate the Basic Law that protects right and freedom of association. If there is a contravention, there has to be cogent and rational reasons. This does not imply that contraventions are a matter of policy or suppression of prescribed rights.

The frequent protests, rallies and strikes seriously affected the economy, tourism, security, tradition and culture of Hong Kong.

There is no ban for workers from exercising their right of peaceful assembly, but this does not give carte blanche to ignore the country's dynamics. It has to be established that infiltrators and anti-social elements took advantage of the genuine activities of trade unions and embellished in unlawful and illegal acts.

Therefore it is proposed that the cases be suspended.

Worker member, Germany (Ms HOFMANN) – I am speaking on behalf of DGB, Sentro, FNV, FGTB and CCOO.

The Committee of Experts requests the Government to ensure that trade unionists are able to engage in their activities in a climate free of violence and intimidation and within the framework of a system that guarantees the effective respect of civil liberties.

The rights under Article 3 of the Convention include, in particular, the right to hold trade union meetings and to organize protest action. They encompass as well certain political activities, such as expressing support for a political party considered more able to defend the interests of members, and having close contact and communication with international organizations of workers. The reality in Hong Kong is a far cry from this. Some examples, on May Day 2020 and 2021, HKCTU members who publicly distributed handouts and gave speeches were surrounded and cordoned off by dozens of police officers to cut off the public from them.

In March 2021, four members of the Health Care Workers Union who spoke publicly on vaccination precautions and privacy protections through the COVID-19 digital tracker were surrounded by police, asked for their ID, photographed or videotaped.

Union hosting member exclusive film screenings were visited by the Office for Film, Newspaper and Audial Administration. Members attending the screening were harassed and photographed by pro-Government media, and unions were forced to cancel the screenings.

Union leaders who represented their members in political elections were arrested last year and prosecuted for allegedly conspiring to subvert state power under the National Security Law. They had been campaigning for reforms in public spending, including health and welfare, and for the monitoring of international human rights standards in Hong Kong.

The prosecutions create a climate of intimidation and discourage trade unionists from participating in elections and advocating for democratic and social reforms.

We therefore call on the Government to immediately bring its practices and laws into compliance with the Convention.

Interpretation from Russian: Government member, Russian Federation (Mr SERGEEV) – The Russian Federation fully shares the assessment made by the representative of the People’s Republic of China about compliance with the provisions of the Convention by the authorities in the Hong Kong Special Administrative Region.

We believe that the authorities in that region are strictly observing the relevant provisions of the ILO Convention and are steadfastly attached to complying with requirements on submitting the necessary reports to the International Labour Office.

As to the allegations against the Hong Kong authorities, we believe that they are political, unfounded.

We believe that the authorities are taking legal measures to re-establish order and we do not consider that they are a threat to the freedom of association of the population of the territory. We hope that the Committee will note with satisfaction the detailed report provided on this issue, which has been provided by our Chinese partners, and bring an end to consideration of this question. We are, generally speaking, seriously concerned about the tendency in ILO to link reports to internal events in a country. Such a practice will lead to a sharp politicization of both reports and decisions and that will make it virtually impossible to have decisions taken complied with. In the end, this could constitute a threat to both the authority and reputation of the ILO. We urge the ILC and its committees to refrain from taking a biased and confrontational approach in favour of a constructive and mutually respectful cooperation. That will make it possible to promote decent work and protect the interests of both workers and employers.

Employer member, Bangladesh (Mr RAHMAN) – We take note, the Committee of Experts has stated in the 2020 observations that workers’ and employers’ organizations

in Hong Kong SAR should have the right to organize their activities in full freedom and to formulate their programme with a view to defending the occupational interests of their members while respecting the law of the land, while at the same time authorities should refrain from any interference which would restrict freedom of association and assembly or impede the lawful exercise thereof, provided that the exercise of these rights does not cause a serious and imminent threat to public order.

We take note of the Hong Kong SAR serious efforts in upholding the rule of law, as underpinned by its independent and impartial tradition. Any responsible government or law enforcement agency would be duty bound to intervene in a legal manner in order to protect the citizens and their rights to resume normal life. Every person must observe the law enforced when exercising his or her right of peaceful assembly.

The Hong Kong SAR Basic Law has protected the right and freedom of association and the right and freedom to form and join trade unions in Hong Kong. There is no detrition in the right and freedom of Hong Kong residents to form and join the trade unions. We understand the number of registered trade unions has actually increased by 56.5 per cent from 866th at end of 2019 to 1,355 at end of 2020.

The labour rights and benefits in Hong Kong have actually been improving progressively.

Finally, based on these facts we recommend that the Committee on the Application of Standards provide constructive observations for Hong Kong SAR to restore its resilient economy and sustainable development in a world-class city.

Worker member, United Kingdom of Great Britain and Northern Ireland
(Mr RUSSELL) – I speak on behalf of the TUC and the International Transport Workers' Federation.

Like freedom of association, collective bargaining is both a fundamental right in itself and an enabling right that improves access to decent work and to the protection of other ILO Conventions and is a corollary to the right to freedom of association protected under the Convention.

For years, the Experts have been requesting that the Government of Hong Kong take new measures to encourage collective bargaining. The Government has declined to do so, claiming that bargaining in Hong Kong takes place in a conducive atmosphere with agreements in, for example, the airline industry, but only 1 per cent of workers benefit from coverage by collective bargaining agreements.

As for airlines, the national flag carrier has now unilaterally ended the recognition and bargaining agreements that had underpinned years of constructive engagement with the Flight Attendants Union, to which 75 per cent of the company's cabin crew belong.

Compounding this abrogation of the company's excuses, collective bargaining, it argues, is "outdated" and "no longer relevant". It also offered the union the chance to, "represent [its] members in a more effective way than in the past". Such pronouncements seriously undermine the ability of unions to organize their activities and programmes in full freedom.

The Government claims its voluntary approach is successful, but voluntary collective bargaining rests on the respect for the independence of the parties, and here we have an employer of great significance to Hong Kong doing quite the opposite.

The real reason for ending the agreement is clear. Not only did the company abandon ten years of annual salary negotiations, it laid off 6,000 employees and pressured its workers to sign new conditions of service that cut their pay and benefits by

up to 40 per cent and that contained a clause that any new agreement reached with the union would not apply to the whole workforce.

The company may believe that the fundamental principles are no longer relevant but I hope this Committee will disagree strongly and it is the Government's failure to act on the urging of the Experts, and its complacency over collective bargaining in Hong Kong, that has given the airline the green light to behave in a way contrary to the values of this house.

Government member, Pakistan (Ms AYESHA) – Pakistan appreciates the continuing commitment of the Government of China to implement its Convention-related obligations and commitments to implement international labour standards, particularly the protection of the right to organize.

It is encouraging that the Hong Kong Special Administrative Region has taken a number of significant legislative and administrative steps to achieve these objectives. It has paid due attention to upholding the rule of law through its independent institutions and has ensured enjoyment of rights, including freedom of association and collective bargaining.

We are cognizant of the responsibility of any government to maintain public order and ensure the safety of its citizens, including health security and safety in the special circumstances of a global pandemic. Measures taken in this context should not be misrepresented as unlawful curbs on freedom of association in the context of the Convention. We appreciate the good track record of the Hong Kong Special Administrative Region in complying with the labour standards, which is evidenced by the presence of a vibrant international financial centre in the region.

All concerns and complaints should be settled amicably in the framework of tripartite cooperation. It is important to refrain from politicizing the work of the ILO supervisory mechanisms and this Committee.

Our deliberations should be in line with the spirit of multilateralism, aimed at implementation of labour standards in a non-political and objective manner.

Employer member, Uganda (Mr OPIO) – I would like to appreciate the comments given by the Government representative.

These are unprecedented times when we are confronted with a very serious health challenge, perhaps the worst of its kind in the past 100 years. Of course, as we have seen, governments in various parts of the world have had to put in place very stringent measures, including even lockdown of business operations but also social gatherings.

In some cases, there have also been requirements to register certain activities or organizations before they are allowed to operate. Therefore, freedom of association and all these other freedoms must be seen also in this light. For me, the politicization of government efforts anywhere for purposes of security or health control measures is certainly not helpful at all.

Like we have seen in the case of China, Hong Kong, the Special Administrative Region, we have seen that social dialogue has been rather productive and that is clearly evident in the numbers that we have seen, a growth in the number of trade unions by over 50 per cent.

We have also seen progress in the terms of collective bargaining agreements which are signed even during this period of lockdown so it is important to disassociate issues of a labour nature from those of a political nature.

Worker member, Republic of Korea (Ms RYU) – I am speaking on behalf of the KCTU, Sentro and KMU of the Philippines, CGIL Italy, CIC Canada and CSGB Switzerland, align themselves with this statement.

Industrial action is the legitimate means of promoting and defending workers' economic and social interests. Yet, strike is narrowly defined in the Trade Union Ordinance and does not cover solidarity actions. Moreover, strike is not a protected form of union activities under the Employment Ordinance. The only statutory protection is to prevent employers from summarily dismissing striking workers, but nothing in the law prohibits employers from terminating the contract by notice.

In February of 2020, facing a potential public health risk due to the Government's inaction to the pandemic, the Hospital Authority Employment Alliance called for a strike demanding the assurance of sufficient supply of PPEs and closure of all borders to contain the infection.

Without meaningful social dialogue, the medical staff started a strike on 3 February and ended it on 7 February when the Government partially agreed to their demands.

The workers put every effort by their own to minimize possible inconvenience to the public. The strike started with non-essential staff and providing essential services was considered during the industrial action.

The objective of the strike was to further their occupational interests, including safe working conditions and the public interest, the protection of public health. This is a very legitimate collective action as a normal union activity.

However, the Hospital Authority have never recognized the collective action as a strike but treated it as "absence from duty" subject to disciplinary action. The targeted

intimidation against the strikers is an act of anti-union discrimination that has a chilling effect.

I call on the Government to effectively promote and protect the fundamental labour rights, including the right to organize a strike, to promote and defend workers' economic and social interests, and to shape public policies, which may impact on working conditions.

Government member, United States of America (Ms MORENO) – The ability of individuals to freely exercise the right to freedom of association is a cornerstone of healthy and functioning societies everywhere. The 2019–20 public protests, including by trade union officials, highlight the challenges individuals continue to face in exercising these labour rights, human rights, and fundamental freedoms in Hong Kong.

Specifically, the recent observations of the Committee of Experts cite allegations of police repression and arrests in connection to these public protests, including the arrest of Hong Kong Confederation of Trade Unions (HKCTU) General Secretary, Lee Cheuk-yan, in 2019.

In June 2020, the law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region came into effect. The Committee of Experts noted allegations that the law has been used to crack down on peaceful and legitimate protests. Further, we are aware of recent media reports that the Hong Kong authorities have used this law to arrest individuals in the context of peaceful gatherings, including the arrests of then-HKCTU Chairperson, Carol Ng, and Hospital Authority Employees Association Chairperson, Winnie Yu.

The authorities submitted information to this Committee in response to concerns of non-compliance with the Convention, noting the National Security Law helped Hong Kong emerge from "chaos into stability."

While the Government credits the law with an 85 per cent reduction in the number of people arrested for public order incidents in the first six months after the law came into force, this reduction correlates to a decline in public gatherings due to the imposition of the threat of arrest under the new law, a draconian enforcement of public order and public health regulations to restrict the right of peaceful assembly.

The effect of the law has been to further suppress the exercise of the right to freedom of association, in stark opposition to obligations under the Convention.

We urge the Hong Kong authorities to take immediate action to meet its obligations under the Convention

Interpretation from Russian: Worker member, Belarus (Ms VARFALAMEYEVA) – The Belarusian Federation of Trade Unions has studied the comments made by the Committee of Experts about compliance with the provisions of the Convention by the Hong Kong Special Administrative Region.

Let me start by saying that we, as unions, fully support the provisions of the Convention on freedom of association. In our opinion, the Hong Kong Special Administrative Region is making serious efforts to comply with the Convention. Provisions on freedom of association are reflected in its Basic Law.

The growth in the number of registered trade unions between 2019 and 2020 from 866 to 1,355, shows the success of the situation.

Furthermore, in accordance with the Trade Unions Ordinance, members and officials of trade unions enjoy immunity from civil suits for certain acts.

As to the arrest of trade unionists between 2019 and 2020, the facts show that these people participated in action which threatened public order and the national security of the country as a whole. What was done was legal. There is no connection with the

freedom of association or their status as trade-union leaders. The authorities acted in accordance with the Convention, Article 8, which states that, in exercising the right to the freedom of association, workers, employers and their organizations – like any other individuals or organizations – need to obey the law.

Political actions in Hong Kong have been widely reported in the media, but in some cases, they did not actually get a very objective press. However, the facts show that there was no relationship with social or economic action. We therefore express the hope that the Committee of Experts will continue to cooperate in a positive spirit with the authorities of Hong Kong.

Government member, Islamic Republic of Iran (Mr MOZAFARI) – My delegation would like to thank the Government of Hong Kong Special Administrative Region for submitting information on how the Government has intended to secure observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

My delegation welcomes the measures undertaken by the Government to reinforce the right and freedom of Hong Kong residents to form and join trade unions. We take note of the statistics submitted on the creation of the employee unions in the country. My delegation is of the view that the measures undertaken by the Government demonstrate willingness and commitment to enhance the situation. Thus, these measures deserve due consideration of the esteemed Committee.

Furthermore, due consideration should be given to the range of rights that trade union members and officers and employees enjoy under the Trade Unions Ordinance and the Employment Ordinance and recent improvement achieved regarding the statutory maternity and paternity leave.

Having said that, my delegation supports the efforts of the Government of Hong Kong SAR for further compliance with the Convention.

Membre gouvernemental, Suisse (M. BLESS) – Tout d’abord, la Suisse fait part de sa profonde préoccupation en relation avec les événements d’arrestation à Hong-kong, Région administrative spéciale de la Chine depuis 1997.

En effet, 1997 coïncide également avec une plainte des syndicats auprès du gouvernement chinois pour la violation de la convention n° 87. Depuis lors, nous assistons à une augmentation de la pression sur les droits syndicaux et la liberté d’association.

Les réformes législatives actuelles, notamment l’introduction de la nouvelle loi sur la sécurité, mettent en danger les libertés syndicales. Cela a entraîné la restriction du fonctionnement des syndicats, la répression de la liberté d’association, la limitation de la liberté d’expression et du dialogue social. En outre, pour la première fois dans l’existence de Hong-kong, des poursuites judiciaires ont été engagées à ce sujet. La commission d’experts a formulé plusieurs recommandations sur ces sujets, entre 1989 et 2020.

La Suisse demande à la Chine de mettre en œuvre les recommandations de la commission d’experts. Par ailleurs, la Suisse saisit cette occasion pour rappeler les obligations découlant de la Déclaration de l’OIT relative aux principes et droits fondamentaux au travail et son suivi, adoptée par la Conférence internationale du Travail lors de sa 86^e session en 1998, de respecter, promouvoir et réaliser les principes relatifs aux droits fondamentaux. La Suisse encourage le gouvernement chinois, à l’exemple de sa Région administrative spéciale, Hong-kong, à ratifier les conventions fondamentales de l’OIT n^{os} 87 et 98 concernant la liberté d’association et la reconnaissance effective du droit de négociation collective, mais aussi la convention n° 29 ainsi que son Protocole de 2014.

La liberté d'association est l'un des quatre principes et droits fondamentaux au travail, un élément essentiel de la justice sociale. À cet égard, la Suisse appelle le gouvernement chinois à libérer les syndicalistes arrêtés et à prendre les mesures nécessaires pour assurer la mise en œuvre des recommandations des experts. La Suisse rappelle également que ce cas est traité par le Comité de liberté syndicale.

Government member, Zimbabwe (Mr WUTAWUNASHE) – Zimbabwe has listened carefully to the statement made by the representative of the People's Republic of China, and appreciates the explanations given on each of the issues that were raised by the Committee of Experts.

Indeed, this is one of the many cases which this august Committee deals with, that require us to exercise our minds distinguishing between political agitations that fall outside the scope of ILO supervisory bodies and those that are within their competencies.

Our approach in this Committee ought to be guided by the positions articulated by the Committee on Freedom of Association. To this end, Zimbabwe would like to draw the attention of this Committee to the following guiding principles articulated in the sixth edition of the CFA Compilation of the decisions of the CFA published in 2018 that: supervisory bodies of the ILO, including this Committee, have no mandate to consider purely political allegations; strikes of a purely political nature do not fall within the protection of Conventions Nos 87 and 98; the CFA would not have competence over a national civic work stoppage which is exclusively political and insurrectional.

These principles resonate with the elements in this case, in the case that we are discussing, therefore we ought to respect them.

Last but not least, we should also be mindful of the fact that while freedoms are fundamental, they are not absolute. Accordingly, a State has an obligation not only to

protect the rights of other citizens, but also to protect property in times of demonstrations that are political or that are mounted for other reasons.

Interpretation from Russian: Government member, Belarus (Mr PISAREVICH) – We would like to thank the Chinese delegation for its exhaustive report.

Belarus has noted the systematic and positive approach by the Government of the People's Republic of China to strengthening social and labour relations in the Special Administrative Region of Hong Kong. We believe that the Chinese Government is carefully monitoring and complying with its obligations under the Convention.

Furthermore, she actively and constructively cooperates with ILO. We agree with what the Chinese delegation has said, to the effect that every individual in exercising his or her rights to the freedom of assembly should respect the law in force. The enjoyment of the rights referred to in the Convention should not be accompanied by a serious and direct threat to public order; they should be exercised in full respect and observance of national law. If that is not the case, then the forces of law and order have the right to re-establish public order in Hong Kong, as in any other city or region around the world.

We also believe that the law adopted by the Chinese Government about national security in the Special Administrative Region of Hong Kong is in line with international practice. It has been transparently and openly studied, taking into account the interests of those who live in the Special Administrative Region of Hong Kong. We therefore think that both the comments of the Chinese Government on their application of the Convention and their action are fully in line with international labour legislation.

Government member, United Kingdom of Great Britain and Northern Ireland (Mr O'CONNOR) – The UK supports the role of the ILO in developing, promoting and supervising the application of international labour standards and of fundamental Conventions in particular. We are committed to the promotion, protection and respect

of human rights and labour rights, as safeguarded by the fundamental ILO Conventions and other human rights instruments, and to the ratification, effective implementation and enforcement of the core labour standards.

The UK remains concerned at the situation in Hong Kong, in particular at a pattern of behaviour by Beijing and the Hong Kong SAR Government intended to stifle dissent and suppress the expression of alternative political views. The National Security Law, imposed on Hong Kong last June, is not being used for its stated original purpose which was to target just “a tiny number of criminals who seriously endanger national security”.

Instead, it is being used to curtail the space for the expression of alternative political views and deter freedom of expression and legitimate political debate. China has broken its legal obligations by undermining Hong Kong’s high degree of autonomy, rights and freedoms, which are guaranteed under the Joint Declaration, a legally binding international treaty.

In this context, we note with concern reports that Hong Kong’s Labour Department has proposed creating an additional position of chief labour officer, whose responsibilities would include ensuring the compliance of trade unions with the National Security Law.

The UK notes that the right to form and join a trade union is guaranteed under Hong Kong’s Basic Law, as is the right of procession and demonstration.

As a co-signatory to the Joint Declaration, we will continue to stand up for the people of Hong Kong, to call out the violation of their freedoms, and to hold China to the international obligations it freely assumed under international law.

Government member, Ethiopia (Ms GUADEY) – My delegation has taken due note of the statement delivered by the representative of the Government of the People's Republic of China with respect to the application of the Convention in law and in practice.

We took note from the information provided by the Government of China that the Hong Kong SAR's Basic Law guarantees the right to organize and form an association of their choosing for Hong Kong residents, in conformity with the Convention. In light of this, we attentively heard that the number of registered trade unions has increased from 866 in 2019 to 1,355 in 2020.

Furthermore, we are encouraged from the report of the Government of China that, in Hong Kong SAR, the statutory maternity leave has been extended from 10 weeks to 14 weeks and statutory paternity leave has been extended from three days to five days, with the aim to strike balance between working time and parental/family responsibilities.

We also learned from the Chinese Government intervention that as primary duty bearer to safeguard national security and uphold the public measures taken against protests that took place in Hong Kong in 2019 have a stringent guideline on the use of force.

In view of the above, efforts made so far and measures taken by the Hong Kong SAR towards enhancing the right to organize and form an association are encouraging towards the full application of the Convention under discussion.

In view of the above, we encourage the ILO to step-up its technical assistance to complement the Chinese Government efforts to ensure the conformity of the Convention with the national laws and practice.

In conclusion, we hope that the Committee in its conclusions will take into consideration the invaluable information provided by the Government of China and all constructive comments and discussions transpired in this sitting.

Miembro gubernamental, República Bolivariana de Venezuela (Sr. CONSTANT ROSALES) — El Gobierno de la República Bolivariana de Venezuela agradece a la distinguida delegación del Gobierno de China la presentación realizada con relación al cumplimiento del Convenio núm. 87 en la Región Administrativa Especial de Hong Kong.

El Gobierno de China ha hecho referencia a acontecimientos de violencia y daños causados durante las protestas públicas ocurridas en 2019 y 2020, lo que obligó a salvaguardar el orden y la seguridad pública en el marco de su legislación.

Asimismo, el Gobierno brindó cifras que destacan el aumento del número de sindicatos bajo la Ley Fundamental de la Región Administrativa de Hong Kong, lo cual ha sido destacado positivamente en el informe de 2021 de la Comisión de Expertos.

Recordamos que la libertad sindical ha de ejercerse bajo el respeto de las leyes de cada país, y que las actividades puramente políticas, como las dirigidas a desconocer o desestabilizar a un Gobierno, no gozan de la protección prevista en el Convenio.

Hacemos un llamado para que los órganos de control de la OIT se alejen de consideraciones políticas, por cuanto se extralimitan en sus comentarios y esto le resta seriedad, credibilidad y hace daño al noble objetivo de nuestra Organización.

Lamentamos que la Comisión de Expertos opine en este caso que las organizaciones sindicales pueden participar en ciertas actividades políticas, manifestando apoyo a partidos políticos de su conveniencia, y, por otra parte, con respecto a otros países, conocemos de pronunciamientos de órganos y mecanismos de control de la OIT que opinan que los Gobiernos debemos garantizar la independencia

de las organizaciones sindicales con respecto a las actuaciones político-partidistas. Esta disparidad de criterios no puede ser utilizada para pretender dar lecciones a los Gobiernos en su rol soberano de mantener la paz y el orden público.

Finalmente, el Gobierno de la República Bolivariana de Venezuela espera que las conclusiones de la Comisión sean objetivas y equilibradas, con la finalidad de que el Gobierno de China siga avanzando en el cumplimiento del Convenio en la Región Administrativa Especial de Hong Kong.

Membre employeur, République démocratique du Congo (M. KALONDA NGOY)

– Nous souscrivons aux observations faites par la commission d'experts, en ce sens qu'il existe une réelle inquiétude de l'usage de l'article 23 de la loi fondamentale sur pied duquel le gouvernement s'appuie pour la prise de lois qui portent entrave non seulement au droit des travailleurs et des employeurs de constituer des organisations de leur choix, mais aussi de celui de s'affilier à ces organisations, et ce au mépris de l'article 2 de la convention n° 87.

Aussi, usant de cet article du fait de l'autorité publique, le droit d'organiser la gestion et les activités des organisations professionnelles sans ingérence de la part des autorités publiques se voit heurté, et ce sans avoir égard à l'article 3 de la convention n° 87.

Par ailleurs, nous exprimons notre inquiétude sur les pratiques de licenciements antisyndicaux, les menaces de licenciements dans le cadre des manifestations publiques, des atteintes au droit de négociation collective, heurtant ainsi la convention n° 98.

Nous soutenons les observations faites par la commission à l'attention du gouvernement en vue de l'amener à prendre des mesures nécessaires, en consultation avec les partenaires sociaux, en vue de s'assurer qu'il y a renforcement du cadre

législatif, réglementaire et conventionnel de la négociation collective, surtout dans le secteur public, ce compris les fonctionnaires, les enseignants et les salariés d'entreprises publiques.

Cependant, les employeurs de la République démocratique du Congo demandent au gouvernement de ne pas répondre à l'observation de la commission faisant incidemment mention du droit de grève, car cela relève du droit de la législation nationale.

C'est l'occasion aussi pour nous de déplorer le fait que nous avons eu à intervenir hier mais, en raison d'un souci électronique, la parole n'a pas pu nous être accordée.

Government member, Bangladesh (Mr AKANDA) – The delegation of Bangladesh has carefully gone through the observations made by the Committee of Experts and the regional information provided by the Government of the Hong Kong Special Administrative Region. We have also taken due note of the statement delivered by the People's Republic of China.

We appreciate the continued efforts made by the Government of China in the Hong Kong Special Administrative Region to comply with the international labour standards, including the Convention. Particularly, we welcome the measures taken by the Government to protect the right to freedom of association and the rights and freedom of Hong Kong residents to form and join trade unions.

In this respect, we note with appreciation the increase in the number of trade unions of more than double from the end of 2019 to the end of 2020. We hope that the amendment of the Employment Ordinance would help further protect and promote the rights of the workers in relation to trade unions.

We also appreciate the incremental progress made in the area of addressing anti-union discrimination in the Hong Kong Special Administrative Region, including through the implementation of the Trade Unions Ordinance and empowering the courts and the labour tribunals. The extension of the statutory maternity and paternity leave is also a positive step towards upholding labour rights in the Hong Kong Special Administrative Region.

We are confident that the Government of Hong Kong Special Administrative Region will continue to maintain its close cooperation with the Office and make sustained efforts to further improve compliance with international labour standards, which has already made the Hong Kong Special Administrative Region an international financial centre and a global business hub.

Observer, Public Services International (PSI) (Mr RUBIANO) – The National Security Law that was passed last year seems to pose new restrictions to the exercise of freedom of association. In the case of public servants, this would be very problematic, and would add further pressure on their activities. For instance, the Civil Service Code and Regulations already subject civil servants to a disciplinary procedure if they make opinions deemed to be of a political or administrative nature.

Also, workers directly employed by the Government in Hong Kong are explicitly excluded both from the Employment Ordinance and the application of Article 6 of Convention No. 98. Therefore, they have no access to the remedies for anti-union discrimination or collective bargaining enjoyed by workers in other sectors.

On top of this, all civil servants have been required to take an oath and sign a declaration of loyalty to the Government and abide by the laws in Hong Kong. This requirement has been extended to the National Security Law. We understand that civil servants that do not take the oath will be dismissed.

The implications of all these restrictions for civil servants are so severe that the leaders of the Union for New Civil Servants determined that it was impossible to effectively represent members and disbanded itself in January 2021.

According to the Government, and I quote from the Committees report “what the National Security Law seeks to prevent, are distinctly different from normal interactions (including normal associations between trade unions in Hong Kong and international organizations)”.

So we hope that the Government will live up to this promise, and also amend all the legislation restricting freedom of association, as requested by the Committee because when public servants lose the right to freedom of association and expression, the public loses a vital pillar in democratic governance and defence of the rule of law. Civil servants in Hong Kong will no longer be able to blow the whistle on corruption, on poor public policy, including dangerous public health decisions, without fear of dismissal, or even prison.

Observer, International Trade Union Confederation (ITUC) (Mr FAN) – I am speaking on behalf of the Hong Kong Confederation of Trade Unions. The application of the Convention requires a domestic legal framework that enshrines the rights fully and an enabling environment that respects and allows the exercise of civil liberties. The Government is obliged to ensure consistence and compliance of laws and policies.

As the Experts pointed out, trade unions have marginalized representations in the workplace in Hong Kong without a legal framework to recognize unions and to bargain collectively with the employers. Civil remedies to address anti-union discriminations are ineffective, as compensation may be in lieu of reinstatement and civil servants are excluded.

In the last two years, the Government banned Labour Day rallies, protests against airline's mass lay-offs, and solidarity march of the journalists association for the arrest of their member and sentenced trade unionists with draconian laws, including the public order audience.

Since the enforcement of the National Security Law last year, alignment of workplace conduct with the law has been unleashed in some sectors, such as an oath for civil servants to incorporate their abidance to the law and a new police-run hotline to invite anonymous reports that include complaints on teachers' conduct. Last month, the Department of Labour announced it is expanding its size to enforce the law with the trade unions, using the threat of deregistration.

Workers in Hong Kong are inhibited to speak out and associate under the prevailing uncertainties, self-censorship, fear of surveillance and sanctions. Trade unions cannot exercise our rights, organize activities freely and defend members without fear of crossing the invisible red line. We echo the urges in the observations of the Committee of Experts that, as the application of the Convention is concerned, it is pertinent to assess the impact of the National Security Law and its enforcement on trade unions and the workplace.

Présidente – Nous sommes arrivés au terme de la liste des orateurs. Nous allons à nouveau passer la parole à M. Sun Yuk Han Chris, pour ses remarques finales. Monsieur, vous avez la parole.

Government representative (Mr SUN) – I would like to thank all delegates for their contribution to the discussion of our case.

The Government of the Hong Kong Special Administrative Region of the People's Republic of China took note of the Committee's observations and will address them in detail in our next report on the application of the Convention.

That said, I would like to take this opportunity to reiterate the Hong Kong SAR Government's views.

First and foremost, I must stress that our Government takes our obligations under the international labour Conventions seriously. In respect of the Convention, we are fully committed to protecting workers' rights to form and join trade unions, and their participation in union activities.

As I have mentioned earlier, the rights of Hong Kong residents to form and join trade unions are guaranteed under the Basic Law of the Hong Kong SAR of the People's Republic of China. These rights have remained intact and have not been affected in any way upon the enactment of the Hong Kong National Security Law. Indeed, the continued increase in the number of registered trade unions over the years in the Hong Kong SAR bears testimony to the freedom and rights of Hong Kong residents to organize among themselves.

Under our labour laws, there are robust and adequate protection against discrimination against labour unions. We accord high priority to investigating complaints on suspected acts of anti-union discrimination. Our Government does not, and will never, tolerate any breach of the law by employers in this respect. We will not hesitate to initiate prosecution whenever there is sufficient evidence to pin down the offenders.

On labour rights and benefits, we have been reviewing our labour legislation from time to time through tripartite consultations among the Government, workers' organizations and employers' organizations, with a view to making continued improvements to labour rights and benefits, while striking a balance between the interests of employees and employers.

Just to name a few, in recent years, statutory maternity leave has been extended from 10 weeks to 14 weeks, and statutory paternity leave has been extended from three

days to five days. The Labour Law has also been amended to empower the Labour Tribunal and the courts, in case of unreasonable and unlawful dismissals, which include dismissals by reason of exercising the right to trade-union membership or participation in trade-union activities, to make a compulsory order for reinstatement or re-engagement of an employee without having first to secure the agreement of the employer.

In exercising the rights enshrined in the Convention, everyone shall respect the law of the land. Any society that upholds the rule of law cannot possibly accept anyone to be put above the law or having the privilege of breaking the law without facing legal consequences. If there is any illegal act, any responsible law-enforcement agency must deal with it based on evidence and in strict accordance with the law.

The Hong Kong SAR Government must emphasize that such enforcement actions are directed against the criminal act itself, irrespective of the social status of the persons concerned or whether they are trade unionists. The Hong Kong authorities have been handling, and will continue to handle, all criminal offences in a fair and impartial manner.

The Hong Kong SAR Government respects citizens' freedom of speech and expression. The rights of procession and peaceful assembly are protected by the Basic Law and the Hong Kong bills of rights. The Hong Kong police force have always been handling applications for public meetings or processions in strict accordance with the statutory requirements under the public order ordinance and having regard to all relevant facts and circumstances in each application.

Coming to the Hong Kong National Security Law, let me stress again that Hong Kong people have been enjoying, and will continue to enjoy, the rights and freedoms as provided for under the Basic Law. In this regard, any law enforcement actions taken by the law enforcement agencies for suspicion of breaches of any national-security offences

must be based on evidence, in strict adherence to the law and focused on the criminal acts committed by the persons or entities concerned.

A number of speakers referred to the arrests of members of trade unions by the Hong Kong law enforcement agencies in relation to public order events. We would like to emphasize that any arrest and prosecution under any law, including the Hong Kong National Security Law, is directed against the criminal act itself, it has nothing to do with political stance, background or the status as trade union leaders. The principle of rule of law is upheld in Hong Kong, and will continue to be upheld in future. The Hong Kong Court, which enjoys independent judicial powers, has made rulings in some of the prosecutions made and convicted the defendants. This proves that the prosecution actions were fully justified. The Hong Kong SAR Government will continue to handle every case in a fair, just and impartial manner in accordance with the law.

In the days ahead, the Hong Kong SAR Government will continue to strengthen publicity and education so as to enhance Hong Kong people's understanding of national security and law-abiding awareness, and also deepen the understanding of the international community on the Hong Kong National Security Law.

The Hong Kong SAR Government is truly committed and attaches high priority to safeguarding workers' rights to form and join trade unions and take part in union activities. We assure the Committee of our Government's continued compliance with all the applications of international labour Conventions applied to the Hong Kong SAR. We will continue to submit our article 22 reports, and provide the Committee of Experts with the information requested.

Interpretation from Chinese: **Government member, China (Mr HAO)** – The Chinese Government supports the response and the introduction of the Hong Kong SAR

Government and we can see that they attach great importance to the production of labour rights and they do very rigorous work in application of all labour Conventions.

We support Hong Kong SAR Government's efforts in obtaining social security and stability and protecting workers' legitimate rights and interests. After the implementation of the National Security Law, there is great and far-reaching significance in upholding and improving the system of one country two systems, safeguarding national sovereignty security and development interests and ensuring the long-term stability, prosperity and the social order in Hong Kong.

This law plugs the legal loophole's ability to national security in Hong Kong SAR and positive results have been achieved. Social order has been restored and the safety of people's lives and their property and their legitimate rights and their freedoms further protected.

During the discussion, some speakers made irrelevant statements, for example, UK. We reject these groundless accusations.

I would like to note that after the return of Hong Kong, the joint declaration between China and the UK has been implemented fully.

I would like to urge the UK Government to refrain from interfering in China's internal affairs.

Employer members – We have listened very carefully to the discussion in the Committee today. We thank all of the speakers who have taken the floor and we have taken note of the statements made and information provided.

We would like to thank the Government representatives for positively engaging with this Committee and providing us with comprehensive and up-to-date information on the case, both in writing and in their oral submissions before the CAS today.

Taking into account the full discussion, the Employers invite the Government to provide information regarding the outcome of procedures to examine the police action and arrests made in connection with the protests that fall only under the scope of the Convention.

Also, the Employers invite the Government to take all necessary measures to further guarantee the right for employers' and workers' organizations to organize their activities.

Furthermore, in respect of the newly adopted National Security Law of June 2020, the Employers invite the Government to keep under review, jointly with the social partners, the application of the National Security Law so that the rights of employers, workers and their organizations under the Convention can be protected. The Employers invite the Government to continue to provide up-to-date information on the impact that that Law has on the application of the Convention both in law and in practice.

Therefore, in conclusion, we would like to once again thank the speakers in this discussion and in particular to thank the Government representative from the Hong Kong Special Administrative Region of the People's Republic of China for its constructive engagement in the work of the CAS and for all of the detailed information that is both up to date and responsive to the inquiries for providing this information to our Committee today.

Worker members – We note the comments of the authorities responsible for China – Hong Kong Special Administrative Region and we also appreciate all the relevant interventions during this discussion, but we must emphasize that the Government has an obligation to respect international labour standards and the guidance provided by the experts in line with their mandate.

We are deeply concerned by the acute deterioration of the labour rights situation in the Hong Kong Special Administrative Region. The Government of China must ensure that trade unionists in Hong Kong are able to engage in their activities in a climate free of violence and intimidation, and within the framework of a system that guarantees the effective respect of civil liberties.

Provisions of the Public Order Ordinance and of the Group Gathering Prohibition (Cap. 599G) must be immediately amended, in consultation with the social partners, in order to ensure that trade unions can freely exercise the right to freedom of assembly and demonstration in compliance with the Convention.

The National Security Law and its application in practice must be thoroughly assessed by the Committee of Experts, and to that extent we call on the authorities to provide a report to the experts before its next sitting.

The authorities must provide a report on the number of people arrested and prosecuted under the various public order and national security legislations and the relevant court decisions to the Committee of Experts at their next sitting.

We must emphasize that peacefully participating in a protest for the realization of economic and social interests, including for democracy and respect for civil liberties, are legitimate trade union activities the authorities must guarantee for all the workers. We call on the authorities to report to the Committee of Experts before its next sitting on all measures taken to ensure that the police and other security forces respect trade union rights in accordance with the Convention.

The authorities responsible for the Hong Kong Special Administrative Region also must ensure that labour laws applicable to the territory fully comply with the Committee. We strongly urge the responsible authorities to accept a direct contact mission of the

ILO to address the urgent and acute situation regarding the application of the Convention in the territory.

Présidente – Je vous rappelle que la lecture du projet de conclusions concernant ce cas aura lieu, comme pour tous les cas individuels, lors de la dernière séance de la commission, le vendredi 18 juin 2021.

Nous avons maintenant terminé l'examen du cas de la Chine, pour la Région administrative spéciale de Hong-kong, et nous remercions toutes les personnes qui ont bien voulu étayer la commission sur ce cas.