



**Third item on the agenda: Information
and reports on the application of
Conventions and Recommendations**

**Report of the Committee on
the Application of Standards**

PART ONE

GENERAL REPORT

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A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 235 members (124 Government members, ten Employer members and 101 Worker members). It also included four Government deputy members, 90 Employer deputy members, and 116 Worker deputy members. In addition, 24 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Ms Cecilia Mulindeti-Kamanga (Government member, Zambia)

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

Reporter: Ms Verónica Diana López Benítez (Government member, Paraguay)

3. The Committee held 23 sittings.

4. In accordance with its terms of reference, the Committee considered: (i) the reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; (ii) the reports requested by the Governing Body under article 19 of the Constitution on the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151); and (iii) the information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference.²

Opening sitting

5. Noting that 2016 marked the 90th anniversary of the Committee on the Application of Standards, the Chairperson of the Committee expressed her honour at being able to preside over this Committee, which was a cornerstone of the regular ILO supervisory system. It was the forum for tripartite dialogue in which the Organization debated the application of international labour standards and the functioning of the standards system. The conclusions adopted by the Committee and the technical work of the Committee of Experts on the Application of Conventions and Recommendations, together with the recommendations of the Committee on Freedom of Association and the technical assistance of the Office, were essential tools for member States when implementing international labour standards. She

¹ For the initial composition of the Committee, refer to *Provisional Record* No. 5. For the list of international non-governmental organizations, see *Provisional Record* No. 4.

² Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1B: General Survey; Part 2: Information document on ratifications and standards-related activities.

trusted that, in the course of the two-week session of the Conference, the Committee would be able to work harmoniously and efficiently, and in a spirit of constructive dialogue.

6. The Worker members indicated that once again this year their priority objective was that the Committee on the Application of Standards could carry out its work and adopt operational conclusions offering real prospects of progress for the ILO's tripartite constituents. In a context of globalized competition and economic crisis, social protection was the only bulwark against precarity. The role of international labour standards was more than ever to guarantee economic development conducive to improving the lives of workers and preserving their dignity. Noting that the concept of work and its organization were now being challenged for the sake of productivity and in view of technological developments, the Worker members considered that it was necessary to reaffirm that universal and lasting peace could only be based on social justice, in itself founded on a system of work that was truly humane.
7. The Employer members noted that this year was the 90th anniversary of the Committee on the Application of Standards, which was the cornerstone of the supervisory system of the ILO. They were looking forward to constructive and meaningful discussions with respect to all aspects of the work of the Committee. They welcomed the positive interaction between this Committee and the Committee of Experts.

Work of the Committee

8. During its opening sitting, the Committee adopted document C.App./D.1, which set out the manner in which the work of the Committee was carried out.³ At that occasion, the Committee considered its working methods, as reflected under the next heading below.
9. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. A summary of the general discussion is found under relevant headings in sections A and B of Part One of this report.
10. The Committee then examined the General Survey concerning the migrant workers instruments. Its discussion is summarized in section C of Part One of this report.
11. The Committee then examined the report of the 12th Session of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART). Its discussion is summarized in section D of Part One of this report.
12. Following these discussions, the Committee considered the cases of serious failure by member States to respect their reporting and other standards-related obligations. The result of the examination of these cases is contained in section E of Part One of this report. More detailed information on that discussion is contained in section A of Part Two of this report.
13. The Committee then considered 24 individual cases relating to the application of various Conventions. The examination of the individual cases was based principally on the observations contained in the Committee of Experts' report and the oral and written

³ Work of the Committee on the Application of Standards, ILC, 105th Session, C.App./D.1 (see Annex 1).

explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Time restrictions once again required the Committee to select a limited number of individual cases among the Committee of Experts' observations. With reference to its examination of these cases, the Committee reiterated the importance it placed on the role of tripartite dialogue in its work and trusted that the governments of the countries selected would make every effort to take the necessary measures to fulfil their obligations under ratified Conventions. The result of the examination of these cases is contained in section E of Part One of this report. A summary of the information submitted by governments and the discussions of the examination of individual cases, as well as the conclusions adopted by the Committee, are contained in section B of Part Two of this report.

14. The adoption of the report and the closing remarks are contained in section F of Part One of this report.

Working methods of the Committee

15. Upon adoption of document C.App./D.1, the Chairperson stressed that strict time management would have to be ensured for the Committee to be able to complete its work in a very tight time frame. While the Officers of the Committee had an important role to play in this respect, the Chairperson called on all the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum. Since the Committee was expected to comply with the decision adopted by the ILO Governing Body to drastically reduce paper consumption, the online distribution of documents would be implemented as of this year.
16. The Worker members emphasized that the time constraints were even greater this year in the context of a Conference session that was one day shorter than last year. The necessary time should however be available for the discussion of the General Survey, which should ensure ownership of the subject by constituents and the opportunity to evaluate the relevance of the instruments under examination. The subject of the General Survey this year was more topical than ever and the Committee's discussion would enrich the general discussion on labour migration at the Conference in 2017. It was also important to devote all the necessary time to the examination of individual cases so as to reach useful conclusions. The question of the impact of the shorter Conference on the work of the Committee would need to be assessed during the informal tripartite consultations on the working methods of the Committee. With reference to the Joint Statement of the Workers' and Employers' groups of February 2015, which had been reinforced by the Government group statement, as well as the 2015 Conference and the Standards Initiative, the Worker members placed emphasis on the constructive atmosphere in which the current discussions were taking place. While recalling that disagreement persisted between the two groups on the issue of the right to strike in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), they noted that the report of the Committee of Experts referred to cases of violations of the Conventions on freedom of association which were as important as those relating to the right to strike. Nor should other fundamental Conventions be neglected, such as those on discrimination, as well as technical Conventions, such as the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and the governance Conventions, with particular reference to the Employment Policy Convention, 1964 (No. 122). Finally, the Worker members emphasized that the common objective was to reach consensual conclusions on all the cases. Conclusions should be short, clear and simple, and identify unambiguously the action expected from governments in both law and practice. They came within the sole responsibility of the Employer and Worker spokespersons.

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- 17.** The Employer members made reference to the preliminary list of cases, which had been instituted in 2006 and which had been published one month before the opening of the Conference in 2015 and 2016. They recalled that, following the adoption of the final list, the Vice-Chairpersons would provide further information to governments on the criteria used for the selection of the individual cases which would be on the final list. They looked forward to a constructive and meaningful discussion on the application of Conventions. They would work towards ensuring that the Committee would adopt short, clear and concrete conclusions specifying the actions requested from governments. The conclusions would reflect consensus recommendations. Where no consensus was possible on an issue, there would be no conclusions on that issue. This represented genuine progress in tripartite governance of the supervisory work that should be continued. Diverging views should be reflected in the record of proceedings. Conclusions should therefore be read in conjunction with the report of the full discussion and they should not repeat the content of that discussion. With better use of technology this year, it was hoped that the drafting of conclusions would be expedited. The dedicated sittings for the adoption of conclusions implemented for the first time in 2015 had been an important step in ensuring efficiency and should be continued. The Employer members noted that in view of the Committee's full agenda, time management was going to be key. Stressing that the Officers of the Committee would ensure strict time management, they invited all members to pay particular attention to the maximum speaking time limits contained in document D.1. Finally, they welcomed the additional technological support which was provided by the Office this year and was expected to facilitate the work of the Committee.
- 18.** The Government member of India, speaking on behalf of the Asia and Pacific group (ASPAG), indicated that his group supported the independence of the social partners in the selection of cases for examination by the Committee. However, they would like to seek more transparency in the criteria and process followed in selecting the preliminary list as well as the final list of individual cases. They were concerned at the lack of clarity and consistency in the application of the criteria contained in document D.1. They made particular reference in this context to the selection of cases that have been examined by the Committee at its previous session or those cases where there was ongoing collaboration between the country concerned and the ILO. They were also seeking clarity on the criteria used for closing a case. ASPAG believes that the Committee had an important role to play in providing for more effective and tailor-made technical assistance, such as capacity building and advisory services, with the objective of facilitating the application of Conventions. Focus should be more on issues that cannot be dealt with under national legal frameworks. ASPAG also highlighted that any conclusions or observations made by the Committee should be based on reliable sources and should be constructive in nature.

Adoption of the list of individual cases

- 19.** During the course of the second sitting of the Committee, the Chairperson of the Committee announced that the list of individual cases to be discussed by the Committee was available.⁴
- 20.** Following the adoption of this list, the Employer members expressed their disappointment that the list of cases did not contain any cases of progress. In their view, in line with the mandate of the Committee as contained in article 7 of the Standing Orders of the Conference, the examination of individual cases should also cover cases of progress in the implementation of ILO Conventions in law and practice, as a way of encouraging member States in their implementation efforts. The application by Namibia of the Worst Forms of Child Labour Convention, 1999 (No. 182) would have been a good example in this respect.

⁴ ILC, 105th Session, Committee on the Application of Standards, C.App./D.4 (see Annex 2).

They trusted that next year, the Committee would be in a position to discuss one or more cases of progress within the list of 24 cases and that this possibility would be duly reflected in document D.1 and included in the agenda of the next informal tripartite consultations on the Committee's working methods. Finally, they regretted that the Committee would not be able to discuss the application by Bolivia of the Labour Inspection Convention, 1947 (No. 81). Concerning the application by Uruguay of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), they expected that the tripartite agreement reached at national level would lead to concrete results without delay.

21. The Worker members recalled that the establishment of the preliminary list of 40 cases selected from the report of the Committee of Experts was very challenging. Since all cases were important and workers were hoping that the Committee would examine the difficulties they encounter in their respective countries, it was even more difficult to finally select 24 cases only. In the past, the list contained 25 cases. Despite the efforts made to ensure balance, there were many cases related to freedom of association. The Worker members noted that the fact that the comments of the Committee of Experts were quite short had prevented the selection of certain cases, in particular in relation to technical Conventions. They indicated that, while the corresponding cases would not be discussed, certain serious events affecting the world of work could not pass without comment. This was the case in the Middle East and North Africa region where respect of workers' rights was almost non-existent. This was also the case in Algeria, Colombia, Egypt, Gambia, Switzerland and Turkey, in particular in relation to violations of freedom of association and collective bargaining; in Japan and Thailand, notably in relation to forced labour; and in the Republic of Korea in relation to violations of freedom of association and the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).
22. The Worker member of Sri Lanka raised issues concerning the application of Conventions Nos 87 and 98 in his country.
23. At the end of the sitting, the Employer and Worker spokespersons conducted an informal briefing for Government representatives.

B. General questions relating to international labour standards

Statement by the representative of the Secretary-General

24. The representative of the Secretary-General pointed out that the mandate of this Committee under the Constitution and the Standing Orders of the Conference was at the core of the work of the ILO. Details concerning the work of this Committee were set out in document D.1 which reflected the results of the informal tripartite consultations on the Committee's working methods, which had taken place since 2006 (lastly in March 2016). The latest innovations aimed at implementing the "paper smart" policy introduced by the Office under the current programme and budget. All documents of the Committee would be made available electronically on the Committee's dedicated web page, including the draft minutes of sittings; each intervention would be reflected in the draft minutes only in the working language in which it was delivered or the language selected by the speaker in the request to take the floor. Other innovations aimed at improving time management.
25. The speaker highlighted the increasing interest in the technical assistance provided by the Office in order to foster the implementation of ratified Conventions. The Information Document prepared by the Office notably contained information on the missions carried out

in 2015 in two countries in order to follow up the conclusions adopted by the Conference in recent sessions.

- 26.** The representative of the Secretary-General recalled that 2016 marked the 90th anniversary of the creation in 1926 of this Committee and the Committee of Experts. Over the years, the two bodies had developed a symbiotic and mutually dependent relationship. In 1932, this Committee indicated for the first time that the report of the Committee of Experts was the basis of its deliberations and that it was this “double examination” of reports by the two bodies that placed “States Members of the Organisation on a footing of equality in respect of the supervision of the application of the ratified Conventions”. The Conference Committee described the way in which the two bodies differed and complemented each other, one being dedicated to the examination of written information by independent experts and the other being a tripartite body in a position “to go beyond the mere question of conformity between national legislation and the ratified Conventions, and, as far as practicable, to verify the practical application of the Conventions in question”. The procedure gradually developed with the opportunity given to member States to submit explanations to this Committee either orally or in writing. At the end of the Second World War, the Committee made a determining contribution to the constitutional amendments eventually adopted in 1946, leading to the strengthening of the ILO’s supervisory machinery notably by introducing the obligation of member States to report on the submission of Conventions and Recommendations to the competent authorities and on the effect given to unratified Conventions and the Recommendations, as well as the communication of reports to the most representative national organizations of employers and workers. In 1955, the Committee introduced for the first time, a principle of selectivity among the observations made by the Committee of Experts and the first list of cases was presented and discussed in 1959. In the 1950s, the dialogue between the two supervisory bodies and member States was amplified by the first references to technical assistance to overcome difficulties in the application of Conventions. From the 1960s to the late 1980s, the convergence of views between the Employers’ and Workers’ groups has been the greatest strength of the ILO, contributing to the increased participation of employers’ and workers’ organizations in the process of supervision of standards.
- 27.** The most recent period has been marked by divergences concerning the mandate of the Committee of Experts and the respective functions of the two Committees. In June 2012, the Conference Committee was for the first time unable to adopt a list of individual cases for discussion because of these divergences. This impasse ultimately sparked off a challenging but useful dialogue within the ILO on its standards system. This dialogue was taking place in the framework of the Standards Initiative.
- 28.** In conclusion, the representative of the Secretary-General noted that this brief historical overview primarily served to highlight the way in which, over the years, the mandate, scope and interaction of the Committee of Experts and this Committee had evolved in response to changing circumstances in terms of ILO membership, socio-economic context and the consequent needs of the constituents. Constant evolution may be challenging under certain circumstances, but it also constituted a distinguishing mark of a living Organization capable of adapting to its changing environment.

Statement by the Chairperson of the Committee of Experts

- 29.** The Committee welcomed Mr Abdul Koroma, Chairperson of the Committee of Experts, who expressed his appreciation for the opportunity to participate in the general discussion and the discussion of the General Survey. The Chairperson of the Committee of Experts stressed the importance of a solid relationship between the two Committees in a spirit of

mutual respect, collaboration and responsibility. He indicated that, during its last session, the Committee of Experts had taken due note of all the important developments that had taken place in the framework of the Standards Initiative in 2015, with particular attention given to the Joint Statement of the Workers' and Employers' groups and the two statements from the Government group of February 2015.

- 30.** The Chairperson of the Committee of Experts recalled that, in the consideration of its working methods, the Committee of Experts had always given due consideration to the views expressed by the tripartite constituents. The Committee had paid particular attention in 2015 to applying in a consistent manner its criteria for distinction between observations and direct requests, as contained in paragraph 36 of its General Report. The Committee of Experts had also decided to provide an explanation of its practice when treating observations received from workers' and employers' organizations (paragraphs 58 to 61 of its General Report). The importance of respecting the obligation under article 23(2) of the Constitution had also been emphasized by the Committee. In relation to the workload and time constraints, the Committee of Experts had reiterated its long-standing concern at the low proportion of reports received by 1 September each year and highlighted once again the fact that this situation disturbed the sound operation of the regular supervisory procedure. It had reiterated its request that member States make a particular effort to ensure that their reports are submitted in time in 2016 and that they contain all the information requested so as to allow a complete examination by the Committee. As regards possible ways of giving more visibility to the Committee's findings by country, the Committee of Experts had invited the Office to use the electronic means available, in particular through the NORMLEX database, to facilitate access to all the comments made on the application of ratified Conventions for each country.
- 31.** Finally, the Chairperson of the Committee of Experts highlighted that during their 90 years of existence, the two Committees had pursued a meaningful dialogue, in the interest of an authoritative and credible ILO supervisory system and ultimately for the cause of ILO international labour standards and social justice worldwide.

Statement by the Employer members

- 32.** The Employer members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of this Committee and in its discussion of the General Survey. They welcomed the 2016 report of the Committee of Experts and highlighted a number of positive elements in that report. The Committee of Experts had reiterated the statement of its mandate in paragraph 15 of its General Report, which the Employer members trusted would be reproduced in all future reports of the Committee of Experts. The Committee of Experts had also paid particular attention to the discussions in the Conference Committee and to the conclusions it adopted. This was particularly important now that conclusions reflected only consensual recommendations.
- 33.** With reference to the general observations adopted by the Committee of Experts on the Radiation Protection Convention, 1960 (No. 115), and on the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), the Employer members noted that general observations contributed to a better understanding and implementation of the Conventions and could be a helpful tool to discuss trends in their application. In the future, it would be important for the Conference Committee to devote time to discuss the content of general observations. Noting positively the constructive and direct interaction between the two Committees, notably at the occasion of the special sitting of the Committee of Experts with the Vice-Chairpersons, the Employer members expressed their readiness to meet more frequently with members of the Committee of Experts to discuss essential matters, such as: (i) how to address reporting failure in an effective and sustainable manner; (ii) the

importance for member States to actively manage their ratification record; (iii) how best to measure overall progress in the implementation of ratified Conventions; and (iv) how to recognize cases of progress. They reiterated their suggestion that such meetings could include ILO officials from the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV) and that they may be organized to brief newly nominated experts.

- 34.** The Employer members made a number of proposals aimed at ensuring a more effective regular supervisory procedure. First, the printed version of the report of the Committee of Experts could be presented by country within a region, and not by Convention. A cover page for each country, preceding the related observations adopted by the Committee of Experts, could provide information about ratification, reports due and received for the year in question, and observations received from workers' and employers' organizations; it would therefore not be necessary to have this information contained in a separate report (currently, Report III (Part 2)). This would facilitate an overall evaluation of the situation of each country. Second, the observations sent by employers' and workers' organizations under article 23(2) of the ILO Constitution should be made available publicly when those organizations so wished. Third, the Office should continue to provide technical assistance to workers' and employers' organizations to ensure greater impact of their observations.
- 35.** In addition, the Employer members considered that measures needed to be taken to ensure the timely examination of all reports by the Committee of Experts. They noted from the Committee of Experts' report that, in view of the heavy workload, they had been unable to examine a number of reports. This occurred despite the fact that the Committee of Experts had been able to function with its full membership for the first time since 2001 and despite the fact that around 30 per cent of government reports requested had not been received. Noting that future developments needed to be anticipated, in particular the increase in the number of reports resulting from additional ratifications, the Employer members stressed that the measures to be envisaged in order to reduce the workload should have a sustainable effect; such measures included: (i) the necessity to facilitate reporting and focus reporting on essential regulatory issues in ILO Conventions; (ii) the major responsibility of the Standards Review Mechanism (SRM) in the modernization and, where feasible, consolidation of the ILO body of standards; (iii) in the short term, a more regular review by member States of their ratification record, in particular regarding outdated Conventions.
- 36.** Lastly, the Employer members emphasized the importance of the review of the ILO standards supervisory system as a whole to ensure consistency and efficiency. With reference to the joint report of the Chairpersons of the Committee of Experts and the Committee on Freedom of Association submitted to the March 2016 session of the Governing Body, they highlighted paragraph 126 which stated that "there may be too many different committees involved in the system which may have negative effects on the transparency and effectiveness of the procedures for those involved". They considered that a simplification of the system was needed and they looked forward to the proposals that the ILO Director-General would submit to the Governing Body in this regard.
- 37.** Finally, the Employer members raised two issues of concern in the 2016 report of the Committee of Experts: (i) the naming of specific companies in the report; and (ii) the continued extensive interpretation of the right to strike in the context of Convention No. 87. A major part of the Committee of Experts' comments on Convention No. 87 concerned the right to strike, both in observations and in direct requests. In doing so, the Committee of Experts was not taking into account the fact that there was no tripartite consensus on this issue. With reference to the statement from the Government group and the joint statement of the Workers' and Employers' groups of February 2015 and the need to respect the role of the Conference Committee, the Employer members trusted that the Committee of Experts would reconsider its position on this issue.

Statement by the Worker members

38. The Worker members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee and in its discussion of the General Survey. Recalling the historical role of the Conference Committee, they stressed that it had a crucial role to play in ensuring a social dimension of the global legal framework.
39. They wished that the constructive spirit that prevailed in the work of the Committee since 2015 would also benefit other activities of the Conference, in particular those related to the adoption of standards, as well as the discussion on decent work in global supply chains.
40. Recalling that the work of the Committee was based on the reports of the Committee of Experts, they welcomed the quality of those reports, as well as the experience and independence of the Committee of Experts. That independent body which had been created by the tripartite constituents of the ILO had gained the respect and trust of the Workers' group. Its mandate was based on three principles. First, its task was to provide information to the Conference Committee on the cases of non-compliance of the national legislation and practice of member States with ILO Conventions. This necessarily required an evaluation and a certain degree of interpretation of the national legislation and the provisions of Conventions. Second, the Committee of Experts was guaranteeing legal certainty by ensuring equal and uniform treatment of member States when examining the application of Conventions. This was encouraging Governments to accept the recommendations of the Committee of Experts. Lastly, that Committee was composed of independent experts with first-hand experience of different legal, economic and social systems. This also contributed to broad acceptance of its opinions on the meaning of Conventions. The impartial and technical analysis of national situations and of the legal scope, content and meaning of the provisions of Conventions served to guide the actions of national authorities, as evidenced by the incorporation of its opinions and recommendations in national legislation and court decisions.
41. While underlining the quality of the report of the Committee of Experts, the Worker members were struck by the tone adopted in some comments which highlighted elements of progress based on the information received from the Government without querying their veracity. In certain cases, progress was minimal. They also noted the absence of comments in a number of cases which remained problematic and which had been raised in the past. In other cases, in particular regarding technical Conventions, the comments were too shortened to be usable. Since 2012, there had been a drastic reduction of the length of the report. Despite the seriousness of the allegations contained in a number of observations from workers' organizations, these observations had only been transmitted to the Governments concerned and had not been reflected in the report of the Committee of Experts. Some countries were not included in the report, which meant that their case could not be discussed by the Conference Committee. This was affecting the proper functioning of the supervisory system.

Reply of the Chairperson of the Committee of Experts

42. The Chairperson of the Committee of Experts indicated that he would transmit the comments made during this discussion to the members of the Committee of Experts for their due consideration. He was confident that the Committee of Experts would wish to examine concrete proposals to strengthen the cooperation between the two Committees. This would be particularly important with regard to a number of questions which had an impact on the working methods, including possible innovative ways to address the heavy workload. The Committee of Experts would be particularly interested in information on the discussion which would take place on the Standards Initiative at the November 2016 session of the

Governing Body. It was to be hoped that these discussions would lead to a strengthening of the supervisory system and its authoritative nature, while ensuring that it had the full engagement of the ILO constituents. He looked forward to continuing constructive dialogue on the occasion of the special sitting between the two Vice-Chairpersons of the Conference Committee and the Committee of Experts at its next session in November 2016.

Reply of the representative of the Secretary-General

43. The representative of the Secretary-General noted the suggestions made with respect to questions that should be further discussed, including during the informal tripartite consultations on the Committee's working methods. She emphasized the Office's intention to continue enhancing capacity building for governments, as well as workers' and employers' organizations, so as to ensure their effective participation in the supervisory mechanisms. In the case of workers' and employers' organizations, this would be done with the continued support of ACTRAV and ACT/EMP.

Concluding remarks

44. The Worker members recalled that the SRM would not have any legal implications for the application of Conventions and that the Conference was the only legislative body in the ILO. This Committee and the Committee of Experts, as the two pillars of the ILO regular supervisory system, remained independent from each other. There was not hierarchy between the two. The Committee of Experts was independently examining the legal scope, content and meaning of Conventions. The Worker members therefore would never dictate to the Committee of Experts what its position should be, whether on the right to strike or any provisions of Conventions. Nevertheless, they considered that dialogue between the two bodies was necessary. In their view, the existing procedures to allow such dialogue were sufficient. They noted that the selection of the double-footnoted cases by the Committee of Experts served as a guide for the work of the Conference Committee. They considered that the suggestions aimed at ensuring greater transparency in the work of the Committee of Experts, including by making publicly available the observations sent by workers' and employers' organizations, were very sensitive and should not lead to any weakening of the role of the Committee of Experts or of its independence. Cases of progress were important to showcase the effectiveness of the supervisory system and better use of those cases should be ensured. It would not be possible to include cases of progress in the list of 24 cases, since there were so many serious violations to address. However, discussion of a case of progress could be envisaged, but not within the list of 24 cases. The Worker members stressed that their considerations were aimed at strengthening the supervisory system and its impact.
45. The Employer members looked forward to continued close collaboration and more frequent direct interaction with the Committee of Experts. Constructive and meaningful dialogue was necessary to address the challenges facing the supervisory system.

C. Reports requested under article 19 of the Constitution

General Survey concerning the labour migration instruments

46. The Committee examined the General Survey carried out by the Committee of Experts on the migrant workers instruments, notably the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151).
47. The General Survey took into account information on law and practice provided by 122 Governments under article 19 of the ILO Constitution, as well as the information provided by member States which had ratified the Conventions in their reports under articles 22 and 35 of the Constitution. The General Survey also reflected the comments received from 43 workers' organizations and 18 employers' organizations pursuant to article 23 of the Constitution.
48. In introducing the General Survey, the representative of the Secretary-General underlined the opportunity for the Committee to make its contribution to the international debate on labour migration.
49. The Chairperson of the Committee of Experts indicated that the General Survey emphasized the importance of good governance, the rule of law and respect for human rights to the effective regulation of international labour migration. He recalled the pivotal role of social dialogue and of international and regional cooperation in this respect. The Committee of Experts was of the view that migrant workers continued to require specific protection. It noted the obstacles reported by member States to the effective implementation of the instruments, and recalled the potential of the instruments to provide a framework for a fair and effective governance of labour migration.

General remarks on the General Survey and its topicality

50. The Committee welcomed the subject matter of the General Survey, emphasizing its timeliness and topicality, and the need for ensuring effective governance of labour migration and the protection of migrant workers.
51. The Worker members noted the importance of the General Survey for providing a global picture of the law and practice of member States on the application of the labour migration instruments. The subjects of General Surveys were selected jointly by the constituents and should benefit from tripartite involvement. The Worker members considered that the observations from workers' organizations had enriched the General Survey, and noted the few contributions from employers' organizations. While many governments had provided reports, these did not always reply to all the questions raised.
52. The Employer members regarded migration for work as a positive feature of globalization when it took place in a legal and orderly manner. The ongoing challenge was to manage migration in conditions that were acceptable to workers, employers and societies in the participating countries. Migration for work balanced labour supply and demand, and encouraged innovation, entrepreneurial opportunities and the transfer of skills. Businesses were frequent users of national migration systems. Voluntary labour migration, for example

in pursuit of employment opportunities, should be differentiated from involuntary migration for other reasons, such as trafficking or escaping conflict. The Employer member of France referred to the tendency in Europe towards making standards more complex for posted workers, which was a disincentive for employers to recruit European workers. The Employer member of Sweden considered that responsible and inclusive migration systems benefited both countries, businesses and individuals. Swedish companies were dependent on the contributions provided by migrants and on having the ability to recruit abroad, notably within the European Union.

53. The Government member of the Netherlands, speaking on behalf of the European Union and its Member States, reiterated that international labour migration was a major global issue ranking high on policy agendas. The Government member of Senegal highlighted the opportunity presented by the General Survey in the context of mass migration from countries in economic difficulty or war. The General Survey was a tool to assist in further adapting social legislation in accordance with international obligations, particularly in the framework of protection for migrant workers.
54. The Government members of Brazil, Iraq, Italy, Libya and Turkey, the Worker members, and the Worker members of Benin, Botswana, India, South Africa and Zimbabwe referred to the seriousness and impact of the current migration crisis and its causes, including rising inequality and regional imbalances, poverty and unemployment, demographic trends, conflict, repression and terrorism, and, increasingly, the consequences of climate change. The Worker members stressed the important role of the ILO in eradicating the negative causes of migration through international labour standards.
55. Many Government members, including from Belgium, Italy, Norway, Sweden and Turkey, and Worker members, including from Chile, India, South Africa and Tunisia, referred to the human rights and precarious situation of migrants, including the deaths in the Mediterranean Sea, hazardous employment, discrimination and prejudice, lack of social protection, and vulnerability to forced labour, exploitation and abuses throughout the migration process. The Worker member of Benin, speaking also on behalf of Burkina Faso, Niger and Togo, indicated that migration needed to be regulated by precise and non-discriminatory standards and stressed how significantly migration issues had evolved in Western Africa in recent times.

Importance of the instruments covered by the General Survey: Conventions Nos 97 and 143 and Recommendations Nos 86 and 151

56. The Worker members considered that the Conventions were fully pertinent in the world of work today. Convention No. 97 was intended to ensure equality of treatment for migrant workers in relation to national workers, and to promote cooperation between member States. It called for general protection measures, and described the conditions in which labour migration should take place. It was supplemented by Convention No. 143, which was intended to prevent irregular migration and ensure respect for the fundamental human rights of all migrant workers, including migrant workers in an irregular situation. The objective of Convention No. 143 was also to ensure equality of opportunity and treatment for workers in a regular situation.
57. The Worker members emphasized the importance of the instruments, which they considered to be fundamental for the protection of migrant workers and an essential basis to control migration processes. Protection was particularly needed for women migrants, as well as certain other groups of migrant workers including youth, indigenous and rural populations, low-skilled workers and migrant workers in an irregular situation, who were more exposed

to discriminatory treatment and abuse. The effective implementation in practice of the protections afforded by the Conventions necessitated strong commitment by member States.

- 58.** The Employer members, based on the General Survey, believed that Conventions Nos 97 and 143 no longer adequately responded to the increasingly complex migration challenges and should be updated. They believed that this view was partly shared by the Committee of Experts and was also in line with the Cartier Working Party classification of these instruments under the category of “other instruments”. It also appeared to be shared by a number of governments in their reports submitted for the General Survey (paragraphs 601 and 602) and was reflected in decreasing ratifications and vague ratification prospects. The Committee of Experts had also recorded that many governments saw obstacles to ratification in the form of non-compatible national law and practice, while others did not appear to see any value added in ratification. The Employer members of France and Uruguay further referred to the outdatedness of the instruments.
- 59.** The Employer members listed some of what they considered to be the most significant shortcomings of the two Conventions, including: (a) the absence of provisions requiring a national policy on labour migration; (b) the absence, in Convention No. 97, of requirements for consultation with the social partners; (c) insufficient consideration of bilateral and multilateral agreements as an increasingly important form of international regulation on issues related to labour migration; (d) the lack of differentiation between temporary and permanent migration; (e) insufficient reflection of the increasing role of privately initiated, as opposed to state-sponsored, migration; (f) inadequate consideration of irregular labour migration given its increase in recent decades; (g) the lack of protection for women migrant workers; and (h) the irrelevant regulations on health protection during migration in Article 5 of Convention No. 97 which conflicted with the need for clarity in obligations and could not be remedied by a corrective interpretation of the Committee of Experts.
- 60.** The Employer members considered that the Committee of Experts’ observation that member States had reasonable flexibility in applying Article 8 of Convention No. 143 took into account the plethora of existing laws and practices. However, Article 8 was not clear and the possibility for differences in approach might increase chances of inconsistent application and lead to misunderstandings. The variety in national regulations on this point suggested that Article 8 no longer reflected the spectrum of real-life situations.
- 61.** The Employer members agreed with the Committee of Experts that genuine misconceptions were not obstacles to implementation but considered that their existence might indicate that the instruments were not as clear and relevant as would be desirable. The appeal to governments by the Committee of Experts in paragraph 562 to “eliminate all legal and practical obstacles impeding the implementation of the instruments” did not therefore seem to address the real problem.
- 62.** The Government member of Oman, speaking on behalf of the countries of the Gulf Cooperation Council (GCC), commented on the low ratification levels of the instruments, which raised the question of their adaptation to the current context, and particularly of the capacity of States to provide employment for their citizens.
- 63.** The Government members of Belgium, Kenya, India and Sweden, as well as the Government member of the Netherlands, speaking on behalf of the European Union and its Member States, highlighted the importance given to migration in the 2030 Agenda on Sustainable Development, in particular Goals 8 and 10, and the need to deliver on commitments. The Government member of Belgium also stressed the relevance of the current discussions to other items on the Conference agenda, namely the evaluation of the impact of the Social Justice Declaration and the work of the Committee on Employment and Decent Work for the Transition to Peace.

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64. The Worker members considered the ratification and implementation of the instruments to be key to achieving the 2030 Sustainable Development Goals. The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, Portugal, Serbia, Spain, Switzerland, Netherlands and the United Kingdom, called upon constituents to fulfil commitments made in the context of the 2030 Agenda.
 65. The Employer members considered that the promotion of these instruments would impede the ILO from playing a meaningful role in the implementation of the Fair Migration Agenda and the 2030 Sustainable Development Agenda.

International labour migration: Challenges to, and opportunities for full implementation

Human rights

66. The Worker members stressed the fundamental nature of freedom of association and the right to organize for migrant workers, including those in an irregular situation. Member States should ensure that these rights were enjoyed in practice. Through workers' organizations, migrant workers could be integrated into national, regional and international social dialogue structures. Alongside these fundamental rights, the instruments offered protection for migrant workers in specific situations, such as through protection against loss of employment and against repatriation in the event of illness or injury. The Worker members stated that criminalizing irregular entry into the national territory only served to stigmatize migrant workers.
67. The Employer members considered that the General Survey (especially paragraph 294) raised questions regarding the responsibilities of migrant workers. Migrant workers should respect immigration rules and seek legal ways of migration. Article 9(3) of Convention No. 143 appeared to lack flexibility in cases where the illegal or irregular situation could be attributed to the migrant worker. Stakeholders should work together to eliminate "illegal and clandestine migration", as well as abuse and exploitation of migrant workers. Opportunities and responsibilities for doing so should be shared among governments, employers and migrant workers.
68. The Government member of the Netherlands, speaking on behalf of the European Union and its Member States, stressed the human rights of migrants, regardless of their status. Special consideration should be given to migrants in vulnerable situations, such as women migrants, but also unaccompanied minors, children, and victims of trafficking. The Government member of Brazil highlighted the importance of respecting the human rights of migrants, including their fundamental rights at work; migrants in an irregular situation must not be treated like criminals.
69. The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, Portugal, Serbia, Spain, Switzerland, Netherlands and the United Kingdom, stated that human mobility was a fundamental human right and identified a number of priorities including: ratifying the ILO Protocol of 2014 to the Forced Labour Convention, 1930, and taking measures against the exploitation of migrants and refugees; developing instruments to avoid exploitation and social dumping; improving member States' cooperation to promote respect of migrants' rights; increasing cooperation between labour inspectorates and social partners; providing migrant workers with welcoming living and working conditions, training and information; increasing collective bargaining at all levels to promote the principle of equal treatment and non-discrimination; and tripartite cooperation with states of origin to address the root causes of migration.

Equality of opportunity

- 70.** The Worker members highlighted that Convention No. 97 intended to ensure equality of treatment for migrant workers in relation to national workers, and to promote cooperation between member States. It was important to promote equal treatment for migrant workers, which was different from treating them in an equitable manner. Equal treatment should include working conditions, social protection, living conditions and access to housing and the principle of equal wages for work of equal value should be universally applied. An active policy to combat prejudice in relation to migrant workers – often at the root of discriminatory treatment – was necessary.
- 71.** The Employer members commented on paragraphs 354–365 of the General Survey, concerning the free choice of employment and its possible restrictions, as set out in Article 14(a) of Convention No. 143. In light of the diverse regulations regarding the duration of restrictions, which responded to varying labour market needs in receiving countries, flexibility on this point was important. Further, the Employer member noted, as stated by the Committee of Experts (paragraph 404), there were considerable differences between countries on the issue of exportability of pensions and other benefits abroad, which were often regulated through bilateral or multilateral social security agreements. Noting the recognized principle of reciprocity in such agreements, it was unclear whether this was in accordance with Conventions Nos 97 and 143.
- 72.** The Employer member of Sweden, commenting on the reference in the General Survey to the opinion of the European Committee of Social Rights in a complaint against Sweden, concerning the changes made in the Swedish legislation after the Laval ruling from the European Court of Justice, expressed concern that workers sent or posted by their employers to work outside their own country were not excluded from Article 6 of Convention No. 97. In his view, requiring that posted workers had to be covered by the same rules as national workers undermined competition and the provision of services in the EU, hindered posting and hampered both economic growth and job creation in the European countries.
- 73.** The Government member of the Netherlands, speaking on behalf of the European Union and its Member States, stressed the key role of international labour standards in ensuring equal treatment to migrants at work. Offering migrant workers equal labour conditions with national workers prevented social dumping and mitigated negative attitudes. EU legislation concerning labour migration from third countries stressed equal treatment, including freedom of association and the right to collective bargaining. The Government member of Norway noted that the viability of the Norwegian welfare state depended on high rates of employment and the inclusion of immigrants in the labour market therefore benefited individual immigrants and the economy as a whole. It was essential to avoid the separation of the workforce into groups of workers benefiting from unequal levels of protection according to their origin or nationality.

Fair recruitment

- 74.** The Worker members emphasized existence of abuses during the recruitment of migrant workers and stressed that member States should combat the furnishing of misleading information to migrant workers and charging of exorbitant fees by private intermediaries, as provided for in the migrant workers Conventions.
- 75.** The Government member of the Netherlands, speaking on behalf of the European Union and its Member States, indicated that recruitment and agency work were strictly regulated in the European Union, and the Seasonal Workers Directive (Directive 2014/36/EU) was an example of a good practice. Nevertheless, as had been discussed during the 326th Session (March 2016) of the Governing Body, abuses and fraudulent practices were a growing

challenge. He welcomed the ILO Fair Recruitment Initiative and the forthcoming tripartite meeting of experts in September 2016 to develop guidance on fair recruitment on this issue. In this regard, ratification and implementation of the Forced Labour Protocol of 2014 by member States was an important step, in which European Union Member States were fully engaged. The Government member of Sweden supported the development of the International Recruitment Integrity System.

- 76.** The Worker member of the United States, referring to the Fair Recruitment Initiative and adoption of guidelines on recruitment at the upcoming meeting of experts, stressed that the ILO was the lead UN agency on labour migration globally, in light of its rights-based framework, supervisory mechanism and tripartite structure. Migration reforms were essential to decent work in global supply chains. Undocumented and visa-contingent migrants were over-represented in informal and subcontracted employment that undermined efforts to demand decent work and wages.
- 77.** The Worker member of Zimbabwe referred to the need for effective regulation of recruitment through both public and private mechanisms. While labour migration regulation could be improved through bilateral agreements, as envisaged by the Private Employment Agencies Convention, 1997 (No. 181), and the Domestic Workers Convention, 2011 (No. 189), some bilateral agreements had the adverse effect. African migrant workers were subjected to inhumane living and working conditions. Furthermore, trade unions were aware that in some countries fee charging by recruitment agencies for services to potential migrant workers was not prohibited, in disregard of Article 7(2) of Convention No. 97 and Article 7(1) of Convention No. 181.
- 78.** The Government member of Kenya considered it an obligation of public authorities and recruitment agencies to ensure that the contract of employment was implemented fairly, respected the rights of migrant workers and continued until the end of the employment relationship. The relevant legislation on employment policy should prevent abuses in the recruitment of migrant workers at home and abroad.

Monitoring and enforcement

- 79.** The Employer members noted that, in paragraph 498 of the Survey, the Committee of Experts recalled that a legislative requirement for public officials to report criminal offences may prevent migrant workers in an irregular situation from requesting assistance when filing complaints of violations of basic human rights and claiming rights from past employment. However, the natural interest of migrant workers in an irregular situation in hiding their irregular status should not compromise the interest of the State in effective enforcement of the law. Migrant workers should not claim protection from expulsion because of their irregular status. The Employer members further disagreed with the experts' view that national systems that envisaged the imposition of sanctions on migrant workers in irregular situations, instead of or in addition to their employers, could increase the vulnerability of migrant workers. Convention No. 143 did not address the possibility of sanctions against migrant workers in an irregular situation. Moreover, the reported national laws reflected the fact that, in certain cases, employers and migrant workers might jointly be responsible for the illegal employment. Migrant workers did not enjoy immunity against prosecution where the illegality of the employment could also be attributed to them.
- 80.** The Worker members stated that all forms of protection would be illusory if migrant workers did not have access to justice. The existence of dissuasive legal sanctions, rigorously applied, was essential for the application of the rights set out in the instruments. It was still the case in certain member States that migrant workers in an irregular situation did not have the right to claim unpaid wages in the courts, despite the guarantee in this regard in Paragraph 34(1)(a) of Recommendation No. 151. Other obstacles to access to justice included linguistic barriers,

lack of knowledge of the legal system and the length, expense and cost of proceedings. Targeted assistance for migrant workers was therefore necessary. Moreover, the protection of the rights of certain migrant workers was hindered by their forced dependence on their employer.

- 81.** The Worker member of Zimbabwe indicated that well-resourced labour inspectorates working within and across countries could improve the governance of labour migration and the protection of the rights of migrant workers. Inspection should ensure that migrant workers had access to remedies in the cases of violations. The Government member of Norway stressed the importance of ensuring that migrant workers were not exploited as a part of work-related crime or trafficking in persons. The Government had introduced a strategy to combat work-related crime, implemented jointly by the labour inspectorate, tax authorities, welfare authorities, migration authorities, police and others, in cooperation with the social partners.

Governance of migration

- 82.** For the Government member of Morocco, the General Survey highlighted the importance of good governance, respect for human rights, and the rule of law for the effective regulation of international labour migration. The Government member of Brazil noted the need for a more sustainable international migration strategy, strengthening the existing international legal frameworks that guaranteed minimum rights for migrant workers. It was crucial to increase ratifications of the instruments and to distinguish between migrants and refugees, who should be given special attention. The Government member of Turkey believed that promoting and protecting the rights of migrant workers required combined national and international efforts.
- 83.** The Worker member of Ghana, speaking also on behalf of the Worker members of Gambia, Liberia, Nigeria and Sierra Leone, welcomed the link in the General Survey between civil liberties, human rights and good governance, and considered that the lack of legal protections and of a broader regional or multilateral governance framework undermined the fundamental right to life, dignity and safe movement across borders. In most of Africa, migration matters were the responsibility of Ministries of Interior or Police, undermining, to some extent, full social dialogue and often explaining the lack of consultation with workers. The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, Portugal, Serbia, Spain, Switzerland, Netherlands and the United Kingdom, considered that the numbers, complexity of political approaches and unacceptable labour exploitation and abuses demanded urgent and coordinated global, regional and national management, prioritizing respect of migrants' fundamental freedoms and human rights, including labour rights.

Bilateral and multilateral agreements

- 84.** Referring to paragraphs 151 to 163 of the General Survey, the Employer members noted the increased importance of bilateral agreements in recent decades, which provided an opportunity for tailored mutually beneficial responses to complex migration issues. The Worker member of Ghana, speaking also on behalf of the Worker members of Gambia, Liberia, Nigeria and Sierra Leone, welcomed bilateral and multilateral arrangements on migration, provided that they were social dialogue compliant. The Government member of Senegal indicated that his Government had initiated discussions for the conclusion of social security agreements with various countries. The Government member of Oman, speaking on behalf of the GCC countries, indicated that the social security system in the Gulf countries covered workers in the informal economy through the establishment of a simplified procedure. He referred to the importance of the Abu Dhabi agreement concluded between

GCC countries and countries of origin in establishing a protective framework for migrant workers.

Prospects for ratification

- 85.** The Employer members recalled that the General Survey had recorded a very low number of ratifications of the two Conventions. Since the last General Survey of 1999, only eight new ratifications of Convention No. 97 and five new ratifications of Convention No. 143 had been registered. Encouraging member States to ratify the two Conventions did not respond to existing realities and the Committee of Experts should instead have encouraged a revision of the instruments with a view to creating modern and attractive instruments.
- 86.** The Worker members equally noted the low number of ratifications of both Conventions, and recalled that, according to the Committee of Experts this was partly due to misunderstandings about the provisions of the instruments. The Committee of Experts had emphasized the flexible nature of the Conventions, as well as the fact that most provisions that member States considered to be obstacles, would not in fact prevent ratification. In the context of the Standards Review Mechanism, it had been agreed that reviews would not have any effect on the legal status of a standard until a final decision had been taken on that standard by the Conference or the Governing Body, as appropriate.
- 87.** The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, Portugal, Serbia, Spain, Switzerland, Netherlands and the United Kingdom supported the Committee of Experts' invitation to Governments to consider further ratification through tripartite dialogue. The Worker member of Ghana, speaking also on behalf of the Worker members of Gambia, Liberia, Nigeria and Sierra Leone, considered that the instruments remained good international law and called upon the ILO to increase support for their ratification as a matter of urgency. The Worker member of India also supported efforts to promote the ratification and implementation of the instruments by all countries. The Worker member of Chile called on his Government to ratify Convention No. 143. The Government members of Belgium, Brazil, Italy and Turkey supported a campaign to promote the effective implementation and awareness or ratification of the Conventions and Recommendations.
- 88.** The Government member of Morocco confirmed that the ratification of Convention No. 97 was in the final stage of depositing the instruments of ratification at the ILO. The ratification of Convention No. 143 had been transmitted to Parliament for consideration and, potentially, adoption.

The way forward

The pivotal role of social dialogue

- 89.** The Employer members and the Employer member of Uruguay considered that comprehensive dialogue between governments and business was a prerequisite to managing an effective migration policy, and referred to the Global Forum on Migration and Development (GFMD). Labour market needs and interests of the private sector varied greatly across companies, industries, countries and regions, and employers of highly skilled migrants and those recruiting large numbers of low-skilled workers had differing needs and challenges. Labour migration should be aligned with education to meet future business needs and create opportunities for workers. Employers' experiences could be the source of important information to governments and international organizations, but, in many countries, the private sector was not consulted on migration policy. Business' and workers' involvement in migration governance was an obvious, but neglected, need, which should be

underpinned by appropriate international labour standards. The Employer member of Turkey stressed that the views of the social partners must be taken into account in shaping policies.

90. The Worker members also considered the presence of the social partners at all levels of dialogue to be essential. Social dialogue was the cornerstone of coherent migration policies but many member States failed to involve the social partners.
91. The Government member of the Netherlands, speaking on behalf of the European Union and its Member States, underlined the role of social dialogue in the effective governance of labour migration issues. The Tripartite Social Summit (16 March 2016) discussed the labour market integration of refugees and the European social partners had presented a joint statement on the refugee crisis. Social dialogue at national, cross-industry and sectoral levels could foster solutions. The Government member of Norway referred to the role of the social partners in ensuring generally applicable collective agreements; tripartite cooperation was necessary both for the successful development of strategies, and their effective enforcement. The Government member of Kenya considered that successful implementation of the rights and protections contained in the instruments required good governance, including social dialogue and the engagement of tripartite constituents. Institutionalized social dialogue was essential to the development of sound labour migration policy and should be promoted.

Possible ILO action

92. The Worker members encouraged the ILO to conduct a wide-ranging campaign for the ratification and the effective implementation of Conventions Nos 97 and 143 and to reinforce technical assistance with a view to improving the ratification rate and enhancing the implementation of the protections guaranteed by these instruments. Member States could seek ILO technical assistance to clarify the conformity of their legislation with the Convention and analyse the possibility of their ratification or implementation. The ILO should play a proactive role in informing member States more effectively of the flexibility offered by the instruments with a view to adapting them to particular national situations. Targeted assistance to migrant workers in an irregular situation to overcome barriers to access to justice would also be desirable.
93. The Employer members, including the Employer members of France and Uruguay, did not see any added value in promoting the implementation and awareness of standards that were not fully up to date, and rather supported their revision. The Employer members considered that a ratification campaign would negatively impact the credibility of the ILO. The ILO should be more ambitious and offer fully up-to-date standards on international labour migration. The Tripartite Working Group on the Standards Review Mechanism should therefore undertake a comprehensive examination of the instruments. This should include an analysis of the relevance of the instruments in the light of present and anticipated needs regarding labour migration, and take into account existing forms of regulation at the international level, in particular bilateral and multilateral agreements in the area of migration.
94. The Government member of the Netherlands, speaking on behalf of the European Union and its Member States agreed with the Committee of Experts' proposal that the Office prepare a background paper to inform the examination of the instruments under the Standards Review Mechanism. The Government member of Norway supported a revision of the instruments to make them more up to date and thereby attain more ratifications. The Government member of Kenya considered that the Standards Review Mechanism could examine the continued relevance of Conventions Nos 97 and 143, and that a revision and merger of the instruments should aim to create flexible, long-lasting and tripartite-owned instruments containing basic principles regarding international labour migration. The Government of Oman, speaking on behalf of the GCC countries, also suggested to consider a revision of the instruments within

the framework of the Standards Review Mechanism. The Government member of Morocco considered that action to address the challenges in implementation of the instruments could include the identification, within the framework of the Standards Review Mechanism, of areas to improve their appropriateness.

- 95.** The Worker member of Italy, speaking also on behalf of the Worker members of Belgium, France, Germany, Greece, Portugal, Serbia, Spain, Switzerland, Netherlands and the United Kingdom, rejected any revision of the existing standards, as they were relevant and a vital part of the ILO mission.
- 96.** The Worker member of Tunisia considered that ILO standards on migrant workers offered a valid and flexible legal potential, supplemented by other fundamental standards and the United Nations Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990. With a view to improving certain provisions respecting access to rights, the adoption of a supplementary Recommendation could be envisaged over the next three years, although distance was needed from sensitivities and the complex nature of the debate.
- 97.** The Employer members called upon the Office to develop an inventory and analysis of existing bilateral and multilateral agreements in order to be able to determine the scope for ILO standards vis-à-vis those agreements and to ensure compatibility and mutual complementarity with international labour standards. Additionally, the Office could prepare a compendium of the provisions of international labour standards relevant to migrant workers, which would enable a comprehensive overview of pertinent provisions.
- 98.** The Government member of Kenya agreed that there was a need for improved understanding of the instruments and ILO technical assistance and follow up was needed in this regard and in relation to the collection and sharing of data. The capacity of labour inspectors should be strengthened to provide better protection for migrant workers and, in particular, the large number in the informal economy, including training in fair recruitment. The ILO could further assist in regional agreements concerning the governance of labour migration and in promoting, developing and implementing bilateral agreements and cooperation.
- 99.** The Government member of Kenya and the Government member of Oman, speaking on behalf of the GCC countries, acknowledged the need to raise awareness among the tripartite constituents, migrant workers and the wider community through promotional campaigns, to overcome the low ratification of these instruments. The Government member of Morocco and the Government member of the Netherlands, speaking on behalf of the European Union and its Member States, supported the suggestion that the Office facilitate the sharing of good practices and experiences among governments and social partners, at intra- and interregional levels, in relation to the implementation of the instruments.
- 100.** The Government member of Libya, referring to recent tragic events in the Mediterranean Sea, called upon the international community to assist his country to mitigate the suffering of migrants, and asked for assistance from the European Union to formulate a plan of action in this regard. The Government member of Morocco requested ILO technical assistance for the implementation of the new national immigration and asylum strategy. The Worker member of Tunisia called for greater ILO commitment in terms of technical cooperation activities and support for constituents, particularly workers' organizations in developing countries. An alert system for violations of the rights of migrant workers could be envisaged, as well as the improved integration of migration issues in thematic and sectoral activities, and a more active programme of collaboration with other international organizations and regional groups.

Concluding remarks

- 101.** The Employer members pointed to the importance of the ILO having the most relevant and up-to-date standards to guide member States' responses to such a timely and serious topic. Migration for work should be seen as a positive and beneficial feature of globalization and should take place in a legal and orderly manner. The ILO, due to its tripartite structure, was uniquely positioned to make a valuable contribution on the issue on the international stage. Labour migration policy and regulation were not only within the purview of governments. Social partners had a critical role to play in influencing policy decision and policy responses. The Committee, in its consideration of the work of the Committee of Experts, had noted that the overall objective of a thoughtful and careful policy response on labour migration was as relevant today as at the time when both instruments had been adopted. Although the current context of labour migration was different, the issue was possibly even more important now. The Employer members considered that certain provisions of the two Conventions had lost their relevance, not being fully responsive to, or necessary in, the current labour migration context. In that regard, the tripartite discussions that were scheduled to take place in various upcoming ILO forums, including the Standards Review Mechanism, provided an opportunity for the tripartite parties to ensure the continued relevance of the instruments to the world of work and to the challenges presented by labour migration. During the general discussion on labour migration in the International Labour Conference to be held in 2017, the tripartite constituents might wish to clarify the possible need for review or consolidation of Conventions Nos 97 and 143. The work of the Committee of Experts had laid the foundation for this important and constructive debate. The Office had also been instructed to undertake an awareness-raising and implementation campaign in order to assist member States that had ratified the two Conventions to fully understand their obligations in law and practice.
- 102.** The Worker members recalled that the issue of labour migration presented many challenges in the context of the serious migration crisis that the world was currently experiencing. The importance of the issue of labour migration and the urgency of responding to it appropriately made it more necessary than ever for the Conference Committee to adopt conclusions in that regard. The adoption of common conclusions should be welcomed. Their content should be able to serve as a guide for the ILO's many efforts in relation to labour migration issues. It was necessary to introduce effective governance of international migration, based on greater international cooperation and a rights-based approach. In addition, effective protection rules and monitoring mechanisms were needed so as to guarantee those rights and safeguard migrant workers from abusive or fraudulent practices, to which they were particularly susceptible. It was therefore important to emphasize the vital role of well-functioning labour inspection services, guarantees of access to justice for migrant workers, and the need for effective means of recourse for workers to exercise their rights. In that regard, the importance of the Protocol of 2014 to the Forced Labour Convention, 1930 should not be underestimated. For the social partners, the ILO had a real contribution to make in establishing good global governance and international cooperation. The Office could provide technical assistance to member States signing bilateral and multilateral agreements required by the establishment of this global migration governance. The leading role played by the ILO would allow good governance practices to be exchanged among governments and social partners and would also allow the coherence needed in labour migration policies to be introduced. Social dialogue was the cornerstone of effective governance of workforce migration. It must exist at all levels where workforce migration issues were discussed. This role for the social partners should not be limited to a simple consultation but should go much further. The Workers would have preferred a campaign for the ratification of Conventions to be launched among member States. The awareness-raising and implementation campaign, as proposed in the conclusions, would nevertheless create tools that could help member States interested in ratifying Conventions. These factors gave hope that the application of Conventions Nos 97 and 143 would improve as a result. The question of whether these

instruments were still fully relevant today could be discussed by the competent bodies. To conclude, they highlighted the flexible nature of the Conventions and the evolving interpretation placed on certain provisions that the Employer members considered outdated.

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- 103.** In reply to the discussion on the General Survey, the Chairperson of the Committee of Experts noted the rich and useful discussion, including the vital importance of the issue in today's world of work. He would share the points made with the other members of the Committee of Experts. He noted with particular interest the points made concerning the challenges created by the current labour migration context around the world – as well as the opportunities that it offered. This context highlighted the difficulties that existed in the effective implementation of these instruments. At the same time, it emphasized the need for instruments that contributed to improved governance of international labour migration and protection of migrant workers' rights. Against this background, he recalled that the Committee of Experts considered awareness raising on the instruments and their implementation to be particularly valuable in ensuring that the instruments reached their potential, as well as assist member States that had ratified the Conventions in implementing their obligations.
- 104.** The representative of the Secretary-General highlighted that both the General Survey and its discussion would inform the work of the ILO on labour migration, including the general discussion on labour migration to be held during next year's Conference. More widely, the discussion would also inform the United Nations General Assembly High-Level Meeting on Refugees and Migrants in September 2016. Further, she took due note of the requests from many members of the Committee for technical assistance, including specifically on international cooperation and data collection. She particularly noted the need to support the sharing of good practices and experiences in relation to the implementation of the instruments.

Outcome of the discussion by the Committee on the Application of Standards of the General Survey concerning the migrant workers instruments

- 105.** The Committee examined the draft outcome of its discussion of the General Survey concerning the labour migration instruments.
- 106.** The Committee approved the outcome of its discussion, which is reproduced below and which it wishes to bring to the attention of the Conference with a view to the general discussion on labour migration, which will take place at its 106th Session (2017).

Introduction

1. The Committee on the Application of Standards welcomed the opportunity, in the context of its examination of the General Survey on the Migration for Employment Convention (Revised), 1949 (No. 97), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), the Migration for Employment Recommendation (Revised), 1949 (No. 86), and the Migrant Workers Recommendation, 1975 (No. 151), to discuss the critical and extremely topical issue of effective labour migration governance and the protection of migrant workers in a globalized world.

2. The Committee's discussion of this year's General Survey, together with the outcome of this discussion and the General Survey itself, will impact the ILO's work on labour migration within outcome 9 on promoting fair and effective labour migration policies, as set out in the Programme and Budget for 2016–17, as well as informing the Tripartite Technical Meeting on the Access of Refugees and other Forcibly Displaced Persons to the Labour Market (July 2016), the Tripartite Meeting of Experts on Fair Recruitment (September 2016), and the general

discussion on labour migration to be held at the 106th session (June 2017) of the International Labour Conference.

3. The Committee highlighted the fact that effective governance of international labour migration and the rights of migrant workers was closely linked to other issues currently addressed by the ILO, including fair recruitment, equality and non-discrimination, economic development, poverty reduction, decent work for the transition to peace, and fundamental principles and rights at work.

4. The Committee recalled that the labour migration instruments call, in essence, for international cooperation to promote a rights-based approach to labour migration that is responsive to national circumstances. Convention No. 97 and Recommendation No. 86 aimed to regulate the conditions for regular migration, provide for general protection measures, and prohibit inequality of treatment between migrant workers in a regular situation with nationals in relation to living and working conditions, social security, employment taxes, and access to justice. The Committee further recalled that Convention No. 143 and Recommendation No. 151 were supplementary to Convention No. 97, affirming the basic human rights of migrant workers, including those in irregular situations, and addressing discrimination and guaranteeing equal opportunity and treatment of migrant workers in a regular situation through national policies.

5. The Committee reaffirmed its commitment to ensuring the application in law and in practice of the fundamental rights of migrant workers and to improving the global governance of labour migration. The enormity of the challenges created by the current experience of migration was considered to have repercussions that were felt throughout the world of work. The Committee recalled that the main driver for migration was employment related, and referred also to other drivers including environmental and climatic pressures, conflict and crisis situations, poverty and inequalities within and between countries, and business needs.

6. The Committee noted that effective regulation and monitoring was necessary to prevent migrant workers from experiencing fraudulent and abusive conditions including trafficking in persons and forced labour, and highlighted the importance of the Protocol of 2014 to the Forced Labour Convention, 1930, in this regard.

Realities and needs of member States

7. The Committee emphasized the crucial importance of the issue of labour migration and the protection of the rights of migrant workers in all regions of the world. It recognized in particular the human dimension to the issue. This was stressed in terms of the opportunities migration offered to many migrant workers, to businesses, and to societies. Labour migration was considered to enhance innovation and skills development, and also respond to labour market needs. At the same time, the Committee was aware of the human tragedies that were sometimes the result of migration, and that certain groups of migrant workers were especially vulnerable to inequalities and abuse throughout the migration process. It noted that the Committee of Experts regarded women migrants among these groups, and in general, as experiencing particular obstacles in relation to the implementation in practice of the instruments. It further noted increased mixed migration flows of refugees and migrants in an irregular situation.

8. In this context, the Committee considered that it was essential that labour migration benefited workers, employers and the wider community. It stressed that it was necessary to balance the rights, responsibilities and needs of all stakeholders. Effective management of international labour migration required good global governance and international cooperation, to which the ILO could particularly contribute. The Committee further recalled the opportunity provided by the 2030 Agenda for Sustainable Development and in particular, Sustainable Development Goals 8 (target 8.8) and 10 (target 10.7), in relation to promoting labour rights for all, including migrant workers. Equally, the Committee recognized the significance of good governance and cooperation at the national level, and the increasing use of bilateral, regional and multilateral arrangements, for regulation of labour migration issues. The Committee considered as well that the Office should provide technical assistance, upon request, to Members using these agreements.

9. The Committee stressed that partnerships were needed to tackle particularly important issues. It acknowledged the ongoing and timely work associated with the ILO's Fair Recruitment Initiative as a means to improve the protection of migrant workers' rights, including to equality of opportunity and treatment. Further, the Committee considered that such partnerships were necessary to address irregular labour migration, which negatively impacted

upon both workers and the wider society. In addition, the Committee stressed that migrant workers should be able to access justice and effective remedies in practice and, in this regard, highlighted the particular role of a well-functioning labour inspectorate.

10. The Committee strongly emphasized the intrinsic value of social dialogue to effective governance of labour migration. It firmly believed that genuine and well-functioning social dialogue could transform policy-making and policy implementation on the topic at both the national and international levels. The comprehensive participation of the social partners in dialogues concerning international labour migration should extend beyond mere consultation, allowing for their active involvement in the design and implementation of initiatives. The Committee further believed that the key role of the ILO in this regard could not be overstated and noted that the Committee of Experts had referred to the potential of the instruments to contribute to effective governance of the considerable migration challenges faced by the tripartite constituents.

ILO means of action

11. Recognizing, as was set out in the General Survey, that the potential and requirements of the instruments were not always fully understood, the Committee considered that the Office should undertake an awareness-raising and implementation campaign on Conventions Nos 97 and 143 and Recommendations Nos 86 and 151. The Committee considered that such an awareness-raising campaign should include tools to assist member States which had ratified the instruments in working towards their full implementation, as well as to assist other member States that express an interest in the possibility of ratifying the instruments.

12. In this regard, the Committee believed that the Office should take steps to build on its existing work on labour migration statistics, including the global estimates, so as to further enhance the collection of data on labour migration disaggregated by sex and, depending on migration patterns, other factors, so as to contribute to evidence-based policy-making and discussions on labour migration. Further, the Committee proposed that the Office follow up previous research reviewing bilateral arrangements on migration of low-skilled workers, carried out in 2014–15, by undertaking further analysis of the compatibility of those bilateral arrangements with the international labour standards. In addition, the Committee considered that the Office should develop a compendium on the provisions from international labour standards that were relevant to migrant workers.

13. The Committee also stressed that it was particularly important for the Office to support the sharing, between governments and social partners internationally, of good practices and experiences in relation to the implementation of the instruments, including within and between regions.

14. The Committee expected the Office to undertake the technical support requested by member States and highlighted the importance of the provision of technical support and advice to workers' and employers' organizations to enable them to actively participate in policy-making and implementation in relation to labour migration.

15. The Committee further recalled that the Committee of Experts noted that the objective of the instruments was as relevant now as it was when the instruments had been adopted. The Committee was aware that details of certain provisions might be considered to have "lost their relevance, not being fully responsive to, or necessary, in the current migration context". In this regard, the Committee noted the opportunity provided by tripartite discussions in various ILO forums, including the Standards Review Mechanism, to ensure the continued relevance of the instruments to the world of work. The Committee considered that the tripartite constituents may, within the general discussion on labour migration in the Conference next year, wish to clarify the possible need for a review or consolidation of Conventions Nos 97 and 143, as well as the need to complement the existing international labour standards.

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16. The Committee requests the Office to take into account the General Survey on the migrant workers instruments and the outcome of its discussion of the General Survey, as reflected above, in the preparation of relevant ILO work, particularly in the context of outcome 9 of the Programme and Budget for 2016–17, and the general discussion on labour migration which will take place at the 106th session (June 2017) of the International Labour Conference.

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

- 107.** When presenting the report, a representative of the Secretary-General made particular reference to the CEART's contribution to the Incheon Declaration, which provided guidance on achieving Sustainable Development Goal (SDG) 4 on inclusive and equitable quality education and lifelong learning opportunities for all. The speaker also provided an update regarding the allegation submitted by the Cambodian Independent Teachers' Association concerning the application of the 1966 Recommendation on the Status of Teachers in Cambodia. The Government had provided a response to the allegation in January 2016. The case was still under examination and the Office encouraged the Government of Cambodia to continue to engage with CEART in dialogue on this matter.
- 108.** The Worker members stated that although the ILO–UNESCO Recommendations concerning teaching personnel of 1966 and 1997 provided guidelines for the status of over 70 million workers; they were not widely known to governments, nor trade unions, nor were they legally binding. They asked for technical assistance from the ILO to ensure their dissemination and implementation. Education stakeholders, including unions, had fought to have education as a stand-alone SDG and the topic should therefore be addressed comprehensively by governments and the ILO. While SDG 4 set out teachers as an area of state investment, the level of investment in teachers remained low. Trained teachers had continued to flood out of the teaching sector, leading many countries to resort to recruiting unqualified personnel to teach. The Worker members condemned the privatization of education as a threat and a detriment to equity in education. Corporations were seeking business in education, and had used untrained teachers to increase profits. There had been such cases in Africa where some governments had outsourced schooling. There was also a fear that some nations would develop reforms to use information and communications technology to replace teachers.
- 109.** With reference to the importance of freedom of association in the education sector, the Worker members highlighted the deterioration of the situation in a number of countries, including Burundi, Denmark, Ecuador, Greece, the Islamic Republic of Iran, the Republic of Korea, Swaziland, Turkey and the United States. They suggested that the principles in the 1966 and 1997 Recommendations be elevated to a Convention. They considered that governments should invest in the supply of quality teachers and quality tools for teachers, as well as quality learning infrastructure.
- 110.** The Employer members said that education was a key factor of development. A well-educated workforce was also a key factor for employers. Education, whether public or private, played an essential part in enabling youth to enter the job market and to develop in adulthood. It was essential for education policies to be designed through dialogue with the private sector to ensure that youth had the qualifications companies required. Employers and their organizations played an important role in education policy development and its application in resource mobilization to complement public funding, and in the direct provision of private education.
- 111.** Welcoming the CEART report, the Employer members noted that the CEART's recommendations were non-binding. While reaffirming that education opportunities should not be sacrificed to the economic crisis, they noted that economic crises could also affect the working conditions for teachers as well as for other workers. Open and constructive social dialogue was important in this context. It was not clear from the report how the private management of publicly funded schools was able to affect social dialogue. With reference

to the evaluation of teaching personnel, they welcomed the CEART's recommendations on the establishment of an evaluation framework, which could include scores as part of a comprehensive system of evaluation. They did not agree that part-time employment was a form of precarious work that was involuntary and had a negative impact. They did not share the CEART's concerns regarding the negative consequences of the privatization of education. They questioned the foundation of some references in the report concerning collective bargaining systems in certain countries, which seemed to form the basis for the recommendation that member States respect "appropriate legal frameworks". Finally, with reference to the use of technology in education and the professionalization of teachers in higher education institutions, they appreciated the recommendations of the CEART.

- 112.** The Worker member of Nicaragua emphasized the importance of education for development. However, a majority of governments had not implemented the commitments made when adopting the 1966 and 1997 Recommendations and had instead reduced education budgets. The Government of Nicaragua had taken measures to improve public education through the professionalization of teachers and the improvement of school infrastructure. The speaker considered that full respect of collective bargaining and the right to strike was important and that it was necessary to transform the Recommendations into a Convention.
- 113.** The Worker member of the United Kingdom considered that the CEART report demonstrated that the Recommendations were not having the intended impact on education systems around the world. A stronger instrument, such as a convention, and an implementation regime were therefore necessary. There was also a need in the shorter term to publicize the Recommendations and recognize the role of teachers in development. In England, the Government had deregulated, fragmented and privatized schools. There was no social dialogue machinery or process for cooperation on policy. Teacher appraisal, evaluation and pay were crudely linked to immediate student outcomes. This system was leading to the de-professionalization of teaching and to teacher shortage.
- 114.** The Worker member of the Republic of Korea stated that in Korea, teachers in precarious employment were risking losing their jobs when exercising their freedom of association and were being discriminated against on the basis of their employment status. Teachers in Korea were prohibited from expressing their political opinion. Their freedom of association had been severely violated, including cases of dismissal of union officials and prosecution for organizing peaceful demonstration. In 2014, the Government withdrew the legal status of the Korean Teachers and Education Workers Union (KTU) because the union had permitted dismissed and retired teachers to retain union membership. The case had been appealed at the Supreme Court.
- 115.** The Government member of the Republic of Korea said that as any other citizens, elementary and middle school teachers had the freedom to express their opinions, but they also had to avoid projecting their personal political opinions onto their students. Their freedom of expression was therefore limited, unlike professors at universities. This view had been upheld by the Constitutional Court. Regarding the freedom of association of teachers, the Constitution set out the duty of political impartiality of public officials and limited their political activities. Teachers' trade unions had the freedom to express views on economic and social policy issues that directly impacted the union members' interests.
- 116.** An observer representing Education International brought up the case of teachers in Algeria who had been recruited on precarious contracts and had worked for years without being paid. They had organized protests to obtain decent contracts, but their actions had been prevented by the authorities, sometimes with violent interventions from the police. Subsequently, many of their contracts had been terminated.

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- 117.** The Government member of Algeria expressed his reservation with regard to the statement of the previous speaker and noted that his country was not the subject of the CEART's report.
- 118.** An observer representing the Confederation of University Workers in the Americas (CONTUA) stated that the 1966 and 1997 Recommendations promoted the dialogue in the teaching profession. Support staff in schools also needed to be covered by standards. Governments suffering from economic crisis often did not realize that education would be the engine and driver of development. Governments kept reducing budgets and introduced policies that devaluated education. Freedom of association and the right to collective bargaining of teachers should be universally recognized. The speaker called for free public education, social dialogue and professional autonomy of teachers. Such rights should be set out in an international convention.
- 119.** The Government member of Libya said that the education sector would suffer if teachers were not regarded highly. There needed to be an international instrument to deal with issues related to hours of work and wages of teachers.
- 120.** The Worker members concluded that trade union rights were human rights that teachers must enjoy. Privatization was going against equity and equality. There was evidence that financial commitment by member States was lacking. Every child had a right to be taught by a motivated and qualified teacher in a safe environment. They reiterated that the ILO should ensure that the Recommendations were applied.
- 121.** The Employer members emphasized the importance of highly motivated teachers. Education had to respond to global changes. It was clear that in some countries education systems were delivering poor results, and these situations should be redressed.

E. Compliance with specific obligations

1. Cases of serious failure by member States to respect their reporting and other standards-related obligations

- 122.** During a dedicated sitting, the Committee examined the cases of serious failure by member States to respect their reporting and other standards-related obligations.⁵ As explained in document C.App./D.1, Part V, the following criteria are applied: failure to supply the reports due for the past two years or more on the application of ratified Conventions, failure to supply first reports on the application of ratified Conventions for at least two years, failure to supply information in reply to all or most of the comments made by the Committee of Experts, failure to supply the reports due for the past five years on unratified Conventions and Recommendations, failure to submit the instruments adopted for at least seven sessions to the competent authorities, and failure during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated. The Chairperson explained the working methods of the Committee for the discussion of these cases.
- 123.** The Employer members recalled that non-observance by member States of their constitutional obligations constituted a serious failure. While ratification of international

⁵ Detailed information on the examination of these cases is contained in section A of Part Two of this report.

labour standards was important, it was equally crucial for member States to comply with their reporting obligations. If a State did not have sufficient resources to comply with the obligation to report, it was recommended that it reconsider whether ratification of a particular instrument was appropriate. Since the ILO supervisory system was largely based on self-reporting, the failure of some member States to submit reports placed greater scrutiny on member States that did comply with their obligation to report. The Employer members expressed the hope that member States would take their reporting obligations seriously as the ILO supervisory system could not function without the timely submission of reports. Indicating that only 69 per cent of member States had provided the requested reports this year, the Employer members highlighted the importance of technical assistance and capacity building, including in the pre-ratification process. Emphasizing the need to keep the body of international labour standards up to date, reference was made to the SRM, which was considered as an opportunity to identify labour standards that were no longer relevant and to give more visibility to up-to-date and relevant standards.

124. The Worker members expressed concern at the serious failures recorded in the report of the Committee of Experts. The governance of the supervisory system placed the obligation on member States to comply with the constitutional provisions, and particularly articles 22 and 35. Despite a slight improvement in the proportion of reports supplied, too many countries had not provided a report for over five years. Moreover, the information requested was only useful if it was supplied within the time limits, and the procedures for sending reminders should be reviewed. The Office needed to ensure that countries encountering difficulties benefited from technical assistance so that they could fulfil their obligations. The failures reported were often an indication of worrying situations. With regard to the obligation of submission, there was a significant lack of goodwill, which needed to be addressed. It was time to adopt a sterner tone towards countries which persisted in ignoring their constitutional obligations.

1.1. *Failure to submit Conventions, Protocols and Recommendations to the competent authorities*

125. In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.

126. The Committee noted that, in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for at least seven sessions (from the 94th Session (Maritime, February 2006) to the 103rd Session in June 2014, because the Conference did not adopt any Conventions and Recommendations during the 97th (2008), 98th (2009) or 102nd (2013) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the dedicated sitting of the Committee so that they may explain the delays in submission.

127. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. It noted the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference. Some governments have requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.

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128. The Committee expressed deep concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It recalled that compliance with the obligation to submit Conventions, Recommendations and Protocols to national competent authorities was a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities. It also recalled that governments could request technical assistance from the Office to overcome their difficulties in this respect.
129. The Committee noted that the following countries were still concerned with the serious failure to submit the instruments adopted by the Conference to the competent authorities: **Angola, Azerbaijan, Bahrain, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Guinea, Haiti, Iraq, Jamaica, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Sudan and Vanuatu.** The Committee expressed the firm hope that appropriate measures would be taken by the Governments concerned to comply with their constitutional obligation.

1.2. Failure to supply reports and information on the application of ratified Conventions

130. The Committee took note of the information and explanations provided by the Government representatives who took the floor during the dedicated sitting. Some governments have requested the assistance of the ILO. The Committee recalled that the submission of reports on the application of ratified Conventions was a fundamental constitutional obligation and the basis of the system of supervision. It also recalled the particular importance of the submission of first reports on the application of ratified Conventions. It stressed the importance of respecting the deadlines for such submission. Furthermore, it underlined the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the governments concerned. In this respect, the Committee expressed deep concern at the failure to respect these obligations and recalled that the ILO could provide technical assistance to contribute to compliance in this respect.
131. The Committee noted that, by the end of the 2015 meeting of the Committee of Experts, the percentage of reports received (article 22 of the ILO Constitution) was 69.3 per cent (70.95 per cent for the 2014 meeting). Since then, further reports had been received, bringing the figure to 75.60 per cent (as compared with 77.25 per cent in June 2015).
132. The Committee noted that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Afghanistan, Belize, Burundi, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Haiti, Saint Lucia, Sierra Leone, Somalia and Tuvalu.**
133. The Committee also noted that first reports due on ratified Conventions had not been supplied by the following countries for at least two years: **Afghanistan, Equatorial Guinea, Kiribati, Luxembourg and Tuvalu.**
134. The Committee noted that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2015 from the following countries: **Afghanistan, Belize, Burundi, Central African Republic, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eritrea, Gambia, Guinea-Bissau, Guyana, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Malta, Montenegro, Nepal, Papua New Guinea, Saint Lucia, San Marino, Sierra Leone, Solomon Islands, Timor-Leste, Trinidad and Tobago, United Kingdom (Anguilla) and Yemen.**

1.3. Supply of reports on unratified Conventions and Recommendations

135. The Committee stressed the importance it attached to the constitutional obligation to supply reports on unratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Surveys of the Committee of Experts. In this respect, the Committee expressed deep concern at the failure to respect this obligation and recalled that the ILO could provide technical assistance to contribute to compliance in this respect.
136. The Committee noted that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Armenia, Burundi, Comoros, Congo, Democratic Republic of the Congo, Equatorial Guinea, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Kiribati, Liberia, Libya, Malawi, Marshall Islands, Nigeria, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu, Vanuatu, Yemen and Zambia.**

1.4. Communication of copies of reports to employers' and workers' organizations

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

2. Application of ratified Conventions

138. The Committee noted with interest the information provided by the Committee of Experts in paragraph 51 of its report, which listed new cases in which that Committee had expressed its satisfaction at the measures taken by governments following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. In addition, the Committee of Experts had listed in paragraph 54 of its report cases in which measures ensuring better application of ratified Conventions had been noted with interest. These results were tangible proof of the effectiveness of the supervisory system.

139. At its present session, the Committee examined 24 individual cases relating to the application of various Conventions.⁶

2.1. Specific cases

140. The Committee considered it appropriate to draw the attention of the Conference to its discussion of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.
141. As regards the application by **Bangladesh of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the

⁶ A summary of the information submitted by governments, the discussion and conclusions of the examination of the individual cases are contained in section B of Part Two of this report.

written and oral information provided by the Government representative and the discussion that ensued.

- 142.** The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.
- 143.** The Committee welcomed the report of the ILO High-level Tripartite Mission and noted with deep concern that the Government has failed to make progress on the repeated and consistent conclusions of this Committee despite the substantial technical assistance and financial resources provided by donor countries.
- 144.** Taking into account the discussion of the case, and taking into account the conclusions of the Committee of 2015, the Committee repeats its concerns and urges the Government to:
- undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the Committee of Experts, paying particular attention to the priorities identified by the social partners;
 - ensure that the law governing the EPZs allows for full freedom of association, including the ability to form employers' and workers' organizations of their own choosing, and to allow workers' organizations to associate with workers' organizations outside of the EPZs;
 - investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and
 - ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.
- 145.** Further, the Committee invited the Government to implement the recommendations of the 2016 High-level Tripartite Mission together with the social partners.
- 146.** As regards the application by **El Salvador of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee took note of the written and oral information provided by the Government representative and the discussion that ensued.
- 147.** The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.
- 148.** The Committee noted with concern the lack of progress both in law and in practice with respect to the issue of the autonomy of employers' and workers' organizations to nominate their representatives to joint or tripartite decision-making bodies and again urged the Government, in consultation with the social partners, to take all measures necessary, without delay, to amend the 19 Decrees adopted on 22 August 2012, so as to bring them into line with the guarantees set out in the Convention.
- 149.** Taking into account the discussion of the case, the Committee urged the Government to:
- take all measures necessary, without delay, to identify those responsible for the murder of Mr Victoriano Abel Vega and punish the perpetrators of the crime;
 - reactivate, without delay, the Higher Labour Council (CST), the work of which had been suspended since 2013 and which was the main forum for social dialogue in the country and for tripartite consultation. The Government must abstain from requiring

consensus among trade union federations and confederations in designating their representatives to the CST;

- ensure full autonomy for employers' and workers' organizations;
- ensure adequate protection for the premises of the National Business Association (ANEP), the country's most representative organization of employers;
- report on all progress with regard to the issues discussed in a detailed report to the Committee of Experts, to be considered at its next meeting.

150. In the face of the Government's failure to take action to apply the provisions of the Convention effectively in law and in practice, the Committee requested that a direct contacts mission be sent to El Salvador.

2.2. Continued failure to implement

151. The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee made no mention in this respect.

3. Participation in the work of the Committee

152. The Committee wished to express its appreciation to the 42 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their cases.

153. The Committee regretted that the Governments of the following States failed to take part in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Afghanistan, Azerbaijan, Bahrain, Burundi, Central African Republic, Congo, Croatia, Equatorial Guinea, Haiti, Kiribati, Malawi, Malta, Mozambique, Pakistan, San Marino, Somalia, Timor-Leste, Trinidad and Tobago, United Kingdom (Anguilla) and Yemen.**

154. The Committee noted with regret that the Governments of the following States, which were not represented at the Conference, were unable to participate in the discussions concerning their country and the fulfilment of their reporting and other standards-related obligations: **Armenia, Belize, Comoros, Dominica, Eritrea, Gambia, Grenada, Guinea-Bissau, Guyana, Kyrgyzstan, Liberia, Marshall Islands, Montenegro, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tuvalu and Vanuatu.**

F. Adoption of the report and closing remarks

155. The Committee's report was adopted as amended.

156. The Worker members welcomed the successful work of the Committee, which had fulfilled its function again this year, with the swift adoption of the list of individual cases, followed by the adoption of consensual and operational conclusions, in a constructive spirit between the groups. The quality of the report of the Committee of Experts, which was the other pillar

of the regular supervisory system, allowed the Committee to have meaningful discussions. However, the Worker members were surprised by the low level of participation of Governments during the discussion of certain cases. The absence of a tripartite delegation in the cases of Ecuador and Mauritania had also impeded a more meaningful debate. While disagreement remained on Convention No. 87, the Worker members questioned a number of statements made by the Employer members during the discussions on Convention No. 98 concerning the mandatory nature of the principles of collective bargaining. Moreover, discussions had started this year on the issue of the right to collective bargaining of self-employed workers and would deserve further examination if the three groups considered it of interest.

- 157.** The Worker members underlined the good time management which had been ensured throughout the work of the Committee. While efforts were made by all to respect speaking time limits, a reflection needed to be made on the impact of a two-week session of the Conference on the examination of the cases, their preparation and eventually the quality of the discussions. This was an important question in view of the impact that the discussions at the Committee may have on similar issues around the world. It should therefore be examined during the next informal tripartite consultations on the Committee's working methods.
- 158.** The Employer members emphasized that the work of the Committee had taken place in a constructive atmosphere, and in a spirit of open and positive dialogue. The Committee had reaffirmed its role as the cornerstone of the ILO supervisory system. The work this year had again demonstrated that it was the appropriate forum for tripartite constructive dialogue, where the application of international labour standards was discussed, on the basis of the report of the Committee of Experts. Divergent views had been expressed in a spirit of mutual respect, understanding and cooperation.
- 159.** The Committee had been able to finalize its work on time, which had been achieved thanks to excellent time management. The use of technological innovations was to be welcomed and should be further pursued. The list of individual cases had been negotiated in good faith and delivered on time. They reiterated their regret that no cases of progress could be included in the list this year and their wish that this issue be further discussed, in particular during the informal tripartite consultations on the Committee's working methods. They noted in a positive manner the process of drafting conclusions, which ensured real tripartite ownership of the outcome of the work of the Committee. The Committee had been able to adopt clear, short and straightforward conclusions on all cases, thereby guiding member States in their application of international labour standards. The Employer members drew attention to the explanatory paragraph concerning the conclusions, which appeared at the beginning of section B of Part Two of this report. While divergences with respect to certain issues remained, they considered that the operation of the Committee this year had been positive. Consensus had been reached where possible and divergences had been highlighted where necessary, which was a sign of healthy social dialogue.
- 160.** The Chairperson thanked the Employer and Worker Vice-Chairpersons, the Reporter and all the Government, Employer and Worker members for their engagement in the work of the Committee. She also thanked the secretariat for its continuous collaboration and support.

Geneva, 9 June 2016

(Signed) Ms Cecilia Mulindeti-Kamanga
Chairperson

Ms Verónica Diana López Benítez
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE
105th Session, Geneva, May–June 2016

C.App./D.1

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document (D.1) sets out the manner in which the work of the Committee on the Application of Standards (CAS) is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference.¹ The document reflects the results of the discussions and informal tripartite consultations that have taken place, since 2002, on the working methods of the Committee, including on the following issues: the elaboration of the list of individual cases to be discussed by the Committee, the preparation and adoption of the conclusions relating to these individual cases, time management and respect for parliamentary rules of decorum.

This document takes into account the results of the last informal tripartite consultations on the working methods of the CAS held in March 2016.

II. Terms of reference and composition of the Committee, voting procedure and report to the Conference

Under its terms of reference as defined in article 7, paragraph 1, of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
- (c) the measures taken by Members in accordance with article 35 of the Constitution.

In accordance with article 7, paragraph 2, of the Standing Orders of the Conference, the Committee submits a report to the Conference. Since 2007, in response to the wishes expressed by ILO constituents, the report of the Committee has been published both in the

¹ Since 2010, it is appended to the General Report of the Committee.

Record of Proceedings of the Conference and as a separate publication, to improve the visibility of the Committee's work.

Questions related to the composition of the Committee, the right to participate in its work and the voting procedure are regulated by section H of Part II of the Standing Orders of the Conference.

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

III. Working documents

A. Report of the Committee of Experts

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

Report III (Part 1A) contains, in Part One, the General Report of the Committee of Experts, and in Part Two, the observations of the Committee of Experts concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States. At the beginning of the report there is an index of comments by Convention and by country. In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.²

Report III (Part 1B) contains the General Survey prepared by the Committee of Experts on a group of Conventions and Recommendations decided upon by the Governing Body.

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of the arrangements for the presentation by the Director-General to the Conference of summaries of reports submitted by governments under articles 19, 22 and 35 of the Constitution.³ Requests for consultation or copies of reports may be addressed to the secretariat of the CAS.

² See para. 36 of the General Report of the Committee of Experts. A list of direct requests can be found in Appendix VII of Report III (Part 1A).

³ See report of the Committee of Experts, Report III (Part 1A), Appendices I, II, IV, V and VI; and Report III (Part 1B), Appendix III.

C. Other information

The secretariat prepares documents (which are referred to, and referenced, as “D documents”) which are made available⁴ during the course of the work of the Committee to provide the following information:

- (i) reports and information which have reached the International Labour Office since the last meeting of the Committee of Experts; based on this information, the list of governments which are invited to supply information to the Conference Committee due to serious failure to respect their reporting and other standards-related obligations is updated;⁵
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the list of individual cases adopted by the Conference Committee.⁶

The Information document on ratifications and standards-related activities (Report III (Part 2)), prepared by the Office to accompany the report of the Committee of Experts, provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, information on the ratification of Conventions, together with “country profiles” containing key information on standards for each country.

IV. General discussion

In accordance with its usual practice, the Committee begins its work with the consideration of its working methods on the basis of this document. The Committee then holds a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution, which is primarily based on the General Report of the Committee of Experts.

It also holds a discussion on the General Survey, which this year concerns the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151).⁷

⁴ D documents will be made available online on the Committee’s dedicated web page (hard copies will be made available to delegates upon request).

⁵ See below Part V.

⁶ See below Part VI (supply of information).

⁷ It should be recalled that the subjects of General Surveys have been aligned with the strategic objectives that are examined in the context of the recurrent discussions under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization (2008). For the current cycle of recurrent discussions, the corresponding General Surveys have already been examined by the CAS. At the time of the Governing Body’s decision on the choice of instruments for the 2016 General Survey, the modalities for recurrent discussions, including the next cycle, were yet to be determined. It was therefore decided that the instruments to be selected needed not necessarily be linked to a specific

V. Cases of serious failure by member States to respect their reporting and other standards-related obligations⁸

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a dedicated sitting of the Committee. Governments that submit the required information before the sitting will not be called before the Committee. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.

The Committee identifies the cases on the basis of criteria which are as follows:⁹

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

VI. Individual cases

The Committee considers cases relating to the application of ratified Conventions. These cases are selected on the basis of the observations published in the report of the Committee of Experts.

Preliminary list. Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. In 2015 and 2016, the preliminary

strategic objective. However, the Committee's discussion of this year's General Survey, together with the outcome of this discussion and the General Survey itself, will feed into the general discussion on labour migration which will take place during the 106th Session (June 2017) of the Conference.

⁸ Formerly known as "automatic" cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005, para. 69).

⁹ These criteria were last examined by the Committee in 1980 (see *Provisional Record* No. 37, International Labour Conference, 66th Session, 1980, para. 30).

list of cases has been made available 30 days before the opening of the International Labour Conference. The preliminary list is a response to the requests from governments for early notification, so that they may better prepare themselves for a possible intervention before the Committee. It may not in any way be considered definitive, as the adoption of a final list is a function that only the Committee itself can assume.

Establishment of the list of cases. The list of individual cases is submitted to the Committee for adoption, after the Employers' and Workers' groups have met to discuss and adopt it. The final list should be adopted at the beginning of the Committee's work, ideally no later than its second sitting. The criteria for the selection of cases, as revised in 2015, should reflect the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote;¹⁰
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact;
- balance between fundamental, governance and technical Conventions;
- geographical balance; and
- balance between developed and developing countries.

There is also the possibility of examining one case of progress as was done in 2006, 2007, 2008 and 2013.¹¹

Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual cases.

Automatic registration. Since 2010, cases included in the final list have been automatically registered and scheduled by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order; the "A+5" model has been chosen to ensure a genuine rotation of countries on the list. This year, the registration will begin with countries with the letter "E". Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which the Committee of Experts requested governments to submit full particulars to the Conference

¹⁰ See paras 40–47 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for footnotes are also reproduced in Appendix I.

¹¹ See paras 48–54 of the General Report of the Committee of Experts. The criteria developed by the Committee of Experts for identifying cases of progress are also reproduced in Appendix II.

(“double-footnoted cases”).¹² Since 2012, the Committee begins its discussion of individual cases with these cases. The other cases on the final list are then registered by the Office also following the abovementioned alphabetical order.

Information on the agenda of the Committee and the date on which cases may be heard is available:

- (a) through the *Daily Bulletin*;
- (b) by means of letters sent to the representatives of the countries concerned by the Chairperson of the Committee;
- (c) by means of a D document containing the list of individual cases and the working schedule for the examination of these cases, which is made available to the Committee as soon as possible after the adoption of the list of cases.¹³

Supply of information. Prior to their oral intervention before the Conference Committee, governments may submit written information that will be summarized by the Office and made available to the Committee.¹⁴ These written replies are to be provided to the Office at least **two days** before the discussion of the case. They serve to complement the oral reply that will be provided by the government. They may not duplicate the oral reply nor any other information already provided by the government. The total number of pages is not to exceed **five pages**.

Adoption of conclusions. The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time to hold consultations with the Reporter and the Vice-Chairpersons. The conclusions should take due account of the elements raised in the discussion and information provided by the government in writing. The conclusions should be short, clear and specify the action expected of governments. They may also include reference to the technical assistance to be provided by the Office. The conclusions should reflect consensus recommendations. Divergent views can be reflected in the CAS record of proceedings. Conclusions on the cases discussed will be adopted at dedicated sittings. The governments concerned will be informed of the adoption of conclusions by the secretariat including through the *Daily Bulletin*.

As per the Committee’s decision in 1980,¹⁵ Part One of its report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to: (i) cases of progress, where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee; (ii) certain special cases, which are mentioned in special paragraphs of the report; and (iii) cases of continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

¹² See para. 45 of the General Report of the Committee of Experts.

¹³ Since 2010, this document is appended to the General Report of the Committee.

¹⁴ See above Part III(C)(ii).

¹⁵ See footnote 9 above.

VII. Participation in the work of the Committee

As regards failure by a government to take part in the discussion concerning its country, despite repeated invitations by the Committee, the following measures will be applied, in conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008),¹⁶ and mention will be made in the relevant part of the Committee's report:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised.¹⁷ In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

VIII. Minutes of the sittings

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat. Each intervention will be reflected only in the corresponding working language – English, French or Spanish – and the draft minutes will be made available online on the Committee's dedicated web page

¹⁶ See *Provisional Record* No. 24, International Labour Conference, 73rd Session, 1987, para. 33; and *Provisional Record* No. 19, International Labour Conference, 97th Session, 2008, para. 174.

¹⁷ In the case of a government which is not accredited or registered to the Conference, the Committee will not discuss the substance of the case, but will draw attention in its report to the importance of the questions raised. It was considered that no country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that it was accredited to the Conference. If a country on the preliminary list registered after the final list was approved, it should be asked to provide explanations (see *Provisional Record* No. 18, International Labour Conference, 100th Session, 2011, Part I/54).

(hard copies will be made available to delegates upon request).¹⁸ It is the Committee's practice to accept amendments to the draft minutes of previous sittings prior to their approval by the Committee. The time available to delegates to submit amendments to the draft minutes will be clearly indicated by the Chairperson when the draft minutes are made available to the Committee.¹⁹ In order to avoid delays in the preparation of the report of the Committee (which will be submitted for adoption to the Conference in three languages), no amendments may be accepted once the draft minutes have been approved.

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

IX. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time during the examination of individual cases will be as follows:
 - fifteen minutes for the government whose case is being discussed, as well as the spokespersons of the Workers' and the Employers' groups;
 - ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group;
 - ten minutes for Government groups;
 - five minutes for the other members;
 - concluding remarks are limited to ten minutes for the government whose case is being discussed, as well as spokespersons of the Workers' and the Employers' groups.
- Maximum speaking time will also apply to the discussion of the General Survey, as follows:²⁰
 - fifteen minutes for the spokespersons of the Workers' and the Employers' groups;
 - ten minutes for Government groups;
 - five minutes for the other members;

¹⁸ These new modalities result from the informal tripartite consultations of March 2016. Delegates who will be intervening in a language other than English, French or Spanish will be able to indicate to the Secretariat in which of these three working languages their intervention should be reflected in the draft minutes.

¹⁹ Further information on the procedure for the submission of amendments will be communicated to delegates at the beginning of the session of the Committee.

²⁰ These new modalities result from the informal tripartite consultations of March 2016.

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- concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups.
 - However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
 - These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
 - During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
 - The list of speakers will be visible on screens in the room. Early registration on that list of delegates intending to take the floor is encouraged.²¹
 - In view of the above limits on speaking time, governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case.²²

X. Respect of rules of decorum and role of the Chairperson

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

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

²¹ These new arrangements result from the informal tripartite consultations of March 2016.

²² See Part VI above.

Appendix I

Criteria developed by the Committee of Experts for footnotes

Excerpts of the General Report of the Committee of Experts (105 III(1A))

40. As in the past, the Committee has indicated by special notes (traditionally known as “footnotes”) at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has seemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session in June 2016.

41. In order to identify cases for which it inserts special notes, the Committee uses the basic criteria described below, while taking into account the following general considerations. First, the criteria are indicative. In exercising its discretion in the application of the criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, the criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as a “double footnote”. The difference between these two categories is one of degree. Third, a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) when there has been a recent discussion of the case in the Conference Committee. Finally, the Committee wishes to point out that it exercises restraint in its recourse to “double footnotes” in deference to the Conference Committee’s decisions as to the cases it wishes to discuss.

42. The criteria to which the Committee has regard are the following:

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

43. In addition, the Committee wishes to emphasize that its decision not to double footnote a case which it has previously drawn to the attention of the Conference Committee in no way implies that it has considered progress to have been made therein.

44. At its 76th Session (November-December 2005), the Committee decided that the identification of cases in respect of which a government is requested to provide detailed information to the Conference would be a two-stage process: first, the expert initially responsible for a particular group of Conventions recommends to the Committee the insertion of special notes; second, in light of all the recommendations made, the Committee will, after discussion, take a final, collegial decision once it has reviewed the application of all the Conventions.

Appendix II

Criteria developed by the Committee of Experts for identifying cases of progress

Excerpts of the General Report of the Committee of Experts (105 III(1A))

49. At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

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

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

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

...

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

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;

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- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
 - judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
 - the Committee may also note as cases of interest the progress made by a state, province or territory in the framework of a federal system.

Annex 2

INTERNATIONAL LABOUR CONFERENCE
105th Session, Geneva, May–June 2016

C.App./D.4

Committee on the Application of Standards

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

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

The text of the corresponding observations concerning these cases will be
found in document C.App./D.4/Add.1.

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

Report of the Committee of Experts
(Report III (Part 1(A), ILC, 105th Session, 2016))

Country	Convention number (The page numbers in parentheses refer to the English version of the Report of the Committee of Experts)
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Czech Republic	111 (page 325)
Bolivarian Republic of Venezuela	122 (page 448)
Zimbabwe	98 (page 171)
Bangladesh	87 (page 46)
Cambodia	87 (page 53)

** Double-footnoted case.

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