



# ▶ Record of proceedings

# 3E

**International Labour Conference – 109th Session, 2021**

Date: 7 December 2021

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## Reports of credentials

### Fourth report of the Credentials Committee

#### Contents

	<b>Page</b>
Composition of the Conference .....	3
Representation of Myanmar .....	3
Objection .....	5
Objection concerning the failure to deposit credentials of an Employers’ and a Workers’ delegate by the Government of Dominica .....	5
Complaint .....	6
Complaint concerning the non-payment of all travel and subsistence expenses of the Employers' delegation by the Government of the Democratic Republic of the Congo .....	6
Communications .....	6
Communication concerning the Employers’ delegation of Nicaragua .....	6
Communications concerning the Workers’ delegation of Sudan .....	7
Other matters .....	7



## Composition of the Conference

1. Since 16 June 2021, when the Credentials Committee adopted its third report (ILC.109/Record No. 3C), there have been changes in the composition of the International Labour Conference. While the total number of Member States remained the same (181 of the 187), the number of persons accredited to the Conference slightly increased (4,537 as compared to 4,467 on 16 June 2021). Close to 80 Member States have modified their tripartite delegations for the purposes of participating in the resumed part of the Conference. The attached list contains more details on the number of delegates and advisers accredited.
2. The following Member States have accredited incomplete delegations:
  - Dominica (exclusively governmental)
  - Saint Lucia (exclusively governmental)
  - Slovenia (no Workers' delegate)
  - Vanuatu (no Workers' delegate)
  - Yemen (no Employers' delegate)
3. The Committee regrets that despite the interval between the June part of the Conference and the resumed part in November–December, as well as the continued virtual nature of the Conference that eliminates the need to travel to Geneva, the number of incomplete delegations remains undiminished (Dominica has now accredited a Government delegate, whereas Haiti which was exclusively governmental has accredited both an Employers' and Workers' delegate. The Government of Slovenia has advised that on 5 September and 15 October 2021, it made a call for a nomination from the most representative workers' organization through its Economic and Social Council (ESC), but that a negative reply had been received due to the ESC still being inactive).
4. The Committee emphasizes again that where a delegation is exclusively governmental, or lacks an Employers' or Workers' delegate, the Government deprives the employers or workers of the country, as the case may be, of their right of being represented in the highest policy-making body of the ILO and to participate in its work. Without the participation of Government, Employers' and Workers' representatives, the Conference cannot function properly or attain its objectives. The Committee, once again, reminds Member States of their obligation under article 3, paragraph 1, of the ILO Constitution, to nominate tripartite delegations to the Conference.
5. For the resumed part of the Conference, the Committee wishes to indicate that 168 ministers, vice-ministers, and deputy ministers have been accredited and that the overall proportion of women delegates and advisers has edged slightly upwards from 38.3 per cent to 38.9 per cent.

## Representation of Myanmar

6. In its second report (ILC.109/Record No. 3B), adopted on 4 June 2021, the Credentials Committee considered the question of the representation of Myanmar during the June part of the Conference. It recalled the decision of the Governing Body at the 341st Session (March 2021) regarding the situation in Myanmar and concluded, in view of the line of precedent affirming that this is a matter for the United Nations General Assembly, that it could not presently proceed to accredit delegates for Myanmar. It decided that it would remain seized of this matter and might reconvene, in particular, in the event that the Credentials Committee of

the General Assembly made a determination on this matter before the close of the current session of the International Labour Conference (11 December 2021).<sup>1</sup>

7. On 2 November 2021, the Secretariat of the Committee received a communication from the Director-General of the “Ministry of Labour, Department of Labour” of Myanmar, submitting credentials for the purposes of the resumed part of the International Labour Conference. The Secretariat acknowledged receipt indicating that the Office remained bound by the Credentials Committee’s determination of 4 June 2021 and that nonetheless the communication would be referred to the Credentials Committee for its consideration.
8. The Committee recalls the developments that have taken place in the ILO concerning Myanmar since the adoption of its second report. It recalls, in particular, the Resolution for a return to democracy and respect for fundamental rights in Myanmar adopted by the Conference on 19 June 2021,<sup>2</sup> which, among other things, calls upon Myanmar to restore democratic order and civilian rule and to respect the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and ensure that workers and employers are able to exercise their freedom of association rights in a climate of freedom and security, free from violence, arbitrary arrest and detention.
9. The Committee further recalls that the Governing Body considered the evolution of the situation in Myanmar on two occasions. At its 342nd Session (June 2021), the Governing Body expressed profound concern among others that the situation had deteriorated and that no progress had been made to respect the will of the people, respect democratic institutions and processes, and restore the democratically elected government.<sup>3</sup>
10. At its 343rd Session (November 2021), having considered an Office report providing an overview of the situation based on information from multiple United Nations sources and other organizations that have been monitoring developments in Myanmar, the Governing Body expressed once again profound concern, among others, that the military authorities had continued with the large-scale use of lethal violence and harassment, ongoing intimidation, arrests and detentions, and reiterated its call on the military authorities to cease immediately such activities.<sup>4</sup>
11. The Committee also notes that, according to information provided by the Office, the military authorities announced in July 2021, the termination of the Memorandum of Understanding on the country’s Decent Work Country Programme (DWCP MoU) 2018–22, which would put an end to the ILO’s presence and development cooperation activities in the country, and subsequently proposed to extend the DWCP MoU for one year provided that they would be invited to attend meetings of the Governing Body and of the International Labour Conference. The Committee notes the Office’s response that as the Secretariat of the Organization, it could not derogate from the relevant decisions of the Credentials Committee and, also that in November 2021, the military authorities finally notified their decision not to proceed with the termination of the DWCP MoU.
12. As regards the situation in other UN agencies and bodies, the Committee takes note that since September 2021, several entities have deferred the consideration of the question regarding the credentials of Myanmar and kept its seat vacant pending a decision of the United Nations

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<sup>1</sup> ILC.109/Record No. 3B, para. 19.

<sup>2</sup> ILC.109/Resolution II.

<sup>3</sup> GB.342/INS/5; GB.342/PV, para. 56.

<sup>4</sup> GB.343/INS/8; GB.343/Decisions, para. 8.

General Assembly. These entities are the General Conference of the International Atomic Energy Agency (IAEA) (September 2021), the General Assembly of the World Intellectual Property Organization (WIPO) (October 2021), the United Nations Conference on Trade and Development (UNCTAD) (October 2021), the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) (24 November 2021), the Conference of the States Parties of the Organisation for the Prohibition of Chemical Weapons (OPCW) (November 2021) and the Second special session of the World Health Assembly of the World Health Organization (WHO) (1 December 2021). On 1 December 2021, the Credentials Committee of the United Nations General Assembly considered the credentials of United Nations Member States, including Myanmar, and decided to defer its decision on the credentials of Myanmar. Its report was approved by the General Assembly on 6 December 2021.

13. *In light of the preceding information, taking into account United Nations General Assembly resolution 396 (V) of 14 December 1950, the Committee decides that no delegates for Myanmar will be accredited at the 109th Session of the Conference.*

## Objection

14. The Committee has received one objection due to an incomplete delegation, as reflected in the [third revised provisional list of delegations](#) published on 25 November 2021 and completed its examination.

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

15. The Committee received an objection presented by the International Trade Union Confederation (ITUC) concerning the nomination of an incomplete delegation on the Employers' and the Workers' side by the Government of Dominica. The ITUC submitted that the Government had not fulfilled its obligation under article 3, paragraph 1, of the ILO Constitution to accredit a complete delegation to the Conference. It requested the Committee to call upon the Government to provide explanations about this situation and to recommend to the Government that it fulfil its constitutional obligations.
16. In a written communication dated 26 November 2021 addressed to the Committee, the Permanent Mission informed that the nomination of an incomplete delegation had been due to human resource constraints, which had been exacerbated by the COVID-19 pandemic, and to a misunderstanding in the nomination requirements.
17. *The Committee notes that the Government of Dominica is again represented at the Conference for the first time since its 82nd Session (1995) and urges the Government to not let such a lapse of time occur again in the future. The Committee also notes that on the last occasion it participated in the Conference, at its 1995 session, the Government had similarly failed to nominate an Employers' and a Workers' delegate.*
18. *The Committee considers that by accrediting an incomplete delegation, the Government deprives the employers and workers of the country of their right of being represented at the highest policymaking body of the ILO. Without the effective interaction of the tripartite constituents, the Conference cannot function properly or attain its objectives. While being cognizant that the COVID-19 crisis may pose constraints, as pointed out in the Government's response, the Committee stresses that the failure to accredit a fully tripartite delegation is all the more regrettable as this year's virtual format permits remote participation in the Conference.*

19. *The Committee encourages the Government of Dominica to continue nominating delegations to future sessions of the Conference and urges the Government to make every effort to nominate a tripartite delegation to each of these sessions.*

## Complaint

20. The Committee has received one complaint.

### Complaint concerning the non-payment of all travel and subsistence expenses of the Employers' delegation by the Government of the Democratic Republic of the Congo

21. The Committee received a complaint presented on 14 June 2021 by members of the Employers' delegation of the Democratic Republic of the Congo at the Conference alleging the non-payment of travel and subsistence expenses of the Employers' delegation by the Government in breach of article 13, paragraph 2, of the ILO Constitution. According to the complainants, while the 109th Session of the International Labour Conference was taking place by virtual means due to the COVID-19 pandemic, the Government had decided to relocate the work of its tripartite delegation away from the capital, in the coastal city of Muanda in the Province of Kongo Central. The Employers' delegation indicated that it was experiencing difficulties in bearing the costs of accommodation, catering services and living expenses due to the lump-sum allocated by the Government for those expenses, which did not comply with the applicable regulations. Consequently, the Employers considered that there was a high risk that they would have to suspend their work before the closure of the Conference.
22. In a written communication addressed to the Committee at its request, the Government confirmed that it had decided, following tripartite consultation, to host the delegation in Muanda. In accordance with its obligations, the Government had committed the expenses relating to the planned travel, subsistence allowances and COVID-19 testing. The Government explained that the four members of the Employers' delegation who had signed the complaint had chosen to stay in accommodations whose daily rates exceeded US\$40, the maximum rate of accommodation decided by the Government following a market study. However, discussions had been held with the authors of the complaint and an agreement had been reached.
23. In a written communication received on 17 June 2021 addressed to the Committee, the authors of the complaint notified their withdrawal of the complaint on the grounds that an agreement had been reached, according to which the Government committed to fully reimburse the cost of accommodation of every delegate and adviser.
24. *Without having to examine the receivability of the complaint, the Committee takes note of its withdrawal. No further action is thus called for on the part of the Committee.*

## Communications

25. The Committee received two communications.

### Communication concerning the Employers' delegation of Nicaragua

26. The Committee received a communication from the Employers' group at the Conference concerning the Employers' delegation of Nicaragua. The Employers' group expressed disagreement with the designation by the Government of the employers' delegates without consulting or agreeing with the Consejo Superior de la Empresa Privada (COSEP), the most representative employers' organization in the country. The group recalled that it had previously

presented objections concerning the matter, the last time during the 108th Session of the Conference in 2019, and noted that, despite the comments of the Credentials Committee, the Government, had failed to inform or invite the COSEP to the consultations for the designation of the Employers' representatives for the 109th Session of the Conference. The Employers' group clarified that it had not presented an objection at this session of the Conference, given the environment contrary to public freedoms, and particularly, to freedom of association prevailing in the country. It requested the Committee to record the communication in its final report.

27. *The Committee regrets that the Government did not reply to the Committee's invitation to comment on the substance of the communication within the time-limit set, particularly in view of the seriousness of the allegations contained in the communication that are similar to those that gave rise to the objection that the Committee examined at the 108th Session (2019) of the Conference.<sup>5</sup> The Committee trusts that when nominating the employers' delegation of Nicaragua to the next session of the Conference, the Government will take into account the conclusions reached by the Committee with respect to that objection.*

### Communications concerning the Workers' delegation of Sudan

28. The Committee received a communication from the Sudan Workers Trade Unions Confederation (SWTUF) requesting the Committee to review its conclusions reached in its third report (ILC.109/Record No. 3C) on the objection concerning the nomination of the Workers' delegation of Sudan.<sup>6</sup> In the communication, the SWTUF contested information provided by the Government of Sudan at the Committee's request in response to the objection. The SWTUF stated that the political context in which previous objections contesting the representative character of the SWTUF had been filed, had changed after the adoption of the Trade Unions Law in 2010. It affirmed that, contrary to the Government's allegation, the SWTUF was independent from any political parties and questioned the fact that numerous trade unions disaffiliated from it. The SWTUF also denied that Khartoum University Teachers Trade Union was representative of the workers of Sudan and reaffirmed its allegation that the dissolution of the SWTUF was illegal.
29. *The Committee notes that this is not the first time that the Committee or the Office receives a communication from an objecting organization or a government challenging the Committee's findings appearing in one of its report. Whereas there is normally no time for the Committee to comment, since this session of the Conference is organized in two parts, it is exceptionally possible for the Committee to address this communication. In this regard, the Committee considers that it would be incompatible with the principle of *res judicata* and with the provisions of the Standing Orders of the Conference that establish specific time-limits for the filing of objections, if the Committee were to reopen the conclusions it adopted in relation to an objection. The Committee therefore considers that this communication is not receivable and does not call for any action on its part.*

### Other matters

30. The Credentials Committee notes, in accordance with the [Special arrangements and rules of procedure for the 109th Session of the International Labour Conference](#), the resumed part of the session took place from 25 November to 11 December 2021 and that governments took steps to ensure that up-to-date information was provided as regarded their tripartite

<sup>5</sup> ILC.108/Provisional Record No. 3C, paras 48–52.

<sup>6</sup> ILC.109/Record No. 3C, paras 51–59.

delegations. The Committee further notes that the Conference was able to resume its work without disruption or particular difficulties.

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- 31.** The Credentials Committee adopts this report unanimously.

7 December 2021

*(Signed)* Mr Juan Pablo Schaeffer, Chairperson  
Mr Fernando Yllanes Martínez  
Ms Amanda Brown



