



Reports of the Credentials Committee

Third report

Composition of the Conference

1. Since 10 June 2005, when the Committee adopted its second report (*Provisional Record* No. 4C), there have been no significant changes in the composition of the Conference.
2. As of this day there are 4,315 persons accredited to the Conference (as compared to 4,180 last year), of whom 3,842 are registered (as compared to 3,696 last year). The attached list contains more details on the number of delegates and advisers registered for each Member.
3. In addition, the Committee wishes to indicate that 168 ministers or vice-ministers have been accredited (as compared to 156 last year) to the Conference.

Objections

4. The total number of objections received this year is 19, the highest number since 2000. In this report, the Committee has considered the following 13 objections. They appear in the French alphabetical order of the Members concerned.

Objection concerning the nomination of the Employers' delegate of Burundi

5. The Committee had before it an objection, submitted by the Employers' group of the Conference, challenging the nomination of the Employers' delegate of Burundi. Just as it did for the 92nd Session (June 2004) of the Conference, the Government had nominated the President of the *Centrale syndicale des employeurs du Burundi* (CESEBU) without consulting the *Association des employeurs du Burundi* (AEB), which was not even represented by an adviser as it had been last year. The Government refused to apply the Committee's recommendation from last year even though it acknowledged the AEB as the most representative employers' organization. It continued to nominate CESEBU as the sole representative of the employers in various tripartite international forums (Social Partners' Forum and Head of States' Summit in Ouagadougou, September 2004; Committee of Social Affairs and Labour of the African Union in Johannesburg, April 2005; meeting of experts on social dialogue organized by PRODIAP in Kigali, April 2005; meeting of the representatives of the employers and of the trade unions with the Head of State of Burundi, April 2005). However, the Government's attitude was not justified by any increased representativeness that the CESEBU may have acquired since the prior session of the Conference.

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6. Several elements favouring the AEB were mentioned. The AEB was founded in 1964, whereas the CESEBU was created only in 2004. Furthermore, the AEB is independent from the Government. As regards the scope and nature of its activities, the AEB has a general secretariat endowed with a highly qualified staff and is well equipped, whereas the CESEBU has neither staff nor headquarters (its secretariat is joined with the office of the Minister of Labour) and has no activities of its own, except for its participation at a few meetings arranged by the Minister of Labour and Social Security. As regards membership, only one enterprise member has resigned from the AEB. Indeed, the AEB has been strengthened in that the membership dues of its members are up to date. By contrast, the CESEBU's membership includes a number of fictitious affiliates. The number of the AEB's affiliates had risen from 98 in June 2004 to 112 at the present time. This reflects the Government's general non-observance for the principles of freedom of association, which affect both the AEB's rights and those of the most representative workers' organization, the *Confédération des syndicats du Burundi* (COSYBU). Accordingly, it was requested that the credentials of the Employers' delegate be invalidated.
 7. The Committee notes with regret that the Government had not replied to its request for information regarding the conditions of the nomination of the Employers' delegate. It deplores the lack of cooperation from the Government and notes that the situation is similar to last year and has even worsened since the 92nd Session (June 2004) of the Conference, as the Employers' delegation this year does not even include a member from AEB (see Credentials Committee, Third Report, *Provisional Record* No. 6D, 2004). The Committee once more denounces the lack of consultation with AEB. It reiterates its deep concern with respect to practices that clearly violate the obligations under article 3, paragraph 5, of the ILO Constitution. Such practices, together with the silence of the Government, appear to support the more general allegations of interference and disregard for the principles of freedom of association formulated in the objection. Recalling that it is the right of the most representative organizations to nominate their representatives to the Conference and that governments shall respect their choice without interfering, the Committee continues to be deeply concerned by the total lack of progress in this matter. It, therefore, wishes to express once again the hope that the Government will avail itself of ILO technical assistance in order to avoid a similar situation from reoccurring.
 8. In view of the objections concerning the nomination of the Employers' delegation of Burundi, already submitted to the Committee, as well as similar objections concerning the nomination of the Workers' delegation, the Committee unanimously considers that the procedure relating to the composition of the Employers' delegation of Burundi to the Conference should be the subject of a follow-up. By virtue of article 26bis, paragraph 7, of the Interim provisions of the Conference Standing Orders concerning the verification of credentials adopted by the International Labour Conference at its 92nd Session (June 2004) (*Provisional Record* No. 16), the Committee proposes that the Conference request that the Government of Burundi submit to the next session of the Conference, at the same time that it submits its credentials for the delegation of Burundi, a detailed report on the procedure utilized to nominate the Employers' delegate and advisers. Specifically, the organizations that will have been consulted on the matter; the date, time and place of these consultations; and the names of the individuals nominated by the organizations during these consultations.

Objection concerning the nomination of the Workers' delegate of Burundi

9. The Committee had received an objection, submitted by Mr. Pierre Claver Hajayandi, President of the *Confédération des syndicats du Burundi* (COSYBU), challenging the nomination of the Workers' delegate of Burundi. Appended to his communication was a copy of a letter, dated 4 May 2005, addressed by the COSYBU to the Minister of Labour

and Social Security of Burundi, whereby the COSYBU nominated Mr. Hajayandi as the Workers' delegate to the present session of the Conference and Mr. Célestin Nsavymana, its Treasurer, as adviser. The Government, alleging that Mr. Hajayandi's mandate had expired and that he no longer possessed the statutory competence to represent the COSYBU, nominated Mr. Nsavymana as the Workers' delegate. This decision of the Government constituted interference in the internal affairs of the COSYBU. Accordingly, he requested the Committee to invalidate the credentials of the Workers' delegate of Burundi and that he be included in the delegation as the Workers' delegate.

- 10.** In a written communication addressed to the Committee in response to its request, the Minister of Labour and Social Security provided the Committee extracts of a note from the Minister dated 21 May regarding the “evaluation of the legality of the executive office of the President and legal representation of the COSYBU”, as well as its reply to a communication from the members of the Confederation Committee of the COSYBU denouncing the interference of the public authorities in their trade union activities. Specifically, the Minister considers that the statutes of the COSYBU do not confer on the Confederation Committee the authority to extend the Executive Committee's term of office and, therefore, its leaders, including Mr. Hajayandi, no longer enjoy any legitimacy to exercise their mandate. In addition, the Government considers that Mr. Hajayandi can no longer be a member of the COSYBU, since he is the medical director of a clinic and, thus, in actuality is an employer. The Minister added that he has limited himself to noting that the COSYBU has failed to respect its statutes and that such a conclusion does not amount to an act of interference. Finally, the Government expressed its readiness to undertake a joint assessment of this matter with the ILO.
- 11.** The Committee notes that the representativeness of the COSYBU is not called into question, but rather the person who has been named to represent it and their function. It observes that the decision not to nominate Mr. Hajayandi as Workers' delegate does not arise from an internal decision of the organization. In this respect, the Committee recalls that in the Governing Body's 335th Report of the Committee of Freedom of Association, that that Committee had emphasized in its conclusions that the Government had stated that it respected the choice of the workers within tripartite institutions as made by the most representative organization, and that it had undertaken to rectify any mistakes that might have been made, which corresponds to the requirements for independence, transparency and predictability under article 3, paragraph 5, of the ILO Constitution. Consequently, deploring that the Government, which has a seat on the Governing Body's Committee on Freedom of Association since 2002, has not met its commitments, the Committee urges the Government to meet its constitutional obligations in this regard and to refrain from any act of interference. The Committee reminds the Government of the possibility to avail itself of technical assistance from the ILO.
- 12.** In view of the objections concerning the nomination of the Workers' delegation of Burundi, already submitted to the Committee, as well as similar objections concerning the nomination of the Employers' delegation, the Committee unanimously concludes that the procedure relating to the composition of the Workers' delegation of Burundi to the Conference should be the subject of a follow-up. By virtue of article 26bis, paragraph 7, of the Interim provisions of the Standing Orders of the Conference concerning the verification of credentials, the Committee proposes that the Conference request that the Government of Burundi submit to the next session of the Conference, at the same time that it submits its credentials for the delegation of Burundi, a detailed report on the procedure utilized to nominate the Workers' delegate and advisers. Specifically, the organizations that will have been consulted on the matter; the date, time and place of these consultations; and the names of the individuals nominated by the organizations during these consultations.

Objection concerning the nomination of the Workers' delegate of Cape Verde

- 13.** The Committee had received an objection from the Chairperson, Mr. José Manuel Vaz, President of the *Confederação Caboverdiana dos Sindicatos Livres* (CCSL) challenging the nomination of the Workers' delegate, on the basis that there had been no consultations and that the delegate nominated was not representative of the workers of the country. The objecting organization explained that since 1992 there have been two trade union confederations co-existing in Cape Verde, the CCSL and the *União Nacional dos Trabalhadores de Cabo Verde* (UNTC-CS). As the result of certain differences and misunderstandings affecting the relations between the two trade union confederations, the Government had decided to introduce a system whereby the Workers' delegate to the Conference would be nominated on a rotational basis. The objecting organization submitted that this arrangement had functioned until 2004 and that its representativeness is demonstrated by the fact that one of its members had been nominated as the Workers' delegate for the 89th Session (June 2001) and 91st Session (June 2003) of the Conference without challenge.
- 14.** The CCSL submitted that it had adopted a critical position with regard to certain Government policies, which in turn had caused a deterioration in its relations with the Government. As a consequence the Government, at the request of the UNTC-CS, launched a study in 2004 to determine the representativeness of the trade unions. To this effect, it requested information regarding the number of affiliated trade unions and their members. The UNTC-CS advised that it was comprised of 20,000 members, 15 trade unions, one federation and two regional trade union federations versus the CCSL's approximate 19,000 members, 19 trade unions and one federation. The Government, allegedly not satisfied with this information, wished to consult the archives of each trade union in order to confirm the information. This request was rejected by the CCSL on the grounds that it constituted interference with internal trade union affairs. As a result, the Government decided not to take into account the information provided by the CCSL and declared the UNTC-CS to be the most representative trade union confederation of Cape Verde. It considered the Government's actions to be biased and discriminatory. It also challenged the information itself as, according to the 2000 census carried out by the National Institute of Statistics, the UNTC-CS had 20,000 members, only 10,000 of whom were active. Consequently, the Government could not argue that the UNTC-CS was the most representative trade union confederation. Moreover, there was no legislation that set out clear and objective criteria for determining the representativeness of workers' and employers' organizations. Finally, the Government failed to carry out prior consultations concerning the nomination of the Workers' delegate.
- 15.** The objecting organization also pointed to the different manner in which the Workers' and Employers' delegates were nominated. For the Workers' delegate, the Government had recourse to the so-called study on trade union representativeness and, thus, favoured the UNTC-CS. For the Employers' delegate, the rotational method that had been the norm since 1993 was employed. The UNTC-CS, in this manner, had selected the Workers' delegate for two consecutive years (2004 and 2005).
- 16.** The CCSL vehemently opposed the Government's decision to unilaterally nominate a representative from the UNTC-CS as the Workers' delegate, since it did not recognize the study carried out by the Government.
- 17.** In a written communication addressed to the Committee in response to its request, the Government indicated that the situation had been ongoing since 1991, when the CCSL was founded. The two centres could not reach an agreement as to who would nominate a Workers' delegate to the Conference. In the absence of any national legislation with

respect to the determination of the most representative workers' organization the Government introduced a system of rotation.

18. As a result of two objections submitted to the Conference (85th Session (June 1997) and 87th Session (June 1999)), the Committee advised the Government that it needed to establish an evaluation system in order for it to fulfil its obligations under article 3, paragraph 5, of the ILO Constitution. In 2005, the Government decided, with the assistance of the ILO, and in agreement with the Counsel for Consultation, to commission an independent study to assess the representativeness of the trade unions. This study was presented to the social partners on 20 October 2004, and on 10 November 2004 the Counsel for Consultation examined the conclusions. According to the study, the overwhelming majority of unionized workers in the country, practically nine in every ten, were affiliated with the UNTC-CS. All the social partners approved these conclusions, except for the CCSL. Consequently, the Government had limited itself to fulfilling its constitutional obligations by nominating a Workers' delegate from the ranks of the UNTC-CS.
19. The Committee notes with satisfaction that the Government had responded to its advice and evaluated the representative character of the two trade union centres. The Committee notes that the CCSL continues to contest the results of the study with respect to representativeness, but that it has limited itself to making declarations without submitting adequate proof to the Committee. In these circumstances, and in view of the information at its disposal, the Committee has decided not to retain the objection.

Objection concerning the nomination of the Workers' delegation of Djibouti

20. The Committee had before it an objection concerning the Workers' delegation of Djibouti, submitted by Messrs. Adan Mohamed Abdou, Secretary-General of the *Union djiboutienne du Travail* (UDT) and Kamil Diraneh Hared, Secretary-General of the *Union generale des travailleurs djiboutiens* (UGTD). In a communication dated 2 June 2005 the International Confederation of Free Trade Unions (ICFTU) associated itself with the objection. The authors of the objection contended that the Government, despite the commitments that it had undertaken on several occasions, had still not applied any of the recommendations of the ILO concerning the reinstatement of the directors and trade union militants of the UDT and the UGTD that had been dismissed in September 1995. Freedom of association and trade union rights continue to be flouted. The Government nominated to ILO meetings false representatives instead of legitimate Workers' representatives. The authors of the objection denounced the ongoing refusal of the Government to apply the recommendations of the ILO to take into account the legitimate representatives of the UDT and the UGTD in the tripartite delegations to the Conference.
21. In a written communication received in reply to the Committee's request, Mr. Guedi Absieh Houssein, Director of Work and Relations with Social Partners, writing on behalf of the Minister of Labour and National Solidarity, informed the Committee that the position of the Government remained the same as presented in its correspondence addressed to the Committee during previous sessions of the Conference.
22. Clarifications requested by the Committee were provided orally: on 9 June 2005, by Messrs. Houssein and Kamil Ali Mohamed, Director of Employment, Training and Professional Insertion; and on 14 June 2005, by Mr. Houmed Mohamed Dini, Minister of Employment and National Solidarity. All three emphasized that the national legislation does not require the approval of the authorities to establish a trade union, to choose its leaders, or to organize a trade union congress. They also affirmed that the law does not contain any disposition concerning the incompatibility of political activities with trade

union activities. They did not deny that there was a recurring trade union problem in Djibouti and the Minister, who had been in office for less than two weeks, expressed his concern about this issue. He had already met with one of the authors of the objection before his arrival in Geneva and he remains available to continue dialogue in order to find, with the assistance of the ILO, if appropriate, a satisfactory solution to the problems raised in the objection. The Government has already prepared a draft labour code, which has been submitted to Parliament, to replace the present one that dates from 1952.

23. The Committee remains concerned by the matters raised in the objection. It, however, welcomes that the Minister is available to tackle the issues that have been brought to the attention of the Committee on several occasions. The Committee takes due note of the affirmations relating to the lack of legal obstacles to the exercise of freedom of association in Djibouti. It cannot but encourage the Government to avail itself of ILO technical assistance, so as to permit it to bring its national legislation into conformity with the relevant ILO instruments. Trusting that the efforts of the new Minister will bring about satisfactory solutions with regard to the nomination of the Workers' delegate to the next session of the Conference, the Committee decided not to propose any action this year.

Objection concerning the failure to deposit credentials of a Workers' delegate of Gambia

24. The Committee had before it an objection, submitted by the International Confederation of Free Trade Unions (ICFTU), which stated that the Government of Gambia had failed to nominate a Workers' delegate to the Conference. In view of the new mandate under the Interim provisions of the Conference Standing Orders concerning verification of credentials, the Committee now had the possibility of examining objections where a government failed to deposit credentials of either a Workers' or Employers' delegate. The *Provisional list of delegations* indicated that Gambia was exclusively a governmental delegation. However, the objecting organization indicated that it had one affiliate, the Gambia Workers' Union, which could have legitimately taken part in a tripartite delegation. An explanation from the Government was requested for this year, hoping that a full tripartite delegation would be accredited at future sessions of the Conference.
25. In a written communication addressed to the Committee in reply to its request, Mr. Karamo K. Bojang, Permanent Secretary of the Department of State for Trade, Industry and Employment, explained that three umbrella unions, namely the Gambia National Trade Union Congress, the Gambia Labour Union and the Gambia Workers' Confederation, were consulted in view of identifying a Workers' delegate for the present session of the Conference. They were, however, invited on 10 May 2005 to make their own financial arrangements for the Conference. Although the Government wished to finance a tripartite delegation, it was not able to finance more than two people due to the resource constraints it was presently facing. It was hoped that a full tripartite delegation would be able to attend the future sessions of the Conference.
26. The Committee notes that, since 2003, Gambia has not been represented at the Conference by a tripartite delegation. Since then the delegation has consisted of only two governmental representatives that have arrived from the capital, Banjul. The Committee expresses its deep concern that Gambia is represented exclusively by a governmental delegation. The Committee reminds member States of their obligations under article 3, paragraph 1, of the ILO Constitution to nominate tripartite delegations to the Conference. Respect for the principles of tripartism requires a balanced representation of employers and workers so as to permit their effective participation at meetings. Without the participation of Government, Employers' and Workers' representatives the Conference cannot function properly or attain its objectives.

Objection concerning the nomination of the Workers' delegation of Guatemala

27. The Committee had received an objection regarding the nomination of the Workers' delegation of Guatemala submitted by the *Unión Sindical de Trabajadores de Guatemala* (UNSI TRAGUA).
28. The Committee takes notes that this objection was not signed and that its authors remain anonymous. The objection is therefore irreceivable, by virtue of the dispositions of article 26bis, paragraph 1(b), of the Interim provisions of the Conference Standing Orders concerning verification of credentials.

Objection concerning the nomination of the Workers' delegation of India

29. The Committee had received an objection from the trade union *Bharatiya Mazdoor Sangh* (BMS) that challenged the nomination of the Workers' delegation. The BMS declared that it had boycotted the present session of the Conference, since the Government had unilaterally decided to appoint, at the last moment, a representative of the Indian National Trade Union Congress (INTUC) as the Workers' delegate without consulting the BMS. By a letter dated 5 April 2005, the Government initially decided that the BMS would nominate one of its members as Workers' delegate and another as adviser. The Government even confirmed the travel arrangements for the BMS representatives. The objecting organization stated that it was the most representative workers' organization, as evidenced by the fact that for nearly a decade the Workers' delegate to the Conference had been a member of the BMS. This representativeness was confirmed through a membership verification system introduced by the Government. The BMS was ready to accept the nomination of the substitute delegate from the INTUC, but this attempt for a compromise failed. The Committee was requested to verify the credentials of the Workers' delegate and ensure that they were in strict conformity with the ILO Constitution and Standing Orders of the Conference.
30. In a written communication addressed to the Committee in response to its request, the Ministry of Labour advised that, according to the latest general verification of trade union membership in 1996, the difference in membership between the BMS and the INTUC was marginal. The next general verification had been delayed for five years by the BMS legal challenges. Other verifications, however, had taken place at the level of industrial units and showed that the BMS had been losing ground since 1996. The Government further indicated that the individual who had been appointed Workers' delegate was a widely accepted leader, even amongst organizations not affiliated to the INTUC and that its designation was therefore "judicious and equitable". Moreover, the BMS was not affiliated to any international trade union, whereas the INTUC was affiliated to the ICFTU.
31. The Committee notes, at the outset, that the Minister of Labour's letter inviting the BMS to propose two of its representatives as the Workers' delegate and adviser was subject to the approval of the Government and, thus, did not constitute a final decision concerning the nomination. The information about the membership of the representative workers' organizations in India is outdated, which appears to be partly due to the legal challenges of the BMS. During the written consultations that the Government had undertaken, the representative of the INTUC seemed to have obtained support from workers' organizations other than his own. In the absence of sufficient and reliable information on the situation in India, the Committee can come to no conclusion on this particular case. It wishes, however, to note for the future that article 3, paragraph 5, of the ILO Constitution imposes on governments in countries where there are two or more representative workers' organizations an obligation to actively seek an agreement between them for the purpose of

nominating the Workers' delegation. This obligation is not fulfilled where a government extends a mere invitation to the largest organization in terms of membership, nor can organizations of comparable importance in good faith claim for themselves the right to appoint the Workers' delegate without even attempting to reach an agreement with the other workers' organizations. The Committee urges the Government to clarify the process of consultation aimed at arriving at a nomination of the Workers' delegation to the Conference. The Committee hopes that the Government will ensure the establishment of objective and transparent criteria for determining the most representative organizations and that the process of nominating the Workers' delegation to the next session of the Conference will be engaged in a spirit of cooperation by all the parties involved.

Objections concerning the nomination of the Workers' delegation of Nepal

32. The Committee had before it an objection, submitted by Mr. Binod Shrestha, Secretary-General of the General Federation of Nepalese Trade Unions (GEFONT), Mr. Achyut Pandey, Secretary-General of the Nepal Trade Union Congress (NTUC) and Mr. Khila Nath Dahal, General-Secretary of the Democratic Confederation of Trade Unions (DECONT), challenging the nomination of the Workers' delegate of Nepal. The objecting organizations stated that they were the only representative workers' unions in Nepal and that, as such, they were convened to a meeting with the Ministry of Labour and Transport Management in March 2005 in order to present candidates for the Workers' delegation. In accordance with the Trade Union Act, 1992, which provides for a system of rotation, these unions unanimously proposed a representative of DECONT as the Workers' delegate, while the two other organizations were to be represented by an adviser each.
33. The objecting organizations learned on 20 May 2005 that the Government had nominated the Workers' delegate from a newly created union, the Nepal Agriculture Workers' Organization, and that no advisers were included in the delegation. They contended that this new union had neither been created in accordance with Nepalese law nor was it affiliated with any national trade union centre. The objecting organizations considered that such a nomination was contrary to both the ILO Constitution and the Trade Union Act, 1992. They considered that, in general, following recent political incidents in Nepal, the rights of trade unions were being undermined and that the nomination of the Workers' delegate should be viewed in this context. They considered that the Nepalese delegation did not have a tripartite character and sought the invalidation of the Workers' delegate's credentials.
34. Following a series of consultations involving, inter alia, the ILO Office in Nepal, the Government deposited on 31 May 2005 new credentials for the Nepalese delegation. Mr. Rajendra Bahadur Raut, President of DECONT, was included as the Workers' delegate while Mr. Bam Bahadur Dewan from the Nepal Agriculture Workers' Organization became adviser in the Workers' delegation.
35. On 7 June 2005, the Committee received a second objection concerning the Workers' delegation, this time submitted by the International Confederation of Free Trade Unions (ICFTU). The second objection was based on the *First revised provisional list of delegations*, which listed Mr. Dewan as the Workers' adviser and reiterated that the Government was attempting to undermine the principles of freedom of association. For example, the three trade union centres had not been permitted to properly examine the membership lists of 12 "national federations"; and amendments of the Civil Service Act that were unfavourable to unionized government workers were being adopted without participation of the workers' organizations. The Government was accused of establishing fictitious trade unions. Considering that Mr. Dewan came from an unknown organization,

the ICFTU requested that the nominations of the representatives to the Worker's delegation correspond to those agreed upon by the GEFONT, NTUC and DECONT.

36. In a written communication sent to the Committee at its request, Mr. Purushottam Ojha, Acting Secretary of the Ministry of Labour and Transport Management and Government delegate at the Conference, indicated that the second objection was unfounded. He explained that the Government had respected the system of rotation and on this basis had nominated a representative of the Nepal Agriculture Workers' Organization who is also the President of the Independent National Democratic Confederation of Nepalese Trade Union (INDECONT), a duly registered confederation, as adviser to the Workers' delegation. The Government added that it had no intention of undermining the unions and union rights of workers. Similarly, the right to establish new unions should also be respected by all existing workers' organizations. It considered the allegations baseless and untrue.
37. To the extent that the credentials of the Workers' delegate have been modified as requested by the objecting organization, the first objection requires no action by the Committee. The Committee notes with satisfaction the readiness of the Government to rectify the matter.
38. With regard to the second objection, however, the Committee notes that the Workers' adviser included in the delegation comes from a trade union that had been registered two days before the deposit of its credentials and had not been included in the consultation process. The Committee expresses its doubt concerning the representativeness of this trade union. The Committee wishes to recall that, when there are several representative workers' organizations in a country, the government has an obligation pursuant to the ILO Constitution not only to hold consultations with the most representative ones, but also to accept the choice of those organizations concerning the nomination of the Worker's delegation. Although the manner in which the nomination process was applied was flawed, the Committee does not propose any particular action this year. It, nevertheless, expects that the spirit of cooperation shown by the modification of the credentials of the Workers' delegate will prevail and that the Government will fully respect the choice of the representative organizations in nominating the Workers' delegation for the next session of the Conference without any interference. The Committee, therefore, encourages the Government to continue availing itself of ILO technical assistance in this matter so as to avoid a similar situation in the future.

Objection concerning the nomination of the Workers' delegate of Nicaragua

39. The Committee had received an objection concerning the nomination of the Workers' delegate of Nicaragua submitted by Messrs. José Espinoza Navas, Secretary-General of the *Confederación de Unificación Sindical*; Nilo Salazar Aguilar, Secretary-General of the *Confederación General de Trabajadores* (CGT-Independiente); Antonio Jarquin Rodríguez, Secretary-General of the *Central de Trabajadores Nicaragüenses* (CNT-Autónoma); and Roberto Antonio Moreno, Secretary-General of the *Confederación Unitaria de Trabajadores* (CUT). These four confederations constitute the *Congreso Permanente de los Trabajadores* (CPT). The authors of the objection submitted that prior to 1990 the Workers' delegates were unilaterally nominated by the Government. Since 1990, the Workers' representatives to the Conference had been elected, either unanimously or by majority, by them. In 2002 the Minister of Labour, Mr. Virgilio Gurdíán Castellón, attempted without success to impose a candidate from the *Central Nicaragüense de Trabajadores* (CNT), which is favourable to the Government. It was from this organization that an adviser, Mr. Edmond Pallais, was later selected to become Vice-Minister of Labour. In 2004, it was not possible to nominate a candidate from the CNT, since it was inactive due to the withdrawal of a large number of its members and it had not held a general assembly. With the agreement of the Minister of Labour and of the Presidency of

the Republic, the CNT was reorganized in a fraudulent manner. The Minister of Labour ordered the registration of the executive committees of the trade unions, despite the fact that the workers had not elected them as no general assemblies had been held.

40. This year the Minister of Labour sent a letter to the representative trade union organizations in the country, which had been recognized by the various governments during the preceding 15 years, reminding them that they should nominate their delegate. However, the Vice-Minister of Labour, who continues to be an adviser to the CNT, convoked the non-representative confederations and in agreement with them nominated someone who was not a representative of the workers of the country. Consultations were not even held with the most representative workers' organizations. The authors of the objection sought the invalidation of the credentials of the Workers' delegate and sought that Mr. Nilo Salazar Aguilar, Secretary-General of the CGT-Independiente and of the CTP, be named in his place.
41. In a written communication addressed to the Committee in response to its request, Mrs. Yadira Martínez Flores, Director of the International Labour Affairs at the Ministry of Labour and Government, delegate to the Conference, indicated that the objection did not refer to a question of representativeness, but rather the manner in which the Workers' delegate was nominated. The Government had complied with the obligations contained in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), when it nominated the Workers' delegation. On the basis of the registry of workers' organizations that is maintained by the Ministry of Labour, 14 organizations were consulted, even though not all their information in the registry was up to date. Three of the four organizations that comprise the objecting confederation were consulted and that process permitted the main ideological trade union thinking to express itself. All the organizations were convoked to an information session on 22 April 2005, during which they were requested to nominate the person of their choice so that they could assume the functions as Workers' delegate to the Conference. No consensus was reached and the CST proposed a vote, during which the Ministry of Labour acted as secretariat. Mr. Frank Jiménez, Secretary-General of the CNT and Ms. Maritza Zamora, Secretary-General of the CNTD were elected, respectively, as delegate and adviser. The CNT-Autónoma and the CGT-Independiente requested that their opposition be recorded. The Government denied that it had interfered in the selection process of the Workers' delegation and considered that the difficulty in designating the Workers' delegate was a reflection of the internal difficulties among the interested organizations.
42. Contrary to the Government's view, the Committee considers that the objection is not only due to the nomination procedure, but also concerns the question of representativeness of the workers' organizations that were convoked to participate in the consultations. The Government admitted that it had not invited the organizations because of their respective representativeness, but rather for historical reasons. In addition, the Government had placed all the organizations on the same footing. In these circumstances, at the time of the vote, this worked in favour of the lesser representative organizations to the detriment of the most representative workers' organizations. The Committee considers that the system of evaluating the representativeness of each organization that is invited to participate in the consultations to nominate the Workers' delegate to the Conference should be based on objective and verifiable criteria. In the absence of this information, the Committee cannot verify which are the most representative organizations amongst those invited. Therefore, it cannot ascertain whether the nomination of the Workers' delegate is in conformity with article 3, paragraph 5, of the ILO Constitution. The Committee trusts that the Government will undertake without delay to establish objective criteria so as to permit it to evaluate the representativeness of the workers' organizations in Nicaragua.

Objection concerning the nomination of the Workers' delegation of Venezuela

43. The Committee had received an objection submitted by the *Confederación de Trabajadores de Venezuela* (CTV) concerning the nomination of the Workers' delegation of Venezuela. The objecting organization claims, for the third consecutive year, that the nomination of the Workers' delegation was in flagrant contravention of the ILO Constitution and in clear contradiction with the criteria that had been reiterated in this matter by the Committee last year. Although CTV remains the most representative workers' organization of the country, the Ministry of Labour had once again used this year an artifice to prevent CTV from exercising its rights by nominating a delegate from the *Confederación General de Trabajadores* (CGT), a minority union. Under the pretext of endeavouring to achieve an agreed structure for the Workers' delegation, the Ministry convened the five national union centres (CTV, CUTV, CODESA, CGT and UNT) to a meeting held on 12 May 2005, at which a system of rotation was proposed again. This method of nomination confirmed the utmost lack of impartiality by the Government in respect to CTV, which recalled in writing the criteria stated last year by the Committee in this matter and reaffirmed that the delegation should be nominated in accordance with the genuine representativeness of each trade union. Furthermore the fact that the UNT, an organization aligned with the Government, is a minority union that may not even have by-laws or a constitution, had been included in this process demonstrated that the Government had utilized once more the minority unions to continue its anti-union practices. Contrary to the tolerance shown towards the UNT, the Government had been more stringent with the CTV by expressly reminding it in the convocation letter of the criteria set forth in the Organic Labour Act regarding the representativeness of trade unions. The Government also contested the legitimate character of its representatives. Although both the Supreme Court and the National Electoral Council challenged, in their decisions of 17 June 2004 and 12 January 2005 respectively, the validity of the elections of the CTV's Executive Board, the CTV insisted that such a challenge did not affect in any manner its existence or its rights. Consequently, the CTV requested that the credentials of the Workers' delegation be invalidated.
44. In a written communication addressed to the Committee in response to its request, Mr. Ruben Darío Molina, Director of the Bureau of International Relations and ILO Liaison Office of the Ministry of Labour, and Government adviser and substitute delegate to the Conference, considered that the objection was unfounded. In 2003 and 2004, the CTV did not enjoy the numerical superiority required to make it the most representative organization given that the statistics that it relied on were obsolete as compared to the statistics gathered by the Ministry of Labour. The Ministry had brought its statistics up to date, as a result of an agreement between it and the UNDP that was signed in 2003 for this purpose. The representativeness of the workers' organizations was measured on the basis of the number of those participating in collective bargaining agreements, in particular the number of members represented by collective agreements concluded by trade unions affiliated with confederations that are legally registered and up to date; as well as those that participate in consultations with the social partners. In 2003 and 2004, respectively, the UNT had a higher number of collective bargaining agreements (74.4 per cent and 45 per cent) versus the CTV (25.1 per cent and 22 per cent). Despite the UNT's greater representativeness, the Government had not nominated a representative from its ranks as the Workers' delegate to either the 92nd Session (June 2004) or 93rd Session (June 2005) to the Conference given that the workers' organizations, with the exception of the CTV, had relied on the system of rotation that had been agreed on in 2003.
45. With reference to the consultations undertaken this year, the Government invited the five most representative centres to two sessions convoked by the Vice-Minister of Labour on 6 and 12 May 2005 so that each could put forth proposals for the Workers' delegation. The

CODESA, the UNT, the CUTV and the CTV sent written proposals, whereas the CGT submitted its proposal during the meeting of 12 May 2005. This meeting took place in the office of the Vice-Minister and, as a result of that dialogue, the CGT, the CODESA and the UNT arrived at an agreement concerning the Workers' delegation. The representative of the CTV withdrew from this meeting, having his withdrawal recorded.

- 46.** Turning to the system of rotation agreed upon by the majority of confederations in 2003, when the CTV ceased to be the most representative workers' organization, the Government stated that this system had been institutionalized so as to address the disagreements concerning the representativeness amongst the workers' organizations from the integrated system of the Andean subregion community. This agreement has been rejected by the CTV.
- 47.** Turning to the CTV's statement that it is the most representative workers' organization, the Government stated that no judicial organ had recognized this, even though the CTV stated that its representativeness was attested to in the registry of the National Electoral Council. Following the trade union elections of October 2001, convoked by all the trade union centres, the CTV did not communicate a certified copy of the Act regarding the composition of its Executive Board. Moreover, the numerical superiority of the CTV was not demonstrated in a referendum as required by article 430 of the Organic Labour Law. Instead, it declared itself to be the winner of the elections without presenting numbers that demonstrated this numerical superiority. Three of the six trade union centres and third-level unions that participated in these elections contested this proclamation and the results announced by the CTV. The Supreme Court, in a decision dated 17 June 2004, confirmed that, for it to demonstrate its representativity of workers, a referendum should take place that would permit the workers' organizations to determine which was the most representative and best qualified to undertake effective dialogue so as to conclude collective bargaining agreements and negotiations in the event of conflict. In a decision dated 10 November 2004, the National Electoral Council annulled the CTV elections. The CTV announced that it would undertake a referendum, but had not done so to date. Therefore, it could not be concluded that the CTV was the most representative workers' organization.
- 48.** The Committee, in the first place, notes that it has not received sufficient information to permit it to evaluate the representativeness of the five centres considered to be the most representative in the country. As the Committee had emphasized last year, the number of workers covered by either collective bargaining agreements or their scope is but one element to be considered. The Government should make a serious effort to arrive at an agreement with the different trade union centres on the basis of reliable criteria that would permit it to determine their representativeness in an objective manner. The Committee reiterates its hope, once again, that the Government will avail itself of ILO technical assistance in this regard. In the present case, the Committee also notes, on the basis of the information that it has received this year from the Government, that in 2002 the CTV covered more than 50 per cent of workers under collective bargaining agreements; in 2003 this figure had descended to 25 per cent; and in 2004 to 22 per cent. As the Committee has already indicated in the past, such a decrease could be tied to the fact that the CTV's ability to negotiate could have been limited due to the persistent attacks on this centre and which the supervisory bodies of the ILO have denounced. In addition, the abovementioned statistics do not correspond entirely to those furnished by the Government last year.
- 49.** With reference to the process of consultation, three of the four centres invited to the meeting of 12 May 2005 by the Government were marginally representative with comparison to the CTV. Notwithstanding they have managed to impose a system of rotation, despite the clear opposition of the objecting organization. With the participation of the minority organizations, the system of rotation has produced a paradoxical result.

Last year, the Workers' delegate was a member of a centre that represented 0.33 per cent of the workers of the country, according to the statistics furnished by the Government. Whereas this year the delegate comes from an organization that in 2004 represented only 0.23 per cent of these workers. Consequently, one organization that represents the public sector (UNT), along with three others who do not represent more than 1 per cent of the workers of Venezuela have impeded, through the system of rotation, the CTV from being adequately represented in the Workers' delegation to the Conference. With regard to the existence of the rotation agreement the Committee recalls, once again, that as per its practice for the agreement to be considered it must be accepted by the most representative workers' organizations. This does not appear to be the case as it has been systematically refused by the CTV, which considers itself to be the most representative workers' organization.

50. Finally, the Committee notes the decisions of the competent authorities at the national level: that the National Electoral Council annulled the elections of 2001, wherein the Executive Committee of the CTV was nominated; and that the Supreme Court could not pronounce itself as to whether the CTV was the most representative workers' organization of the country, as it does not have the necessary technical elements. These decisions indicate that the CTV is not in a situation to confirm, at the national level, that it is the most representative workers' organization nor has the Government demonstrated the contrary. In addition, the Government appears to have ignored the conclusions of the supervisory bodies of the ILO: that the authorities must not deprive the members of the executive committee of the CTV of legitimacy in the absence of a pronouncement by the judicial authority nullifying the elections (see ILO: *Committee on Freedom of Association, 330th Report, Case No. 2067, para. 173*). Furthermore, the Committee notes that the Committee of Experts on the Application of Conventions and Recommendations also commented on the role of the Executive Committee of the CTV (see ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part I(A)), ILC, 93rd Session, Geneva, 2005*). Consequently, the Committee reiterates that the process for the nomination of the Workers' delegation has not been impartial, transparent or foreseeable as is required by article 3, paragraph 5, of the ILO Constitution. This lack of respect can be viewed in the larger context of the systematic attacks directed at the independence of the trade unions that has been denounced to the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations at the Conference. The Committee regrettably recalls, once again, that the nomination of the Workers' delegation should be both in agreement with the most representative workers' organizations, on the basis of pre-established, objective and verifiable criteria; and undertaken in such a manner so as to respect the capacity of the workers' organizations to act in absolute independence from the Government.

Objections concerning the nomination of the Workers' delegate of Zimbabwe

51. The Committee had before it an objection submitted by the International Confederation of Free Trade Unions (ICFTU) concerning the nomination of the Workers' delegate of Zimbabwe. It explained that the Government had nominated the Workers' delegate from the Zimbabwe Congress of Trade Unions (ZCTU), an affiliate of the objecting organization. The individual that had been nominated as the Workers' delegate, Mr. Elias Mlotshwa, had been unilaterally selected by the Government in direct contradiction of the ZCTU's own proposal. The ZCTU had communicated the name of its President, Mr. Lovemore Matombo, and its Secretary-General, Mr. Wellington Chibebe, on 20 May 2005 to the Government for the purpose of those individuals being nominated as, respectively, Workers' delegate and adviser and substitute delegate to the Conference. However, the Government, instead of nominating the individuals freely selected by the ZCTU, nominated someone else from the same organization as the Workers' delegate. It

esteemed that the Government's actions, including demanding minutes of internal meetings, amounted to an interference with a workers' organization's ability to act independently and that it was an attempt to divide its affiliate, the ZCTU.

- 52.** The individual nominated by the Government to act as the Workers' delegate, Mr. Mlotshwa, Second Vice-President of ZCTU, had written to the ILO on 31 May 2005, to explain that he would not be attending the Conference as the names of the ZCTU's representatives had already been communicated to the Government on 20 May 2005. Consequently, the objecting organization sought the invalidation of the credentials of the Workers' delegate and sought that the genuine ZCTU representative, Mr. Matombo, be named instead to represent his fellow workers.
- 53.** In a written communication addressed to the Committee at its request, Mr. N.T. Goche, Minister of Public Service, Labour and Social Welfare, who was heading the delegation of Zimbabwe to the Conference, confirmed that the ZCTU had a higher membership based on affiliates than the Zimbabwe Federation of Trade Unions (ZFTU) and that the ZCTU had been consulted, via correspondence, for the purpose of nominating the Workers' delegate to the Conference, in accordance with article 3, paragraph 5, of the ILO Constitution. However, the Government stated that it had not interfered with the internal selection process of the ZCTU when it nominated the Second Vice-President, Mr. Mlotshwa, to be the Workers' delegate. More accurately, it contended that the ZCTU had first nominated as Workers' delegate the Second Vice-President, Mr. Mlotshwa, and then the Third Vice-President, Mr. Ruzive, since the Second Vice-President had declined the nomination.
- 54.** The Government was informed by the ZCTU that the objecting organization's portended candidate, the "suspended" President of ZCTU, Mr. Matombo, was facing disciplinary charges and was under union investigation. In this regard, the Government annexed to its communication a document sent to the attention of the Permanent Secretary of the Ministry of Public Service, Labour and Social Welfare, that was signed by a spokesperson of the ZCTU, Mr. Nicholas Mazarura, with a date of 13 May 2005. The ZCTU communication sought to register its concern over the inclusion of the ZCTU leadership, namely Messrs. L. Matombo and W. Chibebe, and Mesdames L. Matibenga and T. Khumalo, since they were facing "serious allegations". Moreover, it was in this communication that the name of the Second Vice-President, Mr. Mlotshwa, was put forth by the ZCTU and demonstrated that the objecting organization's accusation was unfounded.
- 55.** It added that the nomination of the Second Vice-President, Mr. Mlotshwa, was also raised during a meeting that was held on 19 May 2005 with Mr. Chibebe. During this meeting, the Government questioned whether Messrs. Chibebe and Matombo had actually been elected at any General Council meeting. Mr. Chibebe was requested to provide the Government with the minutes for the meeting that was supposedly held on 23 April 2005, but to date has not done so. The Government considered that it had complied with article 3, paragraph 5, of the ILO Constitution, which in its view required it to do more than "rubber stamp" an appointment, but provided room for consultation and agreement.
- 56.** In a communication dated 23 May 2005 from the Government to the ZCTU, the Government confirmed that it had received the name of the Second Vice-President as the ZCTU's candidate given that Messrs. Matombo and Chibebe, and Mesdames Matibenga and Khumalo were facing serious allegations.
- 57.** Lastly, the Government annexed a communication dated 26 May 2005 from the ZCTU signed again by Mr. Mazarura furnishing the name of its Third Vice-President, Mr. Ruzive, since the Second Vice-President had declined the nomination as Workers' delegate and that the ZCTU refused to convey the names of Messrs. Matombo and Chibebe, and

Mesdames Matibenga and Khumalo, as their representatives given that they were facing serious allegations.

58. The Government, therefore, refuted the genuineness of the communication annexed to the objection dated 31 May 2005 and signed by Mr. Mlotshwa given that he had personally applied for a Swiss visa through the Ministry of Public Service, Labour and Social Welfare.
59. On 9 June 2005, the Committee received a second objection concerning the Workers' delegate from the ICFTU. The second objection was based on the *First revised provisional list of delegations*, which listed Mr. Ruzive as the Workers' delegate. The Government continued to override the most representative workers' organization's decision regarding who would represent it at the Conference, by now nominating Mr. Ruzive instead of Mr. Matombo. It also submitted information indicating that there was an internal conflict within its affiliate, ZCTU, between Mr. Mazarura, on the one hand, and Messrs. Matombo and Chibebe, and Mesdames Matibenga and Khumalo, on the other hand. This conflict was the subject of a lawsuit in a magistrates court. It questions the authenticity of the communication submitted on behalf of the ZCTU by Mr. Mazarura as he had no authority to use ZCTU letterhead and, in this regard, points to certain distinguishing features from genuine ZCTU letterhead, as well as a reference to the "Aggrieved Affiliates Workers' Union". Finally, it adds that there has been grave intimidation in an effort to dissuade workers from freely organizing.
60. On 10 June 2005, the Committee received a late objection concerning the Workers' delegate, from the Concerned Zimbabweans Abroad who requested the invalidation of the credentials of the Workers' delegate, Mr. Ruzive, on the basis that he did not represent the workers of Zimbabwe and was in fact a government sympathizer.
61. Clarifications that were requested by the Committee were provided orally by Mr. Poem Mudyawabikwa, Director for International Relations in the Labour Administration. He was accompanied by Messrs. Kuziwa Nyamwanza, Director for Legal Services and Langton Ngorima, Senior Labour Officer. Mr. Mudyawabikwa provided very detailed information on the process that led to the nomination of two Worker's delegates. In support of the information that the Government had already furnished to the Committee, he repeated that Mr. Matombo had not been nominated as Workers' delegate as he was the subject of serious allegations regarding his role in ZCTU. He also presented allegations against several other members of the ZCTU's leadership, including Mr. Chibebe. The Government was still seeking the minutes of the ZCTU's meeting that had taken place on 23 April 2005, which would demonstrate who was elected by the ZCTU as the Workers' representatives to the present session of the Conference. He added that the withdrawal of Mr. Mlotshwa, who actually proposed himself as Workers' delegate, was under duress and that the nomination of the present Workers' delegate, Mr. Ruzive, was done correctly with the support of 19 affiliates of ZCTU. Mr. Mudyawabikwa was, however, not able to list the 19 trade unions that comprise the Aggrieved Affiliates Workers' Unions. The Government did not verify who supported the letter of nomination sent by Mr. Mazarura nor did it request the minutes of the meetings wherein the nominations of Mr. Mlotshwa and Mr. Ruzive were decided.
62. The Committee notes that the objection is based on the rejection by the Government of the written proposal made by the most representative workers' organization to nominate its representative as the Workers' delegate. The Government does not question the representativeness of the organization, but rather the individual nominated. The Committee notes that, in light of the information put at its disposal, it is not in a position to verify allegations regarding internal conflicts within ZCTU. The Committee, however, notes that the actions taken by the Government are inconsistent with the principles of freedom of

association and amount to interference in the internal activities of a workers' organization. Specifically, the Government's insistence on obtaining the minutes of a ZCTU meeting that took place on 23 April 2005 represents unnecessary interference in internal matters of ZCTU. The fact that the Government has not made similar requests for the purpose of verifying the alternative proposals leaves some doubts about whether its treatment is impartial with respect to the two other nominations. Furthermore, the level of detail that Mr. Mudyawabikwa furnished to the Committee indicates the Government's manoeuvres to manipulate the choice of the most representative workers' organization through its deep involvement in the internal problems of the ZCTU. Consequently, the Committee considers that the procedure for nominating the Workers' delegation did not fulfil the conditions of impartiality, transparency and predictability required under article 3, paragraph 5, of the ILO Constitution. As the Committee has stressed in the past, governments must accept the most representative organizations' choice regarding the persons to be nominated as the Workers' delegates. The Committee urges the Government to strictly adhere to its constitutional obligations while nominating the Workers' delegation for the next Conference.

Complaints

63. Following are the seven complaints that were not covered in the Committee's second report. They are listed below in the French alphabetical order of the member States concerned.

Complaint concerning the non-payment of the travel and subsistence expenses of the Employers' delegate of Guinea

64. On 3 June 2005, the Committee received a complaint submitted by the Employers' group of the Conference. The complaint stated that the Government had not made any arrangements to pay the travel and subsistence expenses of Mr. Abdoulaye Dabo, the Employers' delegate. It considers that this failure to comply with article 13, paragraph 2 (a), of the ILO Constitution was discriminatory as the Government was meeting the expenses of the other members of the delegation. The Government was requested to fulfil its obligation by paying the travel and subsistence expenses of Mr. Dabo and, in the future, to comply with its constitutional obligations in this respect.
65. The Committee was informed on 13 June 2005 by Mr. Dabo that his travel and subsistence expenses were paid by the Government. The Committee notes that, in so far as the Government has agreed to cover the necessary subsistence expenses to enable the Employers' delegate to be present until the last day of the Conference, the complaint becomes moot and requires no further intervention by the Committee.

Complaint concerning the non-payment of the travel and subsistence expenses of the Employers' delegation of Iraq

66. On 3 June 2005, the Committee received a complaint submitted by the Employers' group of the Conference. The complaint stated that the Government of Iraq had not made any arrangements to pay the travel and subsistence expenses of its Employers' delegation. The Government was requested to fulfil its obligation by making the necessary arrangements and, in the future, to comply with its constitutional obligations in this respect.

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67. The Committee regrets that it has neither received any reply nor any information as to the reason for the absence of replies. Therefore, the Committee could imply that the allegations are accurate. To the extent that the complaint concerns the travel and subsistence expenses of the Employers' delegate, the Committee could find that a violation of the obligations contained in article 13, paragraph 2(a), of the ILO Constitution has been committed and it trusts that the Government will cover the travel and subsistence expenses of the Employers' delegate. It also trusts that in the future the Government will comply with its constitutional obligations in this respect.
68. The Committee recalls that article 13, paragraph 2(a), of the ILO Constitution imposes on its Members an obligation to pay the travel and subsistence expenses of the delegates and their advisers nominated to the Conference. The competence of the Committee to examine complaints on the non-respect of that provision is limited, however, to the situations envisaged in article 26ter, paragraph 1(a) and (b) of the Standing Orders. Consequently, the Committee has decided not to retain this part of the complaint.

Complaint concerning the non-payment of the travel and subsistence expenses of the Workers' adviser of Kazakhstan

69. The Committee had received a complaint submitted by Mr. L. Solomin, Vice-President of the Kazakhstan Confederation of Labour (KCL) and Workers' adviser of Kazakhstan to the Conference, alleging that, under the provisions of Order No. 145-p of 27 May 2005, the Government had undertaken to meet the travel and subsistence expenses of only the Workers' and Employers' delegates, thus, not covering his expenses.
70. The Government has not provided information regarding the allegations, nor has the Committee received any reply or any information as to the reason for the absence of a reply. The Committee recalls that article 13, paragraph 2(a), of the ILO Constitution imposes on its Members an obligation to pay the travel and subsistence expenses of the delegates and their advisers nominated to the Conference. The competence conferred to the Committee in 1997 to examine complaints on the non-respect of that provision is limited, however, to the situations envisaged in article 26ter, paragraph 1(a) and (b), of the Standing Orders, i.e. failure to cover the expenses of at least a tripartite delegation comprising two Government delegates, an Employers' delegate and a Workers' delegate, and cases of serious and manifest imbalance as between the number of Employer and Worker advisers whose expenses have been covered in the delegation and the number of advisers appointed for the Government delegates. Having found no serious and manifest imbalance as between the number of Government advisers and Workers' advisers, the Committee has decided not to retain the complaint.

Complaint concerning the non-payment of subsistence expenses of the Workers' delegate of Liberia

71. The Committee had before it a complaint submitted by the Liberia Federation of Labour Unions (LFLU), alleging the non-payment of expenses of the Workers' delegate of Liberia to the Conference. According to the complaint, the Government stated that it did not have money to sponsor him.
72. The Committee notes that the complaint had been received by the Committee's secretariat on 10 June 2005 at 10.45, that is, three days after the expiration of the deadline established by article 26ter, paragraph 2(a), of the Interim provisions of the Standing Orders of the Conference concerning verification of credentials. On this basis, the complaint is irreceivable.

Complaint concerning the non-payment of the subsistence expenses of the Workers' delegation of the Democratic Republic of the Congo

73. The Committee had before it a complaint, submitted by the International Confederation of Free Trade Unions (ICFTU) on behalf of Mr. Agustin Kabulo, Workers' delegate of the Democratic Republic of the Congo, alleging that his Government had failed to pay the subsistence expenses of the Workers' delegate and two advisers. It requested that the Government provide as soon as possible such subsistence expenses, as it should have done pursuant to article 13, paragraph 2(a), of the ILO Constitution.
74. Despite the Government concerned having been requested to provide information regarding the allegations, the Committee has neither received any reply nor any information as to the reason for the absence of such a reply. The Committee could, in these circumstances, imply that the allegations are accurate and conclude that a violation of the obligations contained in article 13, paragraph 2(a), of the ILO Constitution has been committed. This article obliges governments to bear the expenses of, at least, a complete tripartite delegation so as to permit them to participate for the entire duration of the Conference. The Committee also notes that the Form for Credentials submitted by the Government on 10 May 2005 stated that all the expenses of the ten members of the Workers' delegation had been covered by it. The Committee expects that this is the case and, therefore, does not propose any action at the present session of the Conference.

Second complaint concerning the partial payment of the subsistence expenses of the Workers' delegation of the Democratic Republic of the Congo

75. The Committee had before it a complaint, submitted by Mr. Leyeye-Ngongite, President of the *Intersyndicale des services publics de l'Etat national* (ISPEN) and Mr. Célestin Mayala Wumwesi, President of the *Intersyndical de l'Administration publique* (IAP), alleging that the Government had paid only ten days of subsistence expenses.
76. Under article 26ter, paragraph 2(b), of the Interim provisions of the Conference Standing Orders concerning verification of credentials, a complaint is irreceivable if the author is neither an accredited delegate or adviser nor someone acting on their behalf. The Committee observes that the authors of the objection have been nominated to the Workers' delegation, as persons to occupy advisers' posts that may fall vacant in their delegations designated in accordance with article 2, paragraph 3(i), of the Standing Orders of the Conference. The authors of the complaint, therefore, do not have standing to submit the complaint and, as a consequence, it is irreceivable. In addition, the Committee notes that the complaint had not been received by the secretariat of the Committee until 9 June 2005 at 11.25 a.m., which is to say after the expiration of the time delay provided in article 26ter, paragraph 2(a), of the Interim provisions of the Conference Standing Orders concerning verification of credentials.

Complaint concerning the non-payment of the travel and subsistence expenses of the Employers' delegation of Venezuela

77. The Committee had received a complaint submitted by the Employers' group of the Conference submitted on behalf of the Employers' delegate of Venezuela. The complaint stated that only the delegate and adviser of FEDECAMARAS were paid their expenses by the Government. It was recalled that for 50 years FEDECAMARAS had been the most representative employers' organization in Venezuela, which was confirmed by the

Committee in 2004. Three other organizations that sent representatives to the Conference, namely EMPREVEN, CONFAGAN and FEDEINDUSTRIA, cannot be considered as the most representative employers' organizations under the conditions set forth by the ILO. These organizations were included in the Employers' delegation in contravention of article 3, paragraph 5, of the ILO Constitution, as their nomination was done without the agreement of FEDECAMARAS. Consequently, these organizations should not be part of the Employers' delegations to future Conferences. Finally, the complaint requests that the travel and subsistence expenses of all advisers of FEDECAMARAS be covered by the Government.

- 78.** In a written communication addressed to the Committee at its request, Mr. Ruben Darío Molina, Director of the Bureau of International Relations and ILO Liaison Office of the Ministry of Labour, and Government adviser and substitute delegate to the Conference, considered that the complaint was unfounded. The Employers' representatives were treated in the same manner as the Workers' representatives. It is surprising that the latter were silent about the treatment and were able to ensure financing of their representatives through the contributions of their respective organizations, while the Employers' representatives could not arrive at the same result. The employers' organizations agreed during the meeting of 11 May 2005 on the system of financing of their representatives to the Conference. FEDECAMARAS was apportioned, in addition to the expenses for an adviser as had been done for the other organizations, also the expenses for the Employers' delegate. As for the agreement itself, the Government rejected any allegations of pressure exerted on the representative of FEDECAMARAS. The fact that he signed the agreement following consultations by telephone with the President of FEDECAMARAS and that FEDECAMARAS alleged the pressure on its representatives only two weeks later, reflect conflicts internal to the organization. The meeting in question was only one in a series of meetings between the Government and employers' organizations held since November 2004 on labour-related issues. A copy of the 11 May 2005 agreement appended to the Government's submission reflects the Government's undertaking to cover the travel and subsistence expenses for the Employers' delegate as well as one adviser from each organization represented in the delegation.
- 79.** It is not necessary to repeat the Committee's comments reflected in reports from previous years regarding the fact that FEDECAMARAS is the most representative employers' organization in Venezuela (see Credentials Committee, Third Report, *Provisional Record* No. 6D, 2004). The Committee notes that the position of the Government favours again the minority employers' organizations even on the issue of expenses. While article 13, paragraph 2(a), of the ILO Constitution imposes on all governments the obligation to pay the expenses of their tripartite delegations to the Conference, so that the payment of expenses of the Employer's delegate cannot be understood as a favour, the Government's decision to cover expenses of one adviser of each employers' organization included in the delegation clearly favours CONFAGAN and EMPREVEN, and punishes FEDECAMARAS. The Committee expresses its hopes that the relevant Government decisions for future Conferences will give due consideration to the level of representativeness of each organization not only in the distribution of posts within the Employers' delegation, but also on the issue of covering their expenses.

Communication

- 80.** The Committee had received the following communication.

**Communication concerning the Workers'
delegation of Burundi**

81. The Committee had received on 4 June 2005 a communication submitted by the International Confederation of Free Trade Unions (ICFTU), reporting actions of the Government against Mr. Pierre Claver Hajayandi, Secretary-General of the *Confédération des syndicats du Burundi* (COSYBU). Mr. Hajayandi is the author of an objection that the Committee examined in this report (Supra, paragraphs 9 to 12). The Committee takes note of the information contained in the communication submitted by the ICFTU. It considers that the subject of the communication does not call for any action on its part.

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82. The Committee was advised of a certain number of communications sent by electronic mail to the International Labour Office and the secretariat of the Conference. To the extent that these communications do not contain any signatures and, therefore, their authenticity cannot be verified the Committee had decided to neither consider them nor include them in its report.

83. The Credentials Committee adopts this report unanimously. It submits it to the Conference so it may take note of it.

Geneva, 14 June 2005.

(Signed) Mr. Jules Medenou Oni,
Chairperson.

Ms. Lucia Sasso Mazzufferi.

Mr. Ulf Edström.

CONTENTS

	<i>Page</i>
<i>Reports of the Credentials Committee</i>	
Third report	1
Composition of the Conference	1
Objections	1
Complaints	16
Communication.....	19