



## Reports of the Credentials Committee

### Third report

#### Composition of the Conference

1. Since 11 June 2004, when the Committee adopted its second report (*Provisional Record* No. 6C), there have been no significant changes in the composition of the Conference.
2. In addition, the Committee wishes to indicate that 156 Ministers or Vice-Ministers have been accredited (as compared to 151 last year) to the Conference. As of this day there are 4,180 persons accredited to the Conference (as compared to 4,046 last year), of whom 3,696 are registered (as compared to 3,498 last year). The attached list contains more details on the number of delegates and advisers registered for each Member.

#### Objections

3. Since the adoption of its second report, the Committee has considered the following five objections. They appear in the French alphabetical order of the Members concerned.

#### **Objection concerning the nomination of the Employers' delegation of Albania**

4. The Committee has before it an objection submitted by the Employers' group of the Conference concerning the nomination of the Employers' delegation of Albania. The Employers' group alleges that the Government did not appoint the Employers' delegate in conformity with article 3, paragraph 5, of the ILO Constitution, as he had not been nominated in agreement with the most representative employers' organization in Albania, KOP-Council of Employers' Organizations. Instead, the Government appointed a representative of the Business Organization Union (BOPSH), and later, only on the insistence of KOP, did it appoint two KOP representatives as advisers and substitute delegates to the Employers' delegate. These appointments, however, are meaningless since the Government failed to comply with its obligation under article 13, paragraph 2(a), of the ILO Constitution to cover their travel and subsistence expenses. Therefore, the Employers' group requests the Committee to invalidate the credentials of the Employers' delegate of Albania and the Government to fulfil its obligation to pay the expenses of the members of the most representative employers' organization of Albania.
5. In a written communication received in reply to the Committee's request, Mr. Engjell Bejtaj, Minister of Labour and Social Affairs and head of the delegation to the Conference, stated that there were five representative employers' organizations in Albania: the

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Albanian Employers' Confederation (KOP-Council of Employers' Organizations), BOPSH, the Society of Albanian Constructors (SHNSH), the Union of Industrialists and Investors (BI&ISH) and the Council of Albanian Agro-Business (KASH). All were represented in the National Council of Labour, including KOP with four seats, BOPSH with three seats and the other three with one seat each. After a series of consultations with the social partners, the criteria for determining the representative character of the various organizations were defined by a 2003 decision of the Council of Ministers as follows: number of affiliated enterprises, number of workers employed, economic sectors covered and geographic coverage, financial resources allocated to social issues, capacity for negotiation, collective bargaining and conflict resolution and their membership in international organizations. Since early 2004, new employers' organizations have been established at the regional level under the name KOP. Together they formed a Confederation of Regional Councils of Employers' Organizations that was recognized and given legal personality in April 2004 under the short name Konfederata KOP. This organization was headed by Mr. Vladimir Koka.

6. With regard to the composition of the delegation to the Conference, the Government had consulted the most representative employers' organizations, KOP-Council of Employers' Organizations and BOPSH, on the Ministry's premises. In the absence of an agreement among the employers' organizations, the Government considered that, in addition to a representative of BOPSH and of KOP-Council of Employers' Organizations, a member of the new Konfederata KOP should be appointed in the Employers' delegation. Since, due to prior commitments, Ms. Ngjela, the leader of the KOP-Council of Employers' Organizations, was not available to attend the Conference, Mr. Varoshi from the same organization replaced her. The appointment of the BOPSH representative as the Employers' delegate was supported by a majority of employers' organizations. Due to the financial situation of the country, the Government could only cover the expenses of the delegate and one adviser for each of the social partners, i.e. not more than one person from each organization in the case of the Employers' delegation.
7. Notwithstanding the total lack of clarity as to the procedure followed for the nomination of the Employers' delegation to the Conference, the Committee notes that on 7 June the Government modified the credentials of the Employers' delegation to include a representative of KOP-Council of Employers' Organizations as the Employers' delegate, and making the BOPSH representative an adviser and substitute delegate. To the extent that the credentials of the Employers' delegate have been modified as requested by the Employers' group, the objection requires no further action by the Committee. As regards the extent to which the Government has met its obligations under article 13, paragraph 2(a), of the ILO Constitution, it is not clear for which members of the Employers' delegation the Government had paid travel and subsistence expenses. If, as the Government has recognized, KOP-Council of Employers' Organizations is the most representative organization in the country, then the Government has an obligation to at least cover the expenses of the representative of this organization who was nominated as the Employers' delegate. As regards the payment of the expenses of another member of the Employers' delegation, these should be allocated in accordance with the representativeness of the organizations concerned, a matter on which the Committee is not able to reach a conclusion on the basis of the meagre information provided.

***Objection concerning the nomination  
of the Employers' delegate of Burundi***

8. The Committee has before it an objection, submitted by the Employers' group of the Conference, concerning the nomination of the Employers' delegate of Burundi. From its creation in 1964 until April of this year the Employers' Association of Burundi (AEB) was

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the only national employers' organization and currently remains the most representative with 98 members comprising 52.5 per cent of the country's workforce in the private and semi-public sectors. The *Centrale syndicale des employeurs du Burundi* (CESEBU), to which the delegate nominated this year belongs, was created in April 2004. It has only a few members, two of which have left AEB under government pressure. Most of the few employers affiliated with CESEBU are from the public sector. On 14 May 2004, however, the Government issued a decree designating CESEBU as the most representative employers' organization. The Government's intervention in the creation of CESEBU violates the principle of freedom of association that all member States are bound to respect as Members of the ILO. As the nomination of the Employers' delegate of Burundi violates the provisions of article 3, paragraph 5, of the ILO Constitution, the Employers' group requests the invalidation of his credentials.

9. In a written communication addressed to the Committee in reply to its request, Mr. Dismas Nditabiriye, Minister of Labour and Social Security and head of the delegation of Burundi to the Conference, notes that the representatives of both CESEBU and AEB had been designated as Employers' delegates to the Conference by their respective organizations. Until 2004, AEB was the only employers' organization in the country. On 30 April 2004, however, the Minister had received a request for registration from CESEBU, which had been created at a General Constituent Assembly held the previous day. As the request met the formal criteria set out in the Labour Code, the Minister had proceeded to register it the same day. In response to a request from CESEBU on 10 May 2004 to be recognized as the most representative national employers' organization, the Ministry established an ad hoc committee on 12 May to examine the representative character of the two organizations in accordance with the criteria set out in article 15, paragraph L, of the Labour Code, that is, the organization's experience, length of existence, scope and nature of activities, membership and independence. The Labour Code does not provide for any weighting between the different criteria. In its report of 13 May, the ad hoc committee deemed that AEB had been longer in existence, whereas CESEBU covered more territory and a broader range of economic sectors and had a significantly higher membership. According to the membership lists sent to the Ministry of Labour, AEB had 14 members whereas CESEBU had 66 at the time it was created, including six former AEB members. On the basis of these observations, the Ministry of Labour and Social Security issued an Order on 14 May 2004 stating that CESEBU was the most representative employers' organization. If AEB felt that it was harmed by this ruling, it was free to file an appeal against it with the Administrative Chamber of the Supreme Court.
10. Some clarifications requested by the Committee were provided verbally by Mr. Gaspard Nzisabira, executive secretary of AEB and adviser to the Employers' delegate of Burundi, at a meeting held on 10 June. Mr. Nzisabira affirmed that AEB continued to be the most representative employers' organization in Burundi according to the criteria set forth in the Labour Code to determine representativeness. In addition to AEB being the only one of the two organizations to fulfil the criteria of experience and length of existence, it also covers a significantly broader scope of activities on both national and international levels. With respect to membership, AEB has 98 members, including eight which are also on the list of the founding members of CESEBU. The latter, however, have not lost their AEB membership given that they had not notified their departure as required by the organization's statutes. With respect to the last criterion, AEB is also the most independent of the two due to the fact that its own statutes impose a limit on the number of public enterprises allowed to affiliate with it, whereas CESEBU is comprised mainly of state enterprises. AEB had only learned after the fact that the Government had created an ad hoc committee. This committee had knowingly used false membership data. Moreover, no legislation provides for such a committee. AEB does not deny the existence of CESEBU but maintains that its importance is far from justifying the Government's Order

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recognizing it as the most representative organization. Even assuming that the list of members of CESEBU is accurate, it represents no more than 30 per cent of the country's workforce. As a last point, Mr. Nzisabira noted that his inclusion in the delegation was not the result of consultation. Although AEB had sent its nominations to the Conference to the Government in early May, the Government had not made any efforts to approach AEB to consult it. A representative of AEB was in fact only included very late in time and following AEB's appeal to the Vice-President of the Republic.

- 11.** At the Committee's request the Minister of Labour and Social Security and his Counsellor, Ms. Régine Kankindi, provided additional information at a meeting held on 10 June. The Minister affirmed that, given that AEB was no longer the only national employers' organization and that a new legally constituted organization had requested to be recognized as such, he was bound to make a decision in this respect as, in accordance with national legislation, this organization would be the sole employer representative in several national bodies. It was therefore at the request of CESEBU that the Minister had created the ad hoc committee composed of two of his counsellors and two labour inspectors. This committee submitted a report based on objective information that the Ministry had at its disposal concerning the membership, scope of activity and geographic coverage of the two organizations. Thus, CESEBU for example, which continued to grow, had a membership of 71, which represents approximately 80 per cent of the country's workforce. With respect to sectors of activity, according to the list provided by CESEBU, 80 per cent and 20 per cent of its members are from the private and public sectors, respectively, and many of the large enterprises of the country, in particular in the banking sector, are among its members. The information available on AEB, however, is very sketchy, as this organization, which was created before the current legislation concerning employers' and workers' organizations, refused to comply with certain regulations, in particular concerning the provision of information on its membership, despite the repeated requests for such information by the Government. As CESEBU had therefore been recognized as the most representative employers' organization, it was the one the Government had consulted for determining the composition of the delegation to the Conference. As for AEB, the Ministry was already aware of its position, as it had already received its nominations. Although it is true that the time interval between CESEBU's request to be registered and its recognition as the most representative organization was particularly short, this only reflected the Minister's concern with providing a public service in accordance with the expectations of the social partners.
- 12.** The Committee notes forthwith that, irrespective of whether CESEBU may have become the most representative organization in barely two weeks of existence, the Government had attempted to avoid consulting the employers' organization which had been the only employers' organization in the country until May 2004. In fact when, one month before the beginning of the session of the Conference, AEB had approached the Government to submit the names of its representatives to the Conference as it had done for the past 40 years, the Government had waited almost to the last day for submitting the credentials to recognize the other organization. Contrary to the Government's assertions, the credentials issued on 17 May only contained the name of the CESEBU representative, and confirmed that CESEBU was the only organization consulted. Only on 28 May was the name of the AEB representative added to the credentials. Furthermore, the hasty report of the ad hoc committee serving to justify the fact that AEB had not been consulted, lacked credibility and objectivity in so far as the organizations concerned had not been invited to present themselves. Such manoeuvres clearly violated the obligation under article 3, paragraph 5, of the ILO Constitution to determine the composition of the delegation in agreement with the most representative industrial organizations. Moreover they elicit serious doubts as to its respect for the principles of freedom of association, and all the more so as the consequences of the Order of 14 May go beyond the employers' representation at the

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Conference, thus jeopardizing the participation of the representative organizations in other important national tripartite bodies. The Government may no doubt wish to request the Office's expert technical assistance on these issues.

13. The Committee trusts that in the future the Government will fulfil its obligations under the ILO Constitution concerning the nomination of the Employers' delegation to the Conference and will therefore, with this expectation, refrain from recommending further action on the objection this year.

***Objection concerning the nomination  
of the Employers' delegation of Fiji***

14. The Committee has before it an objection, submitted by the Employers' group of the Conference, challenging the nomination of the Employers' delegate of Fiji. The Fiji Employers' Federation (FEF), to which the Employers' delegate appointed by the Government belongs, is the most representative employers' organization in the country. Instead of nominating the representatives designated by FEF itself, the Government nominated an FEF officer of its own choosing as the Employers' delegate. It also nominated a representative from another organization as his adviser without consulting FEF.
15. In a written communication received in reply to the Committee's request, Mr. Kenneth Vincent Zinck, Minister of Labour, Industrial Relations and Productivity and head of the delegation to the Conference, confirmed that FEF was the most representative employers' organization. The Government had appointed the chairperson of the HR Council of FEF as the Employers' delegate after consulting the president of FEF, Mr. Hafiz Khan. The Government, however, had also received a letter from the chief executive of FEF, Mr. Ken Roberts, nominating himself as the Employers' delegate. As for the adviser to the Employers' delegate, he had been appointed as an observer and not an adviser, as the letter of credentials sent to the ILO on 25 May 2004 clearly indicates.
16. In response to a request by the Committee for additional information as to the way in which FEF had communicated the names of its representatives to the Government, the President of the Employers' group indicated that, in a letter of 26 April 2004, the Government had requested the FEF chief executive to communicate the name of its representative to the Conference by 17 May, the deadline for the submission of credentials to the ILO. FEF chief executive, Mr. Roberts, replied on 29 April that he would be the Employers' delegate to the Conference and requested the Ministry to also include the name of FEF president, Mr. Khan, in the delegation as he intended to attend the Conference for a few days. Having been made aware that the Government had appointed Mr. Politini, chair of the FEF Human Resource Council, as the Employers' delegate to the Conference, the FEF vice-president sought clarifications from the Minister in a letter dated 21 May. The letter indicated that the Government had ignored the nomination made by the competent representatives within FEF and requested the Government to correct the matter in order to avoid an objection being lodged with the Credentials Committee.
17. In reply to the Committee's request for additional information, the Government explained that it had not responded to the nomination contained in the letter from FEF's chief executive because, given that it was a self-nomination, it did not appear to be legitimate.
18. The very clear evidence provided at the Committee's request by the author of the objection, together with the Government's explanation, leave no doubt that the Government had purposefully ignored the nomination made by the very same FEF body that it had itself consulted for the purpose of the nomination of the delegation. It is also

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plain that the Government itself decided who would represent FEF, even after having been made aware of the fact that such a decision violated its obligations under 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 Employers' and the Workers' delegates. Had the person appointed by the Government as the Employers' delegate not been a true officer of FEF, the Committee would not have hesitated to propose that his credentials be invalidated. The Committee therefore trusts that in the future the Government will respect the persons freely chosen by the social partners to be their representatives to the Conference.

### **Objection concerning the composition of the Employers' delegation of Venezuela**

19. The Committee has before it an objection, submitted by the Employers' group of the Conference, concerning the composition of the Employers' delegation of Venezuela and the failure to pay its expenses. The Employers' group claims that four Employer advisers nominated by the Government this year come from three employers' organizations, *Federación de Artesanos, Micros, Pequeños y Medianos Industriales* (FEDEINDUSTRIA), *Empresarios por Venezuela* (EMPREVEN) and *Confederación Nacional de Agricultores y Ganaderos* (CONFAGAN), which cannot be considered representative organizations under the terms of the ILO Constitution, thereby reducing the number of advisers that FEDECAMARAS would be entitled to as the most representative employers' organization. In addition to the fact that the three abovementioned organizations are not representative, they are not independent of the Government. In nominating the Employers' delegation the Government demonstrated partiality to these organizations and against independent organizations, as was denounced in the complaint submitted to the Committee on Freedom of Association of the Governing Body of the ILO on 17 March 2003 (Case No. 2254). Therefore, the Employers' group requests the Government to withdraw the representatives of non-representative organizations from the Employers' delegation of Venezuela, and not to nominate the Employers' delegation without consulting the most representative organizations, or exercise interference or partiality in the future. Furthermore, the Employers' group requests the Government to fulfil its obligation, under article 13, paragraph 2(a), of the ILO Constitution, to pay the travel and subsistence expenses of the FEDECAMARAS delegation.
20. In a written communication sent in reply to the Committee's request, Mr. Ruben Dario Molina, Director of the Bureau of International Relations and ILO Liaison Office of the Ministry of Labour, and Government delegate to the Conference, contends that the objection is obviously irreceivable because it is untimely. In accordance with article 26, paragraph 4(a), of the Standing Orders of the Conference, for an objection to be receivable it has to be lodged with the secretariat of the Conference within 72 hours from 10 a.m. of the date of the publication in the official list of delegations of the name and function of the person to whose nomination objection is taken. Where the name of the person is published for the first time in a revised list of the names and functions of delegates, the above time limit is reduced to 48 hours. According to a circular of 18 May 2004 sent by the Office to ILO member States concerning the 92nd Session of the Conference, the first provisional list was published one week before the Conference this year. As the names of the Employers' delegation of Venezuela were published for the first time in the first revised provisional list as a supplement to the *Provisional Record* of 1 June, the time limit for submitting an objection to the credentials of this delegation expired at 10 a.m. on Thursday, 3 June. The objection submitted by the Employers' group, however, was received at 3 p.m. on 3 June, according to a receipt signed by the secretariat of the Committee. As this case concerned the deadline, which by definition could not be extended, the objection should be declared irreceivable.

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- 21.** In reply to the Committee's request for a number of additional clarifications, the Government indicated that for several decades there had been two employers' centres in Venezuela: FEDECAMARAS, an umbrella organization for employers' chambers and organizations of large enterprises of the primary, commercial, services and manufacturing sectors, and FEDEINDUSTRIA, created in 1970 and grouping together small and medium-sized enterprises and industries with a staff of up to 100 workers. Since 2000, two new employers' organizations, EMPREVEN and CONFAGAN, had been created, in particular in the primary and small businesses sectors. Taking into account that the trade union system in Venezuela was not exclusive, either in law or in practice, the Government consulted the four centres by means of letters dated 21 April, in which it invited them to appoint their representatives to the Conference. These letters also indicated how many representatives of each organization would have their expenses covered by the Government: two from FEDECAMARAS and one from each of the other three organizations. The proposal of FEDECAMARAS, dated 27 April, comprised the Employers' delegate and nine advisers; that of FEDEINDUSTRIA, dated 6 May, contained six names; and those of CONFAGAN and EMPREVEN, both dated in April, included five and four names, respectively. In order to coordinate the composition of the delegation among the various employers' organizations, the Ministry of Labour called all of them to a first meeting on 14 May. At this meeting the Vice-Minister of Labour recalled the Government's wish that the centres, in addition to respecting the principle of representativeness, would take into account the pluralism and diversity of the economic actors especially of micro, small and medium-sized enterprises. At a second meeting, also under the auspices of the Ministry of Labour, FEDECAMARAS maintained its proposal of 27 April designating the delegate and nine advisers whereas the other three centres opted for the nomination of the Employers' delegate to be made by consensus and that the posts of adviser be distributed in various ways among all the centres. In the absence of a consensus, the representatives of the four centres requested the Government to make a decision on the basis of the information it had at its disposal and the decisions and principles of the ILO. The Government therefore proceeded to nominate the Employers' delegation, assigning the post of delegate and five adviser posts to FEDECAMARAS, three advisers to FEDEINDUSTRIA, and one adviser each to EMPREVEN and CONFAGAN. In deciding how to distribute the posts, the Government had also taken into account the relevance of the issues being dealt with at the 92nd Session of the Conference to the participation of small enterprises.
- 22.** The Committee first examined whether the objection was receivable. While it is true that its authors had completed the allegations only by 3 p.m. on 3 June, it is also true that they had previously notified the objection in writing. This notification reached the secretariat of the Committee at 9.45 a.m. on 3 June, that is, before the deadline established in paragraph 4(a) of article 26 of the Standing Orders of the Conference. Therefore the Committee unanimously decided to examine it. In accordance with paragraph 5 of article 26 of the Standing Orders, this decision was final.
- 23.** As to the substance of the objection, the Committee notes that there have been no significant changes since the issue of the representativeness of employers' organizations of Venezuela was examined last year. The conclusions that the Committee had reached on this matter therefore remain valid: FEDECAMARAS is by far the most representative employers' organization in Venezuela. As such, for the nomination of the Employers' delegation to be considered to be in conformity with the provisions of article 3, paragraph 5, of the ILO Constitution, it had to have the agreement of FEDECAMARAS. In the absence of such agreement, the Government therefore was aware that, by nominating a few representatives of organizations that were clearly not representative, it would be exposing itself to criticism, all the more so when the reasons once again pointed to interventions favouring these less representative organizations to the detriment of the

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organization that should be the main interlocutor for the employers. In fact, the Government had appointed five persons from FEDECAMARAS as advisers in the delegation but had only covered the expenses of one of them, whereas it had paid for the expenses of three advisers of the employers' centres of the primary sector and that of micro-enterprises which the Government admits it actively promotes. The fact that the Government had decided whose expenses it would cover for participating in the Conference before consulting the organizations raises doubts about its intention to obtain agreement among them. Such acts are comparable to those that have been denounced by both employers' and workers' organizations before the bodies responsible for supervising Venezuela's obligations under international labour Conventions concerning freedom of association.

24. The Committee regrets to have to recall once again that one of the conditions of application of article 3, paragraph 5, of the ILO Constitution is respect for freedom of association. Any kind of government intervention in the creation, working or development of organizations, which is incompatible with the principles of freedom of association deprives the constitutional provision of one of its objectives, namely that government, employers' and workers' representatives shall be in a position to act independently of one another. The Committee therefore hopes that in the future the nomination of the Employers' delegation of Venezuela will no longer raise doubts in this respect.

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

25. The Committee has before it an objection, submitted by the *Confederación de Trabajadores de Venezuela* (CTV) and supported by the International Confederation of Free Trade Unions (ICFTU), challenging the nomination of the Workers' delegation of Venezuela. The objecting organization claims, for the second consecutive year, that the nomination of the Workers' delegation of Venezuela was in flagrant contravention of the ILO Constitution and in clear contradiction with the criteria that had been firmly established in this matter by the Committee last year. Although CTV remains by far the most representative national workers' organization, as it represents more than 68 per cent of organized workers according to the last trade union elections of 2001, the Ministry of Labour has once again used an artifice to prevent CTV from exercising its rights. Under the pretext of endeavouring to achieve a harmonious structure for the Workers' delegation, the Ministry convoked the five national union centres (CTV, CUTV, CODESA, CGT and UNT) to a meeting held on 14 May 2004, at which a system of rotation was proposed. CTV indicated in writing the criteria stated last year by the Committee so that the delegation would be nominated in accordance with the genuine representativeness of each trade union. In order to encourage greater participation of the other union centres, CTV submitted their proposal for the Workers' delegate and four of his/her advisers, leaving it up to the smaller union centres to propose the six remaining advisers. Nevertheless, according to the minutes of a second meeting, the representatives of the other four union centres approved the nomination of a CODESA representative, who represented only 1.14 per cent of organized workers, as the Workers' delegate and three representatives of CTV, two of CUTV, two of UNT and one of CODESA as advisers. CTV expressed its opposition to this decision by means of letters sent to the Minister of Labour, in which the CTV representatives renounced their functions as advisers and requested to be excluded from the Workers' delegation. Therefore, the objecting organization requests the invalidation of the credentials of the Workers' delegation of Venezuela.

26. In a written communication addressed to the Committee at its request, Mr. Ruben Dario Molina, Director of the Bureau of International Relations and ILO Liaison Office of the Ministry of Labour, and Government delegate to the Conference, at first claimed that the

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objection was irreceivable by virtue of article 26, paragraph 4(c), of the Standing Orders of the Conference, on the grounds that it had been submitted by an adviser to the delegate to whose nomination objection was being taken. Furthermore, the author of the objection and secretary-general of the CTV, is not entitled to act on its behalf since, according to its statutes, only the Executive Committee of the CTV has the right to represent it in international forums. However, the author of the objection provided no specific authorization. Therefore the objection should be considered on a strictly individual basis.

27. Concerning the substance of the objection, the Government emphasizes the fact that trade union pluralism exists in Venezuela in so far as, in addition to CTV, there are other trade unions operating in the country, including CODESA, CUTV, CGT and UNT. The reported relative importance of CTV is based on outdated statistics from the trade union elections of 2001. Since then there have been significant changes in the situation of trade unions in the country, that is, UNT was created from the break up of CTV. Taking into account the fact that the results of the 2001 elections are no longer reliable, the Government used other objective criteria to assess the organizations' representativeness, including the number of workers covered by the collective agreements concluded by trade unions affiliated with each union centre and the organizations' capacity for trade union mobilization. According to the first criterion, the figures for 2003 and 2004 in the last statistics of the Ministry of Labour indicate that UNT and CTV represent 77 per cent and 20 per cent of workers, respectively, while the last three, CODESA, CGT and CUTV, represent 0.33 per cent, 0.23 per cent and 0.16 per cent, respectively. As for the second criterion, recent analyses by reputable national media confirm that UNT is the most representative organization. In the absence of other objective criteria and until a trade union referendum is held, as provided for by the regulation of the Organic Labour Act and as was reiterated by the Electoral Chamber of the Supreme Court, clearly CTV may no longer claim to be the most representative organization. In fact, contrary to the 2002 ruling on the representativeness of trade unions at the time, even the Supreme Court recently rejected a similar complaint filed by leaders of CTV.
28. With respect to the consultation process used this year, the Government informed the five union centres with sufficient advance notice of the date and agenda of the 92nd Session of the Conference in a letter dated 21 April 2004 inviting them to appoint their representatives. CTV was the last organization to reply, which it did on 6 May. Based on the replies, the Ministry of Labour consulted the five union centres at a meeting it had called on 14 May 2004. According to the records of the meeting, which was attended by representatives of all the centres, both UNT and CTV claimed the post of Workers' delegate for themselves. As they were not able to come to an agreement, CGT proposed a system of rotation. Subsequently a second meeting was held on 17 May 2004, the deadline for submitting credentials, at which the final composition of the Workers' delegation was determined. At that meeting, in the absence of a CTV representative, all centres except for CTV agreed on a system of rotation and decided on the composition of the delegation as it appears in the credentials submitted by the Government. Therefore the rotation system for the composition of the Workers' delegation was approved by a large majority of the national union centres including UNT, which is the most active and representative organization with respect to collective bargaining. In addition to this being a collective and participatory rotation agreement that had been proposed and accepted by the centres themselves, it is common practice in other Andean countries. These assertions were substantiated by all the trade union centres (CODESA, CGT, CUTV and UNT) comprising the Workers' delegation of Venezuela, except for CTV, in a written communication addressed to the Committee.
29. Lastly, the Government recalled the dispute that arose in May 2002 concerning the legitimacy of the Executive Board of CTV with respect to establishing the composition of

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the Workers' delegation at the 90th International Labour Conference. At that time, the Government had convoked all the confederations of trade unions including all of the CTV factions. The absence of three out of the six factions obliged the Government to appeal to the Supreme Court whose decision was rendered after the opening of the session of the Conference. Ever since, the question of the legitimacy of the Executive Board of CTV has been the continuous object of legal proceedings and has not been resolved as of yet. The Government, however, followed the ILO's recommendations adopted as a result of the complaints submitted to the Committee on Freedom of Association and those of the direct contacts mission, and continued to deal with the author of the objection and the other members of the CTV Executive Board.

- 30.** In reply to the Committee's request for a number of additional clarifications, the Government indicated that, in accordance with national legislation, trade union elections are held every three years. There is no legislation, however, concerning the term of office of the executive boards of trade union federations or confederations, an issue that is regulated by the statutes of each organization. Furthermore, since the 2001 elections in which the National Electoral Council had intervened contrary to general practice, first-level trade unions had begun to hold elections independently from any state entity in 2002. Moreover, under the terms of the Organic Labour Law, every year trade unions have to bring the public registry up to date with respect to number of affiliates and names of elected leaders. Although these regulations, which have been in existence since 1936, have never been followed to the letter, since 2001 the total absence of data provided by the centres, including CTV, made it difficult for the Government to establish statistics, hold consultations and obtain reliable information on the situation of trade unions.
- 31.** With respect to collective agreements, the Government indicated that according to national legislation any legally registered agreement contains information on its finances, the number of workers covered, the duration of validity, etc. Although the statistical data in this respect have usually been incomplete, with the help of UNDP assistance in the operation of a labour market observatory, they have become much more reliable over the past two years and are published on the web site of the Ministry of Labour. For example, the proportion of collective agreements represented by CTV in the public and private sectors declined from 70 per cent in 2002 to 20 per cent in 2003 and the first quarter of 2004. In addition, the Government uses other data, such as information provided on labour issues, participation in consultations and the number of currently registered affiliates, to assess the relative importance of the various centres. This is part of the Government's policy to move from the practice of favouritism, which has been the rule in Venezuela for decades, towards greater pluralism. Thus, for example, the legislative provisions, which limit the appointment of employers and workers to certain tripartite national bodies to the most representative of their respective organizations, are gradually being amended.
- 32.** The Committee wishes to recall that, with respect to the Government's plea that the objection is irreceivable, when an objection is submitted by an adviser of a delegate whose nomination is being challenged but the adviser renounces his nomination and does not register for the Conference, the adviser's name should not be included in the credentials. In such cases, the Committee has always considered the objection to be receivable.
- 33.** With respect to whether the nomination of the Workers' delegation is in conformity with the provisions of article 3, paragraph 5, of the ILO Constitution, the procedure followed this year was seriously deficient both in its evaluation of the representative character of trade union centres and in adapting the consultation process to the objectives the process should be seeking.

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- 34.** To begin with, the Government has not provided reliable data to assess the representativeness of the new workers' organizations in the country, such as the number of collective agreements or their scope of application. In this particular case the Committee notes that, according to the Government, the proportion of collective agreements covered by CTV was approximately 70 per cent in 2002, dropping to 20 per cent in 2003, whereas an organization that did not exist in 2002 had reached 70 per cent of collective agreements in only one year of existence. One of the possible reasons for the drastic changes reported may be that CTV's capacity for negotiation had been limited by the systematic attacks to this centre, which had been denounced to the supervisory bodies of the ILO. As for the other criteria for assessing representativeness put forward by the Government, in the Committee's view they lacked the objectivity necessary to be considered valid. Furthermore, the Committee does not understand why, given that this year the Government used data on union centres' capacity for negotiation, it included in its consultation process three organizations which together represented less than 1 per cent of the workforce with respect to this criterion. Moreover, if the representativeness of UNT in this respect was 70 per cent, UNT could not be expected to accept that organizations with a maximum representativeness of 0.33 per cent have the post of delegate and that even less representative organizations have the same number of advisers as UNT. Be this as it may, although it is for the Government to provide itself with reliable means for assessing this representativeness, the Government should seek agreement among the various centres on the criteria to be used to assess their representativeness instead of unilaterally changing them from year to year. In this respect the Government may avail itself of the technical assistance of the International Labour Office.
- 35.** Several aspects of the consultation process raise questions as to its validity. Firstly, as occurred last year, the consultations were not held sufficiently in advance for the centres to reach an agreement among them. This was especially true if, according to the objecting organization, it was willing to allow the other organizations to have a significant number of advisers. Secondly, the fact that the Government on the one hand defends the validity of the nomination based on the importance of UNT and, on the other hand, affirms that it had left it up to the centres to make their own decision, discredits any plausible purpose for the consultations. Thirdly, for the system of rotation used this year to be considered valid in accordance with the usual practice of the Committee, it had to take into account the opinion of the most representative organizations. This was obviously not the case for the nomination proposed without CTV's agreement.
- 36.** Consequently, 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 had requested last year. This breach continues to be part of the broader context of systematic attacks on the independence of the trade unions, which have been denounced to the Committee on Freedom of Association and the Conference Committee on the Application of Standards. The Committee therefore regrets that it once again has to urge the Government to ensure that in the future the Workers' delegation is appointed according to previously established objective and verifiable criteria in agreement with the most representative national organizations on the one hand, and in a manner which raises no doubts as to workers' ability to act independently of the Government, on the other hand.

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## Complaints

37. Following are the two complaints that were not covered in the Committee's second report.

### ***Complaint concerning the incomplete payment of the travel and subsistence expenses of the Employers' delegation of Peru***

38. The Committee has before it a complaint submitted on 7 June by the Employers' group of the Conference on behalf of the delegate and advisers of the Employers' delegation of Peru concerning the incomplete payment of the travel and subsistence expenses of the Employers' delegation. The complaint alleges that the Government has not complied with two of its obligations under article 13, paragraph 2(a), of the ILO Constitution. On the one hand, the Government had only covered a part of the travel and subsistence expenses of the Employers' delegate and none of the expenses of his advisers. On the other hand, there was a serious and manifest imbalance between the Government and the Employers' delegations. This hinders the good functioning of tripartism in the Conference as it jeopardizes the ability of the employers of Peru to actively participate in the work of the Conference. With reference to the Credentials Committee's report of the last session of the Conference in 2003, the Employers' group urges the Committee not to satisfy itself with the data supplied by the Government in this respect in the credentials submission form, since such information does not always reflect reality, as was also the case for last year's complaint of the Employers' delegate of Peru.

39. In a written communication addressed to the Committee at its request, Mr. Alfredo Villavicencio, Vice-Minister of Labour and Government delegate of Peru to the Conference, recalled the Government's commitment to respect the obligations enshrined in the ILO Constitution. The payment of the expenses of the Employers' delegate, which represented 12 days of attendance with a daily allowance equivalent to that of the other members of the delegation of Peru, had been incomplete only because of the economic crisis in the country, and the payment of the external debt in particular, as well as the Government's efforts to improve the well-being of Peruvian society.

40. Although the reasons advanced by the Government do not contradict its stance limiting the expenses of its delegation to those of the Minister and Vice-Minister of Labour (in addition to those relating to the Permanent Mission in Geneva), according to the data provided by the Government itself it had not covered at least the expenses for the Employers' delegate to follow the work of the Conference from beginning to end. This was incompatible with its obligation, under article 13, paragraph 2(a), of the ILO Constitution to at least cover the expenses of a complete tripartite delegation so as to enable its members to participate in the Conference until the end of its work, as the Committee had already stated in the case of a similar complaint submitted at the 90th Session of the Conference in 2002 (Credentials Committee, Second report, *Provisional Record* 5C). The Committee hopes that the Government will at least abide by this obligation in the future.

### ***Complaint concerning the incomplete payment of the travel and subsistence expenses of the Employers' delegation of Serbia and Montenegro***

41. The Committee has before it a complaint submitted by the Employers' group of the Conference on behalf of the Employers' delegate and advisers of Serbia and Montenegro, alleging a breach of article 13, paragraph 2(a), of the ILO Constitution by the Government. It claims that the Government failed to pay for the travel expenses of the four members of

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the Employers' delegation. Furthermore, it had paid for only one week of accommodation for their delegate and substitute delegate and was not giving them a daily allowance or covering the subsistence expenses of their two advisers. The Employers' group also claims that the Government had not given the employers of Serbia and Montenegro sufficient advance notice of the composition of the delegation for them to prepare for the Conference nor provided the funds needed sufficiently in advance, thereby seriously impairing their effective contribution to the Conference.

42. The Committee understands that, after the objection had been submitted, the Serbian and Montenegrin Employers' Association came to an agreement regarding the payment of the expenses of the Employers' delegation. Therefore the objection requires no further action by the Committee.

## Communication

43. The Committee also received the following communication.

### ***Communication concerning the non-payment of the travel and subsistence expenses of the Workers' delegate of Swaziland to the 88th Session of the Conference***

44. The Committee received, on 7 June, a communication from the Workers' delegate of Swaziland, Mr. Jan J. Sithole, concerning the non-payment of his travel and subsistence expenses to the 88th Session of the Conference (June 2000). Despite the Committee's position in its second report to the 89th Session of the Conference, and in its third report to the 90th Session of the Conference, as well as the Government's commitment to reimburse the expenses incurred by Mr. Sithole to participate in the 88th Session of the Conference, the Government had still not paid any of these expenses.
45. The Committee deplors that the Government has not deemed it necessary to reply to the Committee's invitation to clarify a situation which arose four years ago and has not been resolved as of yet. The situation arose in the context of an objection lodged at the 88th Session of the Conference concerning the nomination of the Workers' delegation of Swaziland to the Conference, in which the Government had refused to appoint as the Workers' delegate the person selected by SFTU, the most representative organization in the country. As stated in the Committee's second report at that session (*Provisional Record* No. 22, paragraph 56) "the Government regretted that the situation could not have been solved by better communication with SFTU and indicated its willingness to rectify the situation: credentials were accordingly presented endorsing the original nomination by SFTU of its Secretary-General, Mr. Jan J. Sithole, as the Workers' delegate to the Conference and confirming that his travel and subsistence expenses would be borne by the Government". The Committee urges the Government to honour its commitment and prove that it has done so.

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46. Two years after it elicited a discussion on possible improvements in the means at its disposal to ensure tripartism, the Committee is pleased with the suggestions made in the Standing Orders Committee (*Provisional Record* No. 16). As it had already pointed out in 2002, these regulations needed to be amended in such a manner as to provide a lasting solution for situations in violation of the constitutional provisions concerning the procedure for nominating delegates to the Conference. That such reforms are essential was

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evidenced once again by two of the cases examined this year. The Committee therefore hopes that the implementation of the new provisions will bear fruit as of next year.

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

Geneva, 15 June 2004.

*(Signed)* Jules Medenou Oni,  
Chairperson.

Lucia Sasso Mazzufferi.

Ulf Edström.



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