Annex 1

INTERNATIONAL LABOUR OFFICE

Governing Body

GB.297/PV
297th Session

Geneva, November 2006

Minutes of the 297th Session

Minutes of the 297th Session

The 297th Session of the Governing Body of the International Labour Office was held in Geneva, from Tuesday, 14 to Thursday, 16 November 2006, under the chairmanship of Mr Membathisi Mdladlana (South Africa).

The list of persons who attended the session of the Governing Body is appended.

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MINUTES OF THE 297TH SESSION OF THE GOVERNING BODY OF THE INTERNATIONAL LABOUR OFFICE

Geneva, Tuesday, 14 to Thursday, 16 November 2006

First item on the agenda

APPROVAL OF THE MINUTES OF THE 296TH SESSION OF THE GOVERNING BODY
(GB.297/1)

1. The Office had received the following corrections:

> At the end of paragraph 37, the following new sentence would be added: "For these reasons he believed that a culture of complete compliance with the law would make matters easier for the Government."

The following new paragraph 69 would be inserted:

> In Case No. 2441, on Indonesia, the Committee urged the Government to cease harassing trade union officials and initiate an independent investigation forthwith. Mr Daud Sukamto, the trade union leader dismissed for advising his members to reject a proposed wage increase as too low, should be reinstated. Section 158(1)(f) of the Manpower Act of 2003 should be reviewed to prevent the term "gross misconduct" from including legitimate trade union activities. The Government should avail itself of ILO technical assistance.

Governing Body decision:

2. ***The Governing Body approved the minutes of its 296th Session, as amended.***

(GB.297/1, paragraph 3.)

Second item on the agenda

PROPOSALS FOR THE AGENDA OF THE 98TH SESSION (2009) OF THE INTERNATIONAL LABOUR CONFERENCE
(GB.297/2)

3. *The Chairperson* stated that the Governing Body had to choose which of the following six proposals would be considered in greater depth at its 298th Session (March 2007):

Developed proposals

(a) employment and social protection in the new demographic context (general discussion based on an integrated approach);

(b) HIV/AIDS and the world of work (standard setting);

(c) gender equality at the heart of decent work (general discussion);

Proposals to be developed

(d) child labour and protection of young workers (follow-up to the conclusions of the Working Party on Policy regarding the Revision of Standards);

(e) decent work in global supply chains; and

(f) the right to information and consultation in the framework of economic restructuring.

4. The Governing Body would also have to choose, from a series of proposals presented to it, the topics that should be developed in more detail with a view to their possible inclusion on the agenda of future sessions of the Conference.

5. *The Employer Vice-Chairperson* stressed that the agenda of the International Labour Conference had to be adjusted to reflect the reality of the world of work. The issues that most interested employers included the creation of enterprises and employment, for young people in particular, social dialogue, freedom of initiative and enterprise, and social protection in the new production and demographic contexts. The international labour standards developed by the ILO in the course of its history covered almost all possible situations and relationships in the world of work. The important thing was therefore not so much to develop new general standards, but rather to ensure that the existing standards were applied more effectively. The process of developing Conventions and Recommendations, and other texts such as resolutions, had to be clearly defined in order to avoid conflicts or overlaps.

6. The Employers' group agreed that items (a) and (c) should be examined further. Regarding item (b), there should be an evaluation of all activities undertaken, with a view to better synchronizing efforts and creating better synergies. He supported item (d), but not item (e) because the control and inspection functions were exclusively a State matter. The topic addressed in item (f) was already being addressed by the Working Party on Policy regarding the Revision of Standards.

7. Referring to the items proposed for future sessions, he said that he was in favour of holding a general discussion on the new trends in the prevention and resolution of industrial disputes, as that was an example of social dialogue. The topic of hours of work in road transport would require technical consultations. With regard to occupational safety and health, it would be useful, before examining the issue in detail, to know the outcome of the related meeting to be held in December 2007.

8. *The Worker Vice-Chairperson* said that it did not make sense for the ILO to stop developing standards on certain issues simply because there were already many international labour standards in general. Such thinking could only be justified in a static society. With reference to item (b), he warned that if the ILO did not adopt an instrument on HIV/AIDS and the world of work, it would lose credibility in the international community for the way in which it examined and tackled so serious a problem, which mainly affected people living in poverty and could potentially affect every human being. It was not enough to adopt measures whose positive outcome depended solely on the goodwill of those implementing them. He asked the Employers to reconsider their position and agree to the development of a Convention or a Recommendation. It was well known that, in the member States, international labour instruments stimulated thought and discussion at the legislative level, which then led to concrete action and the commitment to moving things forward.

9. Secondly, the speaker supported item (c), which the Workers had firmly defended and for which they had obtained the necessary commitments, and which might be the subject of a

Recommendation. He supported item (d), including the issue of night work and the medical examination of young persons, and items (e) and (f). Of the items proposed for future sessions, he was in favour of the one regarding export processing zones.

10. *A Government representative of China*, speaking on behalf of the Governments of the Asia-Pacific group (ASPAG), stated that members of the group would each indicate their individual preferences for the items presented, but that the group as a whole felt disappointed by the proposed topics for standard setting because most of these were revisions or reiterations of other instruments. It was vital for the Conference to modernize obsolete standards through an integrated approach. She was pleased that reference had been made to the work done by the Working Party on Policy regarding the Revision of Standards.

11. She recalled that, on previous occasions, the Asia-Pacific group and other governments had advocated the development of a list of agenda items considered to be priorities within the ILO's strategic framework. A response to this suggestion should be presented to the March 2007 session. The Working Group could also consider possible improvements to the selection process of Conference agenda items.

12. Speaking on behalf of her own Government, she supported, in order of preference, item (a), which tackled a worldwide phenomenon; item (c) because equality between men and women in the workplace was central to the ILO decent work programme; and item (d), with a view to setting more concrete standards, to provide greater protection for young workers.

13. *A Government representative of Canada* stated that her Government was in favour of items (a), (b) and (c). She asked the Office to present further information, at the March 2007 session, on how the matter regarding HIV/AIDS and the world of work could be addressed. The selection of agenda items for the Conference should be undertaken with a more strategic focus and had to be based on the issues that constituents felt were the most urgent, significant and general in scope. The method of considering the issues selected, whether for standard setting or otherwise, should flow from that first decision and not vice versa, even if that meant that there was no standard-setting discussion at a given session of the Conference, or more than one. It was vital to continue consolidating and modernizing standards, as well as developing robust strategies and programmes for optimizing compliance with standards and achieving the objectives established therein.

14. *A Government representative of Sri Lanka* agreed with the statement made on behalf of ASPAG to the effect that the selection of agenda items for the Conference should be based on the ILO's strategic framework and that it was necessary to modernize or revise certain standards. In 2009, consideration should be given to the revision of the standards regarding night work of young persons and adolescents. He also supported item (a), given the socio-economic problems stemming from the ageing of the population, and item (b). Regarding items for the agenda of future sessions, he supported item (f) on the right to information and consultation in the framework of economic restructuring.

15. *A Government representative of Finland* supported items (c), (b) and (a). He agreed with the Worker Vice-Chairperson that globalization should go hand in hand with the necessary assurances with regard to the effects of restructuring and, therefore, believed that item (f) should be considered in 2009.

16. *A Government representative of Poland* stated his Government's preference for item (a), because the ageing of the population was one of the priority issues in his country. He referred to item (b) as a second choice. He was also in favour of item (f) for general discussion and in the framework of the move towards fair globalization and decent work.

17. *A Government representative of South Africa* chose item (b). Analysis of all the activities that had been undertaken with regard to HIV/AIDS and the world of work would enable them to take stock of the situation and recognize the seriousness of the problem. He also chose item (c), because gender discrimination continued to pervade the labour market. With regard to the proposals for future sessions, he supported the proposal relating to new trends in the prevention and resolution of industrial disputes.

18. *A Government representative of the Netherlands*, mindful of the need to respect a more strategic focus in selecting Conference agenda items, supported item (a) in the light of the new challenges arising from the ageing of the population. He expressed concern that a discussion on items (d) and (c) could lead to a weakening of existing standards. He supported item (b) because developing standards on HIV/AIDS and the world of work would consolidate the success of the ILO's action in that field, where collaboration should be maintained with other international organizations.

19. *A Government representative of India* supported items (c), (a) and (b). He proposed the following issues for future sessions: employment, training, skill development and social protection, in countries with a predominantly young population; and labour market flexibility, in developing and transition countries.

20. *A Government representative of the United States* stated that, while his Government would have preferred to address other issues, it supported item (a), because it reflected a current phenomenon, and proposed that item (b) be put to a general discussion. With regard to items (c) and (d), he believed that the ILO was working with success in those fields and did not need to extend its action. He expressed surprise that employment, the central theme of the Organization, did not figure in any of the proposals presented.

21. He proposed three items for future sessions: the role of ministries of labour in employment policy, given the major role played by those bodies in matching supply to demand; employment in new and growing enterprises, taking account of the fact that SMEs created the most jobs but also had the highest job losses; and product market regulation and job creation, because it had been shown that inflexible market regulation could hinder enterprise growth and, therefore, reduce its capacity to create employment.

22. *A Government representative of France* supported item (a), as the issue of ageing populations was almost universal, and item (c), because gender discrimination, although diminishing, was still far from being eradicated. She was not convinced that standard setting was the best way of addressing item (b). If such a course were adopted, the process would have to come within the framework of the policies for combating the HIV/AIDS pandemic adopted by the other international organizations.

23. *A Government representative of Greece* agreed that there should be a more in-depth examination of item (f), because, in a competitive and continually changing market, respect for the right of workers' organizations to receive information and be consulted in respect of economic restructuring was vital in establishing methods of dialogue and negotiation between the social partners.

24. *A Government representative of Brazil* reiterated the support of his Government for item (a) and, with regard to item (b), said that the implications of HIV/AIDS for the world of work would justify the ILO's examination of the issue at the Conference.

25. *A Government representative of Spain* objected to the agenda items for the Conference being chosen almost three years in advance; at least one item ought to be chosen just six months before the session was held. He believed that it would be more appropriate to

consider only certain aspects of the issues, such as, in the case of item (c), gender equality in management posts in the public and private sectors.

26. *A Government representative of Nigeria* supported items (a) and (b), the latter in consideration of the devastation that HIV/AIDS was causing in the younger segments of the working population, and item (c), in the light of the importance for women of participation in economic activity, which was often restricted for cultural or religious reasons. He also supported item (d), because protecting young workers was critical in countries ravaged by military conflicts.

27. *A Government representative of the United Kingdom* was in favour of two items which the Governing Body had already supported in previous sessions, namely, item (a), including labour market policy and skills development, and item (c). With reference to item (b), he reserved judgement on the suitability of adopting a standard on HIV/AIDS and the world of work until more information was provided about what was really needed. Regarding the topics proposed for future sessions, he expressed his preference for item (e), export processing zones and the issue of the safety of machinery.

28. *A Government representative of Romania* supported item (d), because effective abolition of child labour was one of the principles enshrined in the ILO Declaration on Fundamental Principles and Rights at Work. Consideration of item (c) should focus on carrying out awareness-raising campaigns about the rights of female workers and developing certain forms of flexible work to enable workers to reconcile work with family life. He also supported item (b).

29. *A Government representative of Australia* endorsed the statement made on behalf of the Governments of ASPAG about the selection process for Conference agenda items The International Labour Code had lost its relevance, owing, among other things, to the complexity of the standards, the similarity or repetition of many of the issues addressed, the lack of cohesion between the instruments, and the profusion of technical or prescriptive details which in many cases prevented ratification of the Conventions. The revision, simplification and modernization of the existing International Labour Code should take priority over the adoption of new instruments.

30. He expressed preference for item (a) because he believed that the discussion would produce guidelines for developing national policies on the ageing of the population, demographic imbalances and skills shortages. He asked when the Governing Body would choose the third technical item on the agenda of the 2008 session of the Conference, selection of which had been deferred during the discussion which had taken place at the Governing Body's March 2006 session.

31. *A Government representative of Argentina* supported items (e) and (f) because they were both highly topical and referred to matters that called for original and urgent solutions. With regard to the proposals for future sessions, he opted for the new trends in the prevention and resolution of industrial disputes.

32. *A Government representative of Cameroon* preferred item (b), given the need for enterprises and governments in countries affected by the HIV/AIDS pandemic to have a reference framework for action. Additionally, he supported item (d), examination of which should also include youth employment, and item (c).

33. *A Government representative of the Bolivarian Republic of Venezuela* expressed his Government's preference for item (a), with particular emphasis on strengthening measures for enforcing the law, item (b) and item (c). The issue of HIV/AIDS and the world of work should be examined with a view to creating synergies with other international bodies. He

also supported item (f), because it was important to have an in-depth discussion on social dialogue and democratic participation. In the document due to be presented at the March 2007 session, two more items could be added: employment and social protection in SMEs and in micro- and small enterprises, in view of the potential of those enterprises to create employment; and new trends in the prevention and resolution of industrial disputes.

34. *A Government representative of Kenya* supported the following items for general discussion: item (a), because protection systems needed to adapt to new social phenomena; item (c), examination of which would focus on the resolution on the promotion of gender equality, pay equity and maternity protection, adopted by the 92nd Session of the International Labour Conference (2004); and item (f), to strengthen social dialogue in the age of globalization. With regard to the proposals for future sessions, he supported hours of work in road transport, export processing zones, and new trends in the prevention and resolution of industrial disputes.

35. *A Government representative of Germany*, while considering that there was a lack of coherence between the topics proposed, supported item (a), because the matter of demographic change was a matter of international concern; item (b), in view of the ravages of HIV/AIDS in the working population and the high cost of the disease for everybody; and item (e), because trade unions were often sidelined from the global supply chains where corporate social responsibility was lacking.

36. *A Government representative of the Czech Republic* reiterated that his Government was in favour of items (a) and (c). He was not convinced that item (b) was suitable for standard setting. With regard to the proposals for future sessions, he opted for export processing zones, item (e), and the new trends in the prevention and resolution of industrial disputes, the latter item being for general discussion.

37. *A Government representative of El Salvador* supported items (c) and (d).

38. *A representative of the Director-General* explained that the agenda of the International Labour Conference had to be established substantially in advance, particularly when instruments were to be drawn up, so that the Office would have sufficient time to analyse the issues chosen and prepare the corresponding reports.

39. In response to the question from the Government representative of Australia, he said that the selection of the third technical item, which would complete the agenda of the 2008 session of the Conference, would be made at the November 2007 session of the Governing Body, so that account would be taken of the outcome of the general discussion due to be held in June 2007.

40. Summarizing the debate, he pointed out that the shortlist that would have to be submitted at the March 2007 session would be made up of the six items proposed by the Office. No delegate had opposed the inclusion of item (a) on employment and social protection in the new demographic context, or item (b) on HIV/AIDS and the world of work. With regard to the latter, opinions were divided between holding a general discussion or standard setting. Regarding item (c) on gender equality at the heart of decent work, delegates had insisted that it was essential to avoid diluting existing standards. Item (d), on child labour and protection of young workers, would be considered in the light of the work carried out by the Working Party on Policy regarding the Revision of Standards and without interference in the area already covered by two fundamental ILO Conventions. Item (f), on the right to information and consultation in the framework of economic restructuring, had been supported by the Workers but not by the Employers, and the Governments, for their part, had shown only slight interest in the issue; the Office would study the question in greater depth with a view to making the intended objective clearer.

Item (e) on decent work in global supply chains had been supported by the Workers but not by the Employers, and no more than three governments had commented on it.

41. Lastly, he summarized the proposals for the agenda of future sessions of the Conference which had been supported: assessment of the questions relating to occupational safety and health, new trends in the prevention and resolution of industrial disputes, export processing zones, and hours of work. Three Government representatives had made proposals in relation to the flexibility of the labour market. The Governing Body could examine those proposals in a document that would be presented in November 2007, as part of the preparations for the 2010 session of the Conference.

42. *The Worker Vice-Chairperson*, referring specifically to item (b) on HIV/AIDS and the world of work, which had initially been proposed for standard setting, urged delegates not to go back on the decisions that had been taken and asked his counterparts in particular not to oppose a standard-setting discussion. With regard to the new ideas that had been put on the table, their real relevance to the world of work should be examined at length.

43. *The Employer Vice-Chairperson* was pleased that the new ideas that had been expressed were being taken into account, including labour market flexibility, safety and health, social dialogue and the freedom of enterprise, and the resolution of labour disputes. With regard to item (b), he stressed that it was an extremely worrying issue and merited a general discussion with a view to making the most of the synergies that had been created, but it should not result in standard setting.

Governing Body decision:

44. ***With a view to drawing up the agenda of the 98th Session (2009) of the International Labour Conference, the Governing Body requested the Office to prepare for the 298th Session (March 2007) of the Governing Body a document on the following issues:***

(a) employment and social protection in the new demographic context (general discussion based on an integrated approach);

(b) HIV/AIDS and the world of work;

(c) gender equality at the heart of decent work (general discussion);

(d) child labour and protection of young workers (follow-up to the conclusions of the Working Party on Policy regarding the Revision of Standards);

(e) decent work in global supply chains; and

(f) the right to information and consultation in the framework of economic restructuring.

(GB.297/2, paragraph 15.)

Third item on the agenda

FOLLOW-UP TO RESOLUTIONS ADOPTED BY THE 95TH SESSION (2006) OF THE INTERNATIONAL LABOUR CONFERENCE

Resolution concerning the employment relationship
(GB.297/3)

45. *The Employer Vice-Chairperson* explained that his group could not support the entire point for decision, which contained elements that were not universally applicable in all circumstances. The group agreed to subparagraph (a) in respect of the distribution of the resolution, but not the other parts of the decision point. He recalled that the Employers' group had been against the adoption of the resolution and that it maintained its objections; however, the group was open to dialogue and analysis of certain aspects of the text.

46. *The Worker Vice-Chairperson* supported the point for decision and stated that the Employment Relationship Recommendation, 2006 (No. 198), had already made it possible to set out guidelines in many developing countries. The Workers wanted the Office to take the appropriate measures in the programme and budget for the next biennial period, and felt it was necessary to bring together a range of information that would enable the Office to promote good practice in respect of employment relationships.

47. *A Government representative of the United States* was in favour of subparagraphs (a) and (c) of the decision point; however, his Government could not support subparagraph (b), as the work involved in establishing a law and practice report was considerable, and was more appropriate in the case of a Convention than in that of a Recommendation. Regarding subparagraph (d), which related to the use of budgetary resources, the speaker considered that other Conventions, that he judged more important, should be given priority.

48. *A Government representative of Spain* considered that it was essential to define the employment relationship and regretted that a tripartite agreement on such an important question had proved impossible.

49. *A Government representative of Nigeria* stressed the importance of the resolution adopted by the Conference in the face of new, more flexible forms of employment relationships, which left an increasing number of workers without protection. He was in favour of the decision point.

50. *A Government representative of the Netherlands* considered that the resolution adopted was of great importance not only for workers, but also for governments, which required guidance. It was therefore essential that the resolution be applied effectively, and unreservedly. The Government of the Netherlands supported the point for decision.

51. *A representative of the Director-General* recalled that it was the follow-up to be given to a decision taken by the Conference that was under consideration, stressing that the Office needed a clear decision by the Governing Body on steps to be taken.

52. *The Employer Vice-Chairperson* stated that, in respect of subparagraph (b), his group had no objection regarding the first part of the text concerning the provision of information, but that it opposed the second part beginning with the words "and the extent to which".

53. *The Worker Vice-Chairperson* considered that this objection was in line with the position taken by the Employers in June, but noted that the Conference had gone further, and that this explained subparagraph (b).

54. *A Government representative of the United States* supported the Employers' group and opposed the adoption of subparagraph (b).

55. *The Employer Vice-Chairperson* recalled that 21 countries and his group had voted against the Recommendation, which raised unavoidable legal questions.

56. *The Worker Vice-Chairperson* asked whether opposition to this point by the Governing Body did not call a decision of the Conference into question, and consequently that organ's primacy.

57. *Government representatives of Brazil, Finland and the Netherlands* supported subparagraph (b).

58. *The Legal Adviser* explained that, in the *Compendium of rules applicable to the Governing Body of the International Labour Office*, consensus was characterized by the absence of any objection presented by a Governing Body member as an impediment to the adoption of the decision in question, and that it was for the Chairperson, in agreement with the Vice-Chairpersons, to note the existence of a consensus. She also drew attention to article 19.6 of the Constitution of the ILO, under which a Recommendation adopted by the Conference would be communicated to all members for their consideration with a view to effect being given to it by national legislation or otherwise. The resolution was a decision of the Conference, which was the supreme body of the Organization. The substance of the resolution was not in question and, of course, the Governing Body was free to determine ways in which the resolution might be implemented.

59. *A Government representative of the United States*, in a spirit of consensus, accepted the Office's recommendations, but asked for the concerns expressed to be recorded.

60. *A Government representative of the Bolivarian Republic of Venezuela* stated that the text was in no way problematic for his Government.

61. *The Employer Vice-Chairperson* said that constitutional obligations were not being called into question. In the present case, the Governing Body was simply invited to consider measures it could accept or refuse.

62. *The Worker Vice-Chairperson* said that he considered it important to know what follow-up was to be given to the provisions of the Recommendation, if the Conference's decision was to remain meaningful.

63. *The Legal Adviser* again referred to article 19 of the Constitution, under which Members reported to the Director-General of the International Labour Office at appropriate intervals, as requested by the Governing Body, the position of the law and practice in their countries in regard to the matters referred to in the Recommendation, showing the extent to which effect had been given, or was proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it had been found or might be found necessary to make in adopting or applying them.

64. *A Government representative of Finland* stated that, in the light of the intervention by the Legal Adviser, there was no choice but to adopt subparagraph (b), which reproduced the terms of article 19 and therefore represented a constitutional obligation.

65. *A Government representative of Spain* considered that the Employers' position was coherent, but called on them to take account of the governments that had supported subparagraph (b). He stressed that, in removing this subparagraph, the Governing Body

would be contradicting a decision of the supreme body of the Organization: the Conference.

66. *The Employer Vice-Chairperson* indicated that, while his group was not enthusiastic about the adoption of this subparagraph, it would naturally respect the decisions of the Conference.

67. *A Government representative of the United States* indicated that in a spirit of cooperation he would not oppose subparagraph (d), though he could not support it.

68. *The Worker Vice-Chairperson* called on the Director-General to seek and accept all types of funding to provide follow-up to the Recommendation.

Governing Body decision:

69. ***The Governing Body requested the Director-General:***

(a) to circulate the text of the resolution in the usual way to the governments of member States and, through them, to the national employers' and workers' organizations;

(b) in accordance with article 19, paragraph 6, of the ILO Constitution, to request the governments and social partners concerned to provide information to the Office on the current position of law and practice in their countries with regard to the employment relationship and the extent to which effect has been given, or is proposed to be given, to the provisions of the Employment Relationship Recommendation, 2006 (No. 198);

(c) to take the resolution into account when preparing the Programme and Budget proposals for 2008–09.

(GB.297/3, paragraph 7, as amended.)

Resolution concerning asbestos
(GB.297/3/1)

70. *The Chairperson* indicated that the Employer and Worker Vice-Chairpersons had agreed on a proposed amendment, which consisted of adding the following sentence at the end of the point for decision in paragraph 3:

> Taking into account that the ratification of Conventions, including the Asbestos Convention, 1986 (No. 162), and the Occupational Cancer Convention, 1974 (No. 139), gives rise to treaty obligations.

71. *The Worker Vice-Chairperson* confirmed his agreement with this proposal. He added that it was important that the Organization should set an example and address the question of asbestos in the ILO headquarters building.

72. *The Employer Vice-Chairperson* recalled that the Employers had already expressed their concern in respect of the contradiction between the resolution and the Asbestos Convention, 1986 (No. 162). The group supported the decision point as amended.

73. *A Government representative of France* was in favour of the decision point. She considered that the implementation of this resolution should be a primary objective of the ILO and its

constituents, so as to obtain a general prohibition of the use of asbestos throughout the world.

74. *A Government representative of Nigeria* supported the point for decision and called on the Office to supply technical assistance to member States, that requested it, to give effect to the resolution in their countries.

75. *A Government representative of Canada* recalled that, as he had already stated in June, his country could not support the resolution. The Conference Committee had not been technically prepared to discuss the issue, and this type of approach could only harm the credibility of the Organization and the resolutions it adopted. The ILO should give precedence to promoting the Asbestos Convention, 1986 (No. 162), among its member States.

76. *A representative of the Director-General* stressed that the ILO paid close attention to the question of asbestos and that the Advisory Committee on Occupational Safety and Health would shortly be addressing the issue.

Governing Body decision:

77. ***The Governing Body requested the Director-General to circulate the text of the resolution in the usual way to the governments of member States and, through them, to the national employers' and workers' organizations, and to take appropriate action to give effect to the resolution on asbestos, taking into account that the ratification of Conventions, including the Asbestos Convention, 1986 (No. 162), and the Occupational Cancer Convention, 1974 (No. 139), gives rise to treaty obligations.***

(GB.297/3/1, paragraph 3, as amended.)

Fourth item on the agenda

REPORT OF THE CHAIRPERSON OF THE WORKING GROUP ON THE INTERNATIONAL LABOUR CONFERENCE
(GB.297/4)

78. *The Chairperson of the Working Group* thanked the 24 members of the Working Group for their hard work during formal and informal meetings, as well as the representatives of the Office for their valuable assistance in allowing consensus to be achieved. He gave a brief presentation of the report and drew the attention of members to Appendix I, which contained practical proposals to be applied as of the June 2007 session of the Conference.

Governing Body decision:

79. ***The Governing Body:***

(a) recommended the proposals put forward in document GB.297/4 to the 96th Session (2007) of the International Labour Conference for application on a trial basis within the framework of the ILO Constitution;

(b) decided that the mandate of the Working Group should be renewed to permit it to undertake, during the 298th Session (March 2007) of the Governing Body, a review of the planning of the 2007 session of the Conference,

followed by a review in November 2007 of the outcome of the practical application of the proposals during that 2007 session of the Conference, and to report on these matters to the 300th Session (November 2007) of the Governing Body;

(c) decided that the preliminary constituent group meetings to be held on the day before the opening Conference plenary should be official preparatory Conference meetings requiring the attendance of tripartite delegations, whose credentials had been received on time; and

(d) requested the Office to advise member States, at the earliest opportunity as well as in the letter of convocation to the 2007 session of the Conference, of the modified programme format for that session.

(GB.297/4, paragraph 8.)

Fifth item on the agenda

REPORT AND CONCLUSIONS OF THE 16TH AMERICAN REGIONAL MEETING
(BRASILIA, 2–5 MAY 2006)
(GB.297/5)

80. *The Regional Director for the Americas* introduced the report, and praised the Government of Brazil for its firm support in hosting the Meeting, thereby contributing greatly to its success. The 16th American Regional Meeting had been preceded by a number of other events and summits, which had recognized decent work as a regional and global objective. Thus, the Regional Employment Conference of the Common Market of the Southern Cone (MERCOSUR) and the Andean Community (2004); the Tripartite Subregional Employment Forum for Central America, the Dominican Republic and Panama (2005); the Ibero-American Summits held in Santa Cruz, San José in Costa Rica and Salamanca; the Third European, Latin American and Caribbean Summit; the Fourteenth Inter-American Conference of Labour Ministers; and the Summit of the Americas held in Mar de Plata in 2005, had all referred to decent work as a tool for overcoming poverty. As a consequence, it was considered necessary to include decent work generation in the development strategies of the countries of the region. The Meeting had also been preceded by a series of tripartite consultations seeking out policies to generate more and better work, enhance competitiveness and productivity, while maintaining respect for labour rights and social dialogue. These consultations formed the basis of the Report the Director-General had presented to the Meeting: *Decent work in the Americas: An agenda for 2006–15*.

81. The report provided an agenda with objectives and concrete goals to achieve these objectives, but left individual countries to decide whether to increase these goals and to determine the combination of policies most adapted to national circumstances. The Meeting's conclusions initiated a decent work decade in the Americas. Special attention should be paid to the joint declaration by the International Organisation of Employers (IOE), the Inter-American Federation of Workers (ICFTU-ORIT) and the Latin American Central of Workers (CLAT), calling on governments to take action to eliminate child labour, especially in its worst forms, in the Americas. The Regional Office and the team of Regional Directors in the region were working to ensure implementation of the conclusions of the Meeting, and were pleased to report that the Council of Ministers of Labour of Central America, the Dominican Republic and Panama had, in October 2006, decided to implement the Subregional Decent Work Programme. In the same month, the Caribbean Employment Forum had approved a plan of action to promote decent work in

the subregion, which was communicated to the Heads of State and Government of the Caribbean Community (CARICOM). The Forum had proved an excellent exercise in every way.

82. *The Employer Vice-Chairperson* praised the quality of the consultations prior to the Meeting. They had permitted a real exchange of ideas and analyses, and the Employers' group had felt that they had genuinely participated in the preparation of the report. However, the group regretted that the Caribbean countries, despite the efforts made, were insufficiently represented at the Meeting. It was also regrettable that a representative from the Bolivarian Republic of Venezuela, the President of the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS), had had difficulty in obtaining a visa, or in leaving her country, and this had prevented her from attending. The Government representative of the country should note that a person representing the business world at this level must have freedom of movement. There had been a technical problem in respect of the list of participants, which had been the official list submitted by the governments, and did not take account of all the additions and modifications made during the Meeting. The list should be the true reflection of those present. The Employers' group accorded great importance to the joint statement issued by the IOE, ICFTU/ORIT and CLAT on eliminating the worst forms of child labour in the Americas. The exploitation of children was a grave violation of human rights and of the principles of social justice. Much remained to be done in this area and concrete action should be taken forthwith. The statement was a bipartite document, but called for the full involvement of governments and of the ILO.

83. *An Employer member from Brazil* stated that the Brazilian employers were proud to have hosted the American Regional Meeting in their country's capital city. The climate of frank and open dialogue was translated into the conclusions of the Meeting, which constituted a positive response to the Director-General's Report. The role of the ILO in following up and promoting the agenda would be critical.

84. The Employers reaffirmed their support for decent work, but stressed that the means of attaining this goal must be established by each country, according to its circumstances and possibilities. The first challenge facing the region was to create sustainable, productive employment, particularly in Latin America and the Caribbean. This called for improvements in the institutions and in the economic and social infrastructure. To generate wealth and distribute it equitably, so as to build social cohesion and sustainable development, greater regional integration and competitiveness at the global level were required. However, it should be noted that, in many countries of the region, elections were taking place against a background of frustration at the quality of life and the absence of work opportunities. This scenario appeared to favour the rise of leaders spouting ideology of sorts and proposing populist measures, rather than attacking the true roots of the problems, and could only worsen conditions for generating decent work. Government policies should recognize the essential role of enterprises in creating and maintaining employment. They should encourage the creation of enterprises and the development of business, through trade regulations which insisted on equity and legal certainty, to stimulate entrepreneurship and attract investment. The group reaffirmed the need for respect of property rights, for employers and workers alike; they also stressed that enterprises should be free to operate in accordance with the modern concept of corporate governance based on solidarity, as promoted by the IOE.

85. The joint IOE, ICFTU/ORIT and CLAT statement was of great significance, as the Employers accorded the highest priority to the eradication of child labour, particularly its worst forms. The speaker noted with regret that the Credentials Committee had two complaints of non-payment of travel and subsistence expenses of an Employers' delegate from Guatemala, and an Employers' adviser from the Bolivarian Republic of Venezuela,

both of which countries were members of the Governing Body. He deplored the fact that Ms Alabis Muñoz, former President of FEDECAMARAS, the most representative employers' association of the Bolivarian Republic of Venezuela, had been prevented from travelling to Brazil, although she had correctly applied for, and obtained on 26 April 2006, the requisite authorization, which she had transmitted the same day to the Ministry of Justice and of the Interior, as required. In closing, he thanked two departing ILO officials, Mr Daniel Martínez and Mr Ignacio Espinosa, for the great contribution they had made to improving social conditions within the region.

86. *A Worker member from Brazil* stated that Brazilian workers were proud that the Regional Meeting had been hosted by their country. She was concerned that the Meeting had been held only a month before the 95th Session of the International Labour Conference, thereby rendering participation difficult for Workers, as for Employers. The division of the sittings into panels had facilitated interactive participation, and was a more favourable format than that of previous Meetings. By putting democratic governance, freedom of association and the rule of law at the centre of the *Agenda for the Hemisphere 2006–15*, the Director-General had laid the foundations of a route out of poverty through the generation of decent work. The themes of employment, dialogue and social inclusion should be placed on the agenda of the regional integration process. The speaker joined the previous speakers in highlighting the importance of the joint IOE/ICFTU/ORIT statement concerning the eradication of child labour, and pointed out that the Global Report showed how the Americas had made progress in the domain. Of the 35 countries of the region, 25 had ratified both the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). The United States and Mexico, two of the largest countries of the region, had not yet ratified Convention No. 138. The region had made considerable advances in the elimination of child labour, which had fallen by two-thirds, so that only 5 per cent of children now entered the world of work. Most countries had adopted policies and strategies to eradicate the phenomenon. In Brazil, child labour for the 10–17 year age group had fallen by 36.4 per cent, while for the 5–9 year age group, there had been a fall of 60.9 per cent. Much credit for this could go to a national forum established for the prevention of child labour, together with education policies under the banner of "Every child at school". The trade unions and employers of Brazil had acted to eradicate child labour, and the national programme for the eradication of child labour had taken 1 million children out of work. This progress had doubtless been brought about by political changes in various countries and by the consolidation of democratic practices such as dialogue between the social actors. The workers should be included in the implementation of the Decent Work Country Programmes (DWCPs). In closing, the speaker regretted the small percentage of women participating in the Regional Meeting. This number had fallen from 18.8 per cent in 2004 to 8.6 per cent in 2006.

87. *A Government representative of Mexico*, speaking on behalf of the Governments of Latin American and Caribbean States (GRULAC), thanked the ILO Regional Office for the Americas, ILO Geneva headquarters, and the Government of Brazil for organizing an event that had allowed discussion on the promotion of decent work in the Americas. The proposed *Agenda for the Hemisphere 2006–15* had been well received, and the Report had prompted a wide-ranging debate. GRULAC supported the Director-General's analysis of the situation in the region, and reaffirmed its commitment to taking up the challenges listed, by promoting economic growth and social inclusion, and by implementing fundamental principles and rights at work. However, GRULAC believed that while internal efforts made by countries to attain these goals were important, a favourable international context was also needed.

88. The proposed *Agenda* was an important initiative. In particular, the DWCPs provided a tool to promote sustainable economic and social development. This required concerted action between governments and the social actors in drawing up and implementing policies and

programmes. The Global Report on the Elimination of Child Labour had been launched on 4 May 2006 in Brasilia. GRULAC recognized the progress made, as shown in the Report, and again stressed its commitment to eradicating the worst forms of child labour. It therefore took note with interest of the joint IOE, ICFTU/ORIT and CLAT statement; it also stressed the recent South-South cooperation that had taken place in this field, and urged the ILO to follow these initiatives closely.

89. GRULAC welcomed the launching of a Decent Work Decade for the Americas. The countries of the region should design and apply national public policies that incorporated social dialogue, attracted national and foreign investment, and promoted the economic growth needed to generate decent work. Of special importance were the Report's suggestions for policies to create more and better jobs; those related to the fundamental principles and rights at work; and the international labour standards ratified by individual countries. The discussions held at the Meeting showed a considerable degree of agreement between countries in respect of the efforts required to promote decent work in the Americas.

90. Speaking on behalf of the Government of Mexico, she informed the Governing Body that the Secretary of Labour and Social Security of Mexico, as President *pro tempore* of the Fourteenth Inter-American Conference of Ministers of Labour of the Organization of American States, held in Mexico in September 2005, had recognized that the biggest challenges in the region were the eradication of poverty, the reduction of inequality and the promotion of social inclusion. The Secretary had emphasized that employment was central to policies that stimulated investment, growth with equity and social inclusion. That Conference had clearly confirmed that any migrant, irrespective of their migratory condition, should enjoy full protection of his or her labour rights as part of the reinforcement of the human dimension of globalization in the hemisphere. In this connection, the speaker highlighted the common ground shared between the Director-General's Report, the Mexico Declaration and the new labour culture being developed in Mexico, which involved placing greater weight on the human element, on democratic governance, the rule of law and on social dialogue.

91. *A Government representative of Argentina* endorsed the GRULAC statement, and thanked the Government and the social partners of Brazil for the smooth organization of the Meeting. The Director-General's Report was excellent, and presented several valuable innovations; it had contributed greatly to the success of the event. The Government of Argentina attached great value to the conclusions of the Meeting and was pleased to hear from the Regional Director of the follow-up already being implemented on the basis of the conclusions. Argentina was committed to undertaking the necessary action at national level, and would participate in regional and subregional processes as well.

92. *A Government representative of the Bolivarian Republic of Venezuela* endorsed the statement made on behalf of GRULAC. With reference to the comments made by the Employers' group, the speaker stressed the need for wide representation of the different social actors at the Meeting. The choice of representation should not be exclusive. The delegation of the Bolivarian Republic of Venezuela had included employers from organizations representing the small and medium-sized enterprise (SME) sector. These organizations had existed in the country for more than 30 years. The importance of SMEs in the world of work was clear, and had been much discussed in the ILO, and during the present session of the Governing Body by the Committee on Employment and Social Policy in particular. The 2002 resolution concerning tripartism and social dialogue called for a "meaningful consultative process in labour reforms, including dealing with core Conventions and other work-related legislation", and for "in-depth studies of social dialogue", as well as examining means to render international standards more flexible in order to facilitate the full participation of these sectors, fundamental to the generation of

decent work. The tripartite work and efforts of the ILO would be a dead letter if the representatives of SMEs were not present at regional and other meetings. The importance of the sector, which was fundamental to development in countries of the region, was acknowledged in paragraph 7 of the Meeting's conclusions. As regards the regrettable absence of Ms Muñoz, former President of FEDECAMARAS, the Government had been in no way responsible. The principle of the separation of powers was rigorously upheld in the Bolivarian Republic of Venezuela. This issue concerning Ms Muñoz was currently being examined by the judiciary, and it would appear that the unfortunate incident was the result of that organ failing to supply sufficient information to the emigration authorities. It should however be noted that Ms Muñoz was present at the International Labour Conference in June 2006, three weeks after the Regional Meeting. In closing, the speaker drew attention to paragraphs 24–26 of the report of the Credentials Committee, which referred to this question.

93. *A Government representative of Spain* said that his Government's observer delegation had been led by the Deputy Minister of Labour and Social Affairs, Ms Aurora Domínguez. He thanked the Brazilian authorities and the ILO Regional Office for their meticulous organization and hospitality, and reaffirmed his Government's commitment to the region.

94. *The Employer Vice-Chairperson* drew the attention of the Government representative of the Bolivarian Republic of Venezuela to article 3, paragraph 5, of the ILO Constitution, which established that delegations to the Conference, and to ILO Regional Meetings, should nominate non-government delegates and advisers chosen in agreement with the industrial organizations most representative of the employers and workers of the country. FEDECAMARAS was one of the oldest organizations belonging to the IOE, and its representative status had been verified by the ILO supervisory bodies, and by the Credentials Committee in particular. The Employers' group did not oppose other sectors being represented on delegations, but insisted on the right of FEDECAMARAS to participate in the Conference and in Regional Meetings.

Governing Body decision:

95. ***The Governing Body requested the Director-General:***

(a) to draw to the attention of the governments of member States in the Americas and, through them, to the attention of national organizations of employers and workers, the conclusions adopted by the Meeting;

(b) to take these conclusions into consideration when implementing current programmes and in developing future programme and budget proposals; and

(c) to transmit the text of the conclusions:

(i) to the governments of all member States and, through them, to national organizations of employers and workers; and

(ii) to interested international organizations, including international non-governmental organizations with consultative status.

(GB.297/5, paragraph 163.)

Sixth item on the agenda

REPORT AND CONCLUSIONS OF THE 14TH ASIAN REGIONAL MEETING
(BUSAN, 29 AUGUST–1 SEPTEMBER 2006)
(GB.297/6)

96. *The ILO Regional Director for Asia and the Pacific* warmly thanked the tripartite constituents of the Republic of Korea and the municipal government administration of Busan for their support of the Meeting and the hospitality extended to delegates and to ILO staff. The Meeting had adopted concrete, pragmatic and forward-looking conclusions. The Meeting considered that the Decent Work Agenda could contribute to a sustainable route out of poverty, to addressing growing economic inequality within and between countries of the region, and to the attainment of the Millennium Development Goals. The constituents in the region had pledged to continue to provide global leadership in making decent work a central objective of relevant national, regional and international policies, as well as national development strategies, and had welcomed the initiation of an Asian Decent Work Decade up to 2015. National action plans were built around tangible outcomes and practical measures for the implementation of time-bound policies and programmes. Participants placed great emphasis on the need to promote tripartism, social dialogue and capacity building, as mentioned in paragraph 9 of the conclusions. Stress was also laid on extending regional cooperation, a call which had been made at the opening ceremony by President Roh of the Republic of Korea, as well as by Prime Ministers Wickremanayaka of Sri Lanka and Bakhit of Jordan. The Office would need to develop its programme, including the DWCPs, to support the commitments undertaken by the constituents following this highly successful Meeting.

97. *An Employer member from Japan* agreed that the 14th Asian Regional Meeting had been very rich in substance and had set the scene for an Asian Decent Work Decade. The opening remarks made by the visiting dignitaries, and by the Director-General were all future oriented. The subjects dealt with in the parallel sessions had been very pertinent to the current situation in the region, and the Employers felt that they had fully contributed to the conclusions of the Meeting. The subject of the special session of labour ministers was an issue of great importance to the region, that of *developing workers' skills for decent jobs in a globalization context*; a panel session of regional and international organizations with IOE and ICFTU participation had also been very informative. The conclusions provided a clear plan of action and had the Employers' full backing. The group thanked the Government of the Republic of Korea and its social partners for their efficient organization and hospitality.

98. *A Worker member from Pakistan* thanked the Government of the Republic of Korea and its social partners for the role they had played in the organization of the Meeting. The Asia-Pacific region contained more than half the world's population, and a great effort was required to make up the decent work deficit, since the region also had the largest segment of poor in the world, who worked mostly in the informal and rural sectors, with a very high level of youth unemployment. Despite a high rate of development and economic growth since 1995, poverty and social exclusion had not decreased. The Workers' group stressed the need for regional cooperation to make decent work a reality, as outlined in paragraphs 4–10 of the conclusions, the promotion of national action, highlighted in paragraphs 11–13, the regional initiatives and partnerships in paragraphs 14 and 15 and the proposals for ILO action in paragraphs 16–18; they strongly supported the initiation of the Asian Decent Work Decade, set out in paragraphs 19 and 20. The group called for the promotion and ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), as only 17 out of 40 member States from the region had ratified this instrument. The problems faced by migrant workers should be dealt with through greater cooperation between countries, and a multilateral framework should be put

in place. The ILO, through its Regional Office, should use the DWCPs to strengthen the role of the social partners, and reinforce social dialogue. Regional Meetings should be held regularly, at four yearly intervals, to help the region to close the gap between the life of its workers and that of those in more developed countries. The Workers' group supported the reaffirmation of the conclusions of the 95th Session of the International Labour Conference in respect of Myanmar, and appreciated the work done by the Organization for countries struck by natural disasters, including the recent tsunami and the earthquake which had hit Pakistan. It also welcomed the Director-General's assurance that the ILO would continue to work in the occupied Arab territories, as in other war-torn areas.

99. *A Worker member from France* stated that the Workers' group was not divided into sectors, and that a member from Europe was legitimately concerned at what was happening in another region of the world. Accordingly, he noted that ratifications of ILO Conventions were less numerous in the Asia-Pacific region, and that the conclusions of the Meeting referred to this in paragraphs 12 and 16, which called for the promotion and ratification of ILO instruments. As the conclusions had been adopted unanimously, it was to be supposed that all who participated at the Meeting would therefore support the ratification and promotion of ILO Conventions. The speaker had noted with interest that China had ratified, on 12 January 2006, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). He called on China, the most populous country in the world, with the highest current annual growth rate, now to proceed to ratify the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

100. *A Government representative of China*, speaking on behalf of ASPAG, commended both the Office and the Government of the Republic of Korea for having organized the Meeting, which had revealed a common will to achieve decent work throughout the region. The group noted and endorsed the outline for national action in the conclusions and the commitment to implementation of measures in accordance with national circumstances and priorities. Greater cooperation within the region was required to implement the Asian Decent Work Decade. The Office should fully utilize the Regional Office for Asia and the Pacific as an operational centre, and should mobilize available resources to assist governments and social partners in the region. Its work should be accomplished after full consultation with the constituents. The Meeting showed the way forward for future Regional Meetings.

101. *A Government representative of the Republic of Korea* thanked the delegates from all member States and the Office for their support and cooperation in making the Meeting successful. The Republic of Korea had benefited from the discussions, which enabled it to reflect on the challenges faced by many countries in dealing with globalization, and to identify priorities and policies needed to realize decent work in the region. The country would continue to cooperate with the other member States from the region and with the ILO.

102. *A Government representative of Sri Lanka* thanked the Government of the Republic of Korea for having hosted the Meeting. At the 13th Asian Regional Meeting, member States had made a commitment to establish national plans of action for decent work. Several countries had done this, including Sri Lanka. The national policy for decent work in Sri Lanka was developed with tripartite and regional participation. Financial provisions to implement the policy had been made in the national budget for 2007, integrating it closely into national economic and social development plans. The countries of the region had recognized the need for regional cooperation and had affirmed their commitment to tangible outcomes and practical measures for implementing time-bound policies and programmes for generating decent work for all and reducing poverty. Regional cooperation between member States would reveal common needs, enable countries to share good

practices, and to develop strategies to address areas of mutual benefit and concern. ILO DWCPs had been recognized as the means for delivery of coordinated support to member States, and the ILO had an important role to play in assisting countries to develop further initiatives. Sri Lanka was committed to working closely with the countries in the region and the ILO in implementing the Asian Decent Work Decade.

103. *The Worker Vice-Chairperson* recalled that great efforts had been made to make sure that the Meeting could take place, after it had been initially delayed, on account of workers' concerns that the Republic of Korea had failed to implement the recommendations of the Committee on Freedom of Association (CFA). The Workers' group had managed to persuade its members from the Republic of Korea that the Meeting should go ahead on the grounds that it would give a high profile to the country. It was therefore surprised to receive information, almost coinciding with the last day of the Meeting, that certain Republic of Korea workers had been imprisoned for exercising freedom of association and the right to organize. Attempts to approach the authorities of the Republic of Korea through the embassy to rectify this situation had proved fruitless. Given that the country had been given the opportunity, as host of the Regional Meeting, to stand out as a State that respected the decent work ethic, the group strongly condemned this flouting of freedom of association.

104. *Mr Anand, an Employer member from India*, was both proud and grateful that the Director-General had invited him to address the Asian Regional Meeting. He recalled that the South Asia region, including Afghanistan, Bangladesh, India, the Islamic Republic of Iran, Nepal and Sri Lanka, was amongst the hardest hit by poverty in the world. There was a serious education deficit in the region, coupled with a lack of training and of skills development. The Meeting had recognized that, over the next ten years, 250 million jobs would need to be created in Asia. The conclusions set out clear guidelines as to how this problem should be tackled. The Meeting placed emphasis on the employment sector, but without accelerated skills development, jobs would not be created.

105. *The Employer Vice-Chairperson* recalled that two Regional Meetings had been held in 2006 in locations other than the Regional Offices. An evaluation of the pros and cons of these experiences should be conducted, not exclusively on the basis of, but including, financial implications, etc., with a view to seeing whether the practice should be continued, and what form the Meetings should take.

106. *The Worker Vice-Chairperson* agreed that this evaluation should be carried out.

Governing Body decision:

107. ***The Governing Body requested the Director-General to:***

(a) draw the attention of the governments of member States of the region and, through them, that of their national employers' and workers' organizations, to the conclusions adopted by the Meeting;

(b) bear the conclusions in mind in executing ongoing programmes and in preparing future programme and budget proposals; and

(c) transmit the text of the conclusions:

(i) to the governments of all member States and, through them, to national employers' and workers' organizations; and

(ii) to the international organizations concerned, including the international non-governmental organizations having consultative status.

(GB.297/6, paragraph 114.)

Seventh item on the agenda

ENHANCED PROGRAMME OF TECHNICAL COOPERATION
FOR THE OCCUPIED ARAB TERRITORIES
(GB.297/7)

108. *The Employer Vice-Chairperson* expressed his group's grave concern at the situation in the occupied Arab territories and the resulting social and labour problems, as well as the problems for enterprises. The group had noted the progress made in applying the programme, but felt that still greater efforts were required in the reconstruction and capacity building of employers' and workers' organizations, the reinforcing of entrepreneurship and assistance in vocational training, particularly for disabled persons, as well as the strengthening of social dialogue. The group therefore requested the Office to increase its technical assistance activities in the occupied Arab territories.

109. *The Worker Vice-Chairperson* said his group believed that the ILO programme, though good, was insufficient. Since the formation of the new Government in March, there had been economic paralysis in the occupied Arab territories. The imposition of international embargoes deprived the people of the resources needed for the functioning of their institutions, for the development of their workers and no doubt of their enterprises as well. This situation was exacerbated by the permanent blockade imposed on the territories. A commitment should be made to strengthen the Palestinian Fund for Employment and Social Protection (the Fund); the group requested that the necessary financial resources be made available, even from the regular budget, as well as from other donors, to reinforce technical cooperation for workers, employers and for the Government. The Workers called on all ILO member States to make all efforts to raise the blockade of the territories, thereby allowing freedom of movement of persons and goods between Palestine and Israel.

110. *A Government representative of Morocco*, speaking on behalf of Arab governments, noted the increasing tension in the occupied Arab territories and deplored the action taken by the Government of Israel in the region. The result was a humanitarian disaster, with rising unemployment and all economic activity paralysed. The Arab governments represented on the Governing Body called on the ILO to take measures to dissuade Israel from pursuing its policy of aggression, and cease violation of Palestinian rights. Israel should cease its blockade, which prevented workers from reaching their workplaces, and withdraw from the Gaza Strip. Israel should release the taxes due to the Palestinian Authority under bilateral agreement. The group called on the Governing Body to continue to follow the situation of Arab workers and employers in the occupied territories very closely. It was important that international standards should be applied, including the ILO Declaration on Fundamental Principles and Rights at Work. The ILO should make every effort to support the Government and its social partners in the territories, and should pursue its technical cooperation activities to answer to the short- and medium-term needs of the Palestinian people. The funding for this should come from the regular budget. Finally, Arab governments called on the Governing Body to adopt the same policy of firmness towards Israel that it had applied to Myanmar.

111. *A Government representative of Tunisia* noted that the presence of this item on the agenda indicated the constant concern of the tripartite constituents to follow closely the situation

of Arab workers in the occupied territories. The Palestinian people, especially women and children, were subject to violations of basic rights recognized in international labour standards. Tunisia wished to see the ILO's programme of technical cooperation in the occupied territories reinforced; the Fund had insufficient resources and should be revitalized with financing through donor States and from multilateral sources. Tunisia supported the strengthening of the ILO office in Jerusalem.

112. *A Government representative of South Africa* stated that his Government again called on the Israeli authorities to allow staff from the ILO Regional Office for the Arab States access to the occupied Arab territories, to continue to provide the required technical assistance. The international community should review its stance on funding projects in the occupied territories, including those of the ILO. South Africa supported an intensified mobilization of extra-budgetary resources, and the reinforcement of the ILO office in Jerusalem.

113. *A Government representative of the United States* stated that his Government had worked continuously to support the social and economic development of the Palestinian people, through significant assistance and consistent support of the ILO enhanced programme. While the general situation meant that it was very difficult to implement the programme, the United States Government hoped that the ILO would focus on delivering practical advice and technical services to those in need. The Organization should not be used as a forum to advance unbalanced views of the Israeli-Palestinian conflict. The question of supplementing the fund through regular budget resources was a matter that would require the careful consideration of the Governing Body in March 2007. The United States position remained however that no assistance should go to the Palestinian Authority as long as it was under Hamas control.

114. *A Government representative of Australia* stated that the issue of using the regular budget to supply the Fund was a question that should be dealt with by the Governing Body at its 298th Session (March 2007). Australia could not provide assistance to a Hamas-led Palestinian Authority. At the same time, Australia continued to provide significant development assistance to the Palestinian territories, and had in 2006–07 allocated US$16.2 million in humanitarian assistance, to be distributed through the UN and non-governmental organizations. The ILO cooperation activities in the occupied territories should be focused on continuing to provide practical help to those in need.

115. *A Government representative of Canada* said his Government supported the ILO's enhanced programme. In view of the call for regular budget funding of this programme, he reiterated that his Government opposed any financial or technical assistance directed to the Hamas-led Palestinian authority.

116. *The Director-General* noted the calls that had been made on the ILO to focus on the practical assistance it could supply on the ground. The aim of the programme was to assess the situation in the occupied territories, and then to determine what action should be taken to alleviate the lives of those living and working there. The ILO was wholly committed to this course of action, and the Director-General had been able to discuss with Mr Shaher Sa'ed, General Secretary of the Palestine General Federation of Trade Unions, on the occasion of the recent formation of the International Trade Union Confederation (ITUC), particular activities that would be helpful. The Fund had not been conceived as an entity to be financed by the ILO, as its needs were far in excess of such funding. The ILO had made an initial investment and had allocated resources to initiate certain projects. Some resources from the ILO regular budget could be directed to the Fund, but these would not be in any way sufficient for it to operate, and basically it required the commitment of countries that wished to put resources into it. The Director-General noted

the suggestions that the ILO Jerusalem Office should be strengthened, and agreed that this would be useful, given the increasing complexity of the situation.

Governing Body decision:

117. ***The Governing Body noted the developments regarding the enhanced programme of technical cooperation for the occupied Arab territories and took full note of the discussion that had been held.***

(GB.297/7, paragraph 21.)

Eighth item on the agenda

DEVELOPMENTS CONCERNING THE QUESTION OF THE OBSERVANCE BY THE GOVERNMENT OF MYANMAR OF THE FORCED LABOUR CONVENTION, 1930 (NO. 29)
(GB.297/8/1)

Legal aspects arising out of the 95th Session of the International Labour Conference
(GB.297/8/2)

118. *The Ambassador of Myanmar* referred to the moratorium on the prosecution of persons lodging false allegations of forced labour announced by the Government in June 2006. The moratorium would remain in place until the mechanism for dealing with complaints of forced labour was functioning. Since June 2006, in response to the conclusions of the 95th Session of the International Labour Conference, Aye Myint had been released from prison, and the prosecutions against the three persons involved in the Aunglan case had been dropped. Preliminary discussions had been held in early September 2006, with respect to the establishment of a credible mechanism for dealing with complaints, and these had led to an ILO mission visiting Myanmar in the second half of October 2006, when two rounds of talks had been held. The Myanmar side had been led by the Deputy Minister of Labour. The difficulties that remained concerned the confidentiality of the complaints made to the ILO Liaison Office; the personnel required by the ILO representation in Yangon; and the trial period for the mechanism. As regards the issue of confidentiality, this was inconsistent with national law, and particularly the Code of Criminal Procedure. Means would be explored to find a mutually acceptable solution to this problem, which would require adjustments to the legislation. In respect of the personnel required by the ILO representation, on the basis of the agreement concluded between Myanmar and the Organization, it had been understood that there was to be only one ILO representative in the country. The authorities were prepared to review this in relation to the Liaison Officer's workload and had proposed a formulation to be included in the draft supplementary agreement to this end. A compromise would be possible. As regards the trial period, the ILO had suggested a period of not less than six months and not more than 18 months, and it was felt that this provided the flexibility necessary to arrive at an agreement. The Government would continue to engage with the ILO to resolve these three issues as early as possible.

119. *The Worker Vice-Chairperson* recalled that the Selection Committee of the International Labour Conference had issued some very specific instructions on what action the ILO was to take with regard to Myanmar. This included the preparation of material to be submitted to the UN Economic and Social Council (ECOSOC), and putting the ILO's position clearly before the Council. The group understood that a letter had been sent to ECOSOC, but apparently the ILO representation had not chosen to make a statement of its views. The group felt that more work should have been done to foster awareness among governments,

employers' and workers' organizations of the issues, involving them more in the implementation of the measures; a user-friendly questionnaire had been foreseen, as part of an enhanced reporting process, as well as multi-stakeholder conferences to exchange ideas as to the implementation of the measures. The conclusions also called for the use of public diplomacy, by drawing public attention to the practice of forced labour in Myanmar.

120. Forced labour continued in Myanmar. Relations with the Government of that country must depend on the discontinuation of that practice. The speaker urged Governments that had adopted a sympathetic stance towards the Government for diplomatic reasons to take a more enlightened position so that a united front could be presented to convince the Myanmar authorities that action was necessary, precisely in the interests of ongoing diplomatic and economic relations. A multi-stakeholders' conference must be organized as a matter of urgency, and widely publicized. As part of the public diplomacy, the ILO should design and post a special page on the Organization's web site, devoted to the issue of forced labour in Myanmar, and setting out the action already engaged by the ILO, as well as planned future action. This would inform the public of what Myanmar was doing, and of what remedial action the ILO was undertaking. The web page should be continuously updated to show progress.

121. Referral to the International Court of Justice (ICJ) had also been envisaged in the conclusions of the Selection Committee, and the related materials should be prepared by the Office to allow the Governing Body to refer the matter to the ICJ, should it consider this course of action appropriate. The group believed that the matter should now be referred to the ICJ for an advisory opinion, because forced labour was still exacted in Myanmar, and because the Government did not appear to wish to create an atmosphere in which people might confidently come forward and give evidence before an ILO representative in the country. The Court would deliver an advisory opinion within six months. In March 2007, the Governing Body would be able to judge whether the Government of Myanmar had taken steps to come into line with Convention No. 29 and, if not, the opinion would arrive shortly afterwards, opening up other courses of action.

122. One of these would be to take the matter before the International Criminal Court (ICC), and the Director-General should take steps to prepare this submission, in case no success had been achieved by the March 2007 session. The UN Security Council could subsequently be involved. It should be made clear to the Government of Myanmar that the international community considered the situation in Myanmar to be extremely serious. The Governing Body should make the ILO's detailed information on forced labour in Myanmar available to Security Council members through the UN Secretary-General, to allow the Council to examine and consider action to be taken to address the situation, with the possibility of referring the matter to the ICC Prosecutor. The ILO should already submit all information on the issue to the ICC, to allow the Prosecutor to begin work forthwith.

123. *The Employer Vice-Chairperson* expressed his group's frustration at the fact that recourse to forced labour clearly continued in Myanmar. The group noted the authorities' continued reluctance to allow the ILO Liaison Office to make a preliminary, confidential assessment of complaints of forced labour. This was a primary requirement to enable the Liaison Office to carry out its functions. A second point of contention was the duration of the trial period. The group felt that the trial period of 18 months, proposed by the Office and so far rejected by the Government of Myanmar, was already too short a time to evaluate the effectiveness of the steps to be instigated. It felt that there should be a period of three to five years, to allow a proper judgement to be made in respect of so wide-ranging a process. The third point of contention was that of the staff resources to be allocated to the Liaison Office. In seeking to limit the resources available to the Officer, the authorities were trying to restrict the execution of the Officer's duties.

124. The task before the Governing Body was to initiate the mechanisms to eradicate forced labour in Myanmar, and to ensure that the regime of impunity for the perpetrators did not remain in place. The group supported, firstly, recourse to the ICJ, for that Court to be able to issue an advisory opinion. The Office should nevertheless submit further, developed alternatives to the Governing Body, as soon as possible. Secondly, the Employers believed that if the credibility of the Organization was to be maintained, it was essential that measures were adopted rapidly to guarantee the rights of those affected by forced labour. Thirdly, the group wished it to be understood clearly by the Government of Myanmar, that the maintenance of recourse to forced labour, and the impunity of those who exacted such labour, were impediments to the good relations of Myanmar with the international community as a whole.

125. *A Government representative of the Philippines*, speaking on behalf of the Governments of the ASEAN, acknowledged the importance of the ILO presence in Myanmar and appreciated the efforts of the ILO Liaison Officer ad interim in assisting the authorities in the observance of Convention No. 29. The Government had committed itself to the eradication of forced labour in the country, and dialogue and cooperation between Myanmar and the ILO should continue. Myanmar had announced a moratorium on prosecutions of persons making false complaints of forced labour in June 2006, and had renewed this moratorium before the Governing Body. Various prisoners had been acquitted, as called for in the Selection Committee's conclusions. This showed that the authorities were cooperating in a genuine fashion with the ILO. While the deadline of the end of October 2006 for the establishment of a credible mechanism for dealing with complaints of forced labour had passed, discussions were continuing between the ILO and Myanmar, both in Yangon and in Geneva. The speaker called on both sides to intensify the dialogue and demonstrate the flexibility necessary to arrive at mutually agreeable solutions.

126. *A Government representative of Finland*, spoke on behalf of the Governments of the European Union (EU), the acceding countries, Bulgaria and Romania, the candidate countries, Turkey, Croatia and the former Yugoslavian Republic of Macedonia, the countries of stabilization and association processes and potential candidates, Albania, Bosnia and Herzegovina, Montenegro, Serbia, as well as Ukraine, the Republic of Moldova and Switzerland. He noted that the human rights situation in Myanmar had been under the scrutiny of the international community for many years. The Conference in June had made it clear that progress was only possible if the Government committed itself fully to ending forced labour. The EU supported the ILO's efforts in continuing to negotiate on the establishment of a credible and effective mechanism to protect victims of forced labour in Myanmar, and welcomed the release of the imprisoned persons, and the Ambassador's personal commitment to the negotiations. However, the Conference's deadline of 31 October 2006 had passed, and the negotiations had broken down, principally over the requirement that the Liaison Office should be able to operate unhindered by the authorities, and with sufficient staff. The EU urged Myanmar to conclude the negotiations forthwith, giving concrete assurances that there would be no prosecutions for submitting complaints of forced labour to the Liaison Office. A clear agreement was needed at this stage, with inbuilt means as to its correct functioning. The EU wished to see Myanmar move towards democracy, and to cooperate fully with the international community as a whole. At present, the EU was obliged to maintain the measures presented in its common position against the military regime in Myanmar. The Office, in consultation with the Officers of the Governing Body, should take such action as was needed to enable the Governing Body in March 2007 to reach a decision in respect of the various legal options, including referring the case to the ICJ. At that stage, further complementary action, as expressed in the conclusions of the Conference should also be pursued as appropriate.

127. *A Government representative of Canada* said his Government supported the Office in its efforts to negotiate with the Myanmar authorities. The release of the political prisoners was a positive outcome, but otherwise the authorities were displaying little sincerity. Indeed, the record showed that this had been the case for many years. The fact that Ang San Suu Kyi remained under house arrest was symptomatic of the oppression under which the people of Myanmar lived. The Selection Committee of the 95th Session of the International Labour Conference had produced a series of proposals to move the situation forward. Canada urged members to consider the role they might play in implementing the options set out in the second, third and fourth paragraphs of these conclusions. The negotiations should continue, but other forms of action should also be pursued. The Office and Governing Body members should discuss ways of achieving this to allow the Governing Body to take a decision on supplementary measures at its next session in March 2007.

128. *A Government representative of Australia*, speaking on behalf of the Governments of Australia and New Zealand, supported the Office in its efforts to negotiate with the Myanmar authorities. It remained extremely disappointing that the Government of Myanmar continued to refuse to implement the recommendations of the Commission of Inquiry, and had failed to demonstrate commitment at the highest level to a substantive dialogue to address the forced labour problem. The announced moratorium on prosecutions of those complaining of forced labour was worthless without the establishment of a credible mechanism for dealing with such complaints. Australia and New Zealand strongly urged Myanmar to establish this mechanism without delay, as spelt out by the ILO in the draft Memorandum of Understanding. A first step would be to permit the ILO to strengthen the Liaison Office in Yangon with the additional staff required, and to allow the office to work without hindrance. The visit, in November 2006, of UN Under Secretary-General Gambari to Myanmar showed the importance accorded by the international community to progress in the country. Australia and New Zealand reiterated their call to the Government to comply with its obligations under Convention No. 29.

129. *A Government representative of Japan* said the report showed some positive developments, but also noted the points of divergence. The Government of Myanmar should return to the negotiations concerning the protection mechanism for those filing complaints; extend the period of the moratorium until the mechanism was established and operating; continue to cooperate with the ILO until a solution was forthcoming. He stressed that these remarks were made in a spirit of friendship towards Myanmar, and not a spirit of conflict.

130. *A Government representative of the United States* noted that little, if any, progress had been made. The practice of forced labour continued, and was especially utilized by the military; perpetrators went unpunished; the National League for Democracy, which had been overwhelmingly elected in 1990, had still not taken its place in the Government; and Ang San Suu Kyi remained under house arrest. The United States would continue to support the ILO's efforts to address forced labour in Myanmar, but would only be satisfied when the authorities had implemented all the recommendations of the Commission of Inquiry. Complaints of forced labour should be submitted to the Liaison Office on a confidential basis; the trial period for the mechanism should be indefinite, but not less than 18 months; the Liaison Officer should have freedom of movement; the Liaison Office should be staffed at a level to allow it to carry out its duties. The United States was interested by all other suggestions by the Office, by governments, or by the social partners, to put an end to forced labour in Myanmar.

131. *A Government representative of India* noted that the Government of Myanmar had taken steps, in negotiation with the ILO, towards facilitating a mutually acceptable mechanism to eradicate forced labour from the country. These were positive developments, and the cooperation and dialogue should continue. India commended the efforts made by the

Director-General thus far, and remained strongly opposed to recourse to forced labour, which was forbidden under the Indian Constitution.

132. *A Government representative of China* said the Government of Myanmar had taken realistic steps, showing its will to cooperate and demonstrate flexibility. This should be encouraged and maintained. Dialogue and cooperation, rather than referral to other international institutions, would result in an acceptable solution to the problem. The imposition of sanctions would only exacerbate social unrest and poverty in Myanmar. The international community should seek ways of providing effective, tangible assistance to Myanmar to develop economically and socially.

133. *A Government representative of the Russian Federation* stressed that forced labour was unacceptable, and that it must be eradicated in Myanmar. This could only be achieved through cooperation between the Government of Myanmar and the ILO. Myanmar had released political prisoners, and had taken other steps that were to be welcomed. As regards the report submitted in respect of legal aspects arising out of the 95th Session of the Conference, the delegation reserved the right to return to this question in greater depth in future. The speaker nevertheless expressed doubts concerning referral of the case to the ICJ. It appeared that the Government of Myanmar recognized that there were problems in respect of its observance of Convention No. 29, so there was no clear divergence of opinion as to the application of the instrument. As regards the question of obtaining a possible binding advisory opinion, it did not appear clear that the statute of the ICJ provided the court with the jurisdiction to issue a judgement in respect of forced labour in Myanmar. The act of exacting forced labour could not be qualified as a crime against humanity as defined by the Rome Statute.

134. *A Government representative of the Republic of Korea* recognized the encouraging elements in the report, but expressed disappointment and frustration that the negotiations appeared to be at a stalemate. The Government should demonstrate its willingness to cooperate with the ILO by addressing the three remaining key issues forthwith. A mutually agreeable solution should be found as soon as possible, before recourse to further, more coercive, steps became necessary.

135. *A Government representative of Cuba* said his Government rejected all forms of forced labour in the world, but believed nevertheless that cooperation and dialogue would provide the solution to this problem. The Government's efforts should be recognized: it had put forward suggestions to solve the three outstanding issues. Use should not be made of coercive measures, which would only result in greater confrontation and distress to the population of Myanmar. The other measures exposed in the document GB.297/8/2 would, by involving instances outside the ILO, create doubtful precedents without helping to enhance the present situation.

136. *The Chairperson* presented the following conclusions, which had been approved by the Employer and Worker Vice-Chairpersons.

Governing Body conclusions:

137. ***The Governing Body considered all the information before it, including the comments of the Permanent Representative of Myanmar, in the framework of the conclusions adopted by the International Labour Conference in June 2006. In this regard, regret was expressed by the Workers' group and some Governments that not all options contemplated by the Conference had been followed up. It was recalled in this context that the Conference conclusions, inter alia, provided that "in the light of the developments or lack thereof, the Governing Body would have full delegated authority to decide on the most appropriate course of action,***

including as appropriate on the basis of the … proposals for the enhanced application of the measures".

138. ***It was acknowledged that the Myanmar authorities had released Aye Myint and ended the prosecutions in Aunglan. The Permanent Representative furthermore gave assurances in his opening comments that the moratorium on prosecution of complainants would remain in place.***

139. ***However, the Workers, Employers and the majority of Governments, expressed great frustration that the Myanmar authorities had not been able to agree on a mechanism to deal with complaints of forced labour within the framework set out in the Conference conclusions. The authorities had therefore missed a critical opportunity to demonstrate a real commitment to cooperating with the ILO to resolve the forced labour problem, which once again raised serious questions as to whether any such commitment existed. There was widespread and profound concern that, at the same time, the practice of forced labour continued to be prevalent in Myanmar.***

140. ***The general conclusions were that:***

– ***The Myanmar authorities should, as a matter of utmost urgency and in good faith, conclude with the Office an agreement on a mechanism to deal with complaints of forced labour, on the specific basis of the final compromise text proposed by the ILO mission.***

– ***Irrespective of the status of the moratorium on prosecutions of complainants, it must be clearly understood that any move to prosecute complainants would be a violation of Convention No. 29 and would open the way to the consequences contemplated in paragraph 2 of the Conference conclusions.***

– ***Following the Conference conclusions in June 2006, a specific item would be placed on the agenda of the March 2007 session of the Governing Body, to enable it to move on legal options, including, as appropriate, involving the ICJ. The Office should therefore make necessary preparations for the Governing Body to request an advisory opinion of the ICJ on specific legal question(s), without prejudice to the possibility that a member State could take action on its own initiative.***

– ***As regards the question of making available a record of the relevant documentation of the ILO related to the issue of forced labour in Myanmar to the Prosecutor of the ICC for any action that may be considered appropriate, it is noted that these documents are public and the Director-General would therefore be able to transmit them.***

– ***In addition, the Director-General could ensure that these developments are appropriately brought to the attention of the UN Security Council when it considers the situation in Myanmar, which is now on its formal agenda.***

– ***As provided for in the Conference conclusions, the Governing Body in March will revisit the question of placing a specific item on the agenda of the 2007 session of the International Labour Conference to allow it to***

review what further action may then be required, including the possibility of the establishment of a special committee of the Conference.

– ***The other options contained in the Conference conclusions should also be appropriately followed up by the Office.***

Ninth item on the agenda

MEASURES TAKEN BY THE GOVERNMENT OF BELARUS TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION OF INQUIRY ESTABLISHED TO EXAMINE THE OBSERVANCE OF THE FREEDOM OF ASSOCIATION AND PROTECTION OF THE RIGHT TO ORGANISE CONVENTION, 1948 (NO. 87), AND THE RIGHT TO ORGANISE AND COLLECTIVE BARGAINING CONVENTION, 1949 (NO. 98)
(GB.297/9)

141. *A representative of the Director-General* reported that, at the request of the Government of Belarus, the Office had held informal consultations with a delegation from Belarus, headed by the Deputy Prime Minister, in Geneva in October 2006, in order to examine the implementation of the recommendations of the Commission of Inquiry.

142. As stated during the consultations, the Government of Belarus considered that it had already complied, or was in the process of complying, with almost all the recommendations of the Commission of Inquiry. It had stated that, in order best to disseminate the recommendations, the texts and other relevant information had been published in *Respublika*, the official gazette of the Council of Ministers, with a print run of 114,364 copies. It had also announced that the National Commission for the Registration of Public Associations had been dissolved and that the Government would include in draft legislation the new concept of trade union being developed with the assistance of the Office, and that a representative of the Congress of Democratic Trade Unions of Belarus (CDTU) had been granted a seat on the National Council for Labour and Social Issues.

143. The speaker confirmed that the Office was working with the Government of Belarus on a new trade unions bill, in accordance with Conventions Nos. 87 and 98. In addition, the Office would cooperate in the organization of a seminar on the principles of freedom of association for judges and court officials. The ILO's supervisory bodies would be responsible for establishing whether the measures taken by the Government of Belarus were in line with the recommendations of the Commission of Inquiry. The Committee of Experts on the Application of Conventions and Recommendations would examine the situation, and the Committee on Freedom of Association (CFA), which would be responsible for follow-up to the recommendations, would submit a report to the Governing Body in March 2007.

144. *A Government representative of Belarus* emphasized that the consultations held with the Office had enabled an agreed position to be reached on a set of complex issues. The Government had undertaken to examine the relations between enterprises and unions in a systematic manner through the National Council for Labour and Social Issues. The Ministry of Labour and Social Protection had established an independent body responsible for examining complaints filed by trade unions, some of whose members were representatives of the Federation of Trade Unions of Belarus (FPB) and the CDTU. The draft trade unions act would be prepared in 2007 on the basis of the text approved by the President of the Republic and in accordance with ILO standards.

145. Within the context of the transition to a market economy, the Government had made considerable efforts to reduce poverty, which stood at a rate of 12 per cent. Unemployment

affected 1.2 per cent of the working population, and prevailing income disparities were at socially acceptable levels. The main pillars in the construction of civil society were trade unions and employers' organizations.

146. The speaker was concerned that not all of the measures taken by the Government had been included in the documents submitted to the Governing Body, and that some of the information was out of date. He recalled that five of the six Worker members of the CFA, including three regular members, had been part of the delegation that had previously filed a complaint against the Government of Belarus under article 26 of the ILO Constitution. He further recalled that, at its 292nd Session (March 2005), the Governing Body, having examined a complaint against the Government of the Bolivarian Republic of Venezuela under the same article, had decided that the persons bringing the complaint could not participate in the examination of that complaint in the Committee; it was not permissible to act as judge and jury in the same case.

147. Given these circumstances, the Government of Belarus, a regular member of the Governing Body, recommended that any decisions adopted by the Governing Body at its 297th Session acknowledge the progress achieved with regard to compliance with the recommendations of the Commission of Inquiry, include no reference to a possible application of article 33 of the ILO Constitution with respect to Belarus, and indicate that the assessment of measures adopted by the Government of Belarus would be undertaken by the Committee of Experts on the Application of Conventions and Recommendations, which would report to the Conference Committee on the Application of Standards. The speaker stated that the Government of Belarus was prepared to continue engaging in dialogue with all interested parties and to take the measures necessary to comply with the recommendations of the Commission of Inquiry.

148. *The Worker Vice-Chairperson* expressed satisfaction that the consultations held in Geneva had brought together senior members of the Government of Belarus and representatives of the social partners. If the Government stated that it was complying with Conventions Nos. 87 and 98, it needed to provide reliable evidence that freely constituted trade unions were able to operate without interference from the public authorities. Such evidence, rather than being presented to the Governing Body in the form of documents of questionable reliability, should be presented to the ILO's supervisory bodies. The recommendations of the Commission of Inquiry dated from 2004 and, since that time, the Workers' group had received a wealth of information that contradicted the Government's statements. It was essential for a trustworthy source of information to be found. Even if the Government of Belarus continued to express its intention of introducing improvements, beyond merely adopting a trade union representation agreement and issuing information which shed no real light on the situation in the eyes of the public, the Workers agreed that the Governing Body should examine the possible application of article 33 of the ILO Constitution in March 2007.

149. *The Employer Vice-Chairperson* welcomed the active participation of senior members of the Government of Belarus in the examination of the issue. He expressed the hope that the willingness for change shown by the Deputy Prime Minister would, before March 2007, be translated into concrete action to implement the recommendations of the Commission of Inquiry. He recalled that the Committee on the Application of Standards had been hoping that the Governing Body would, at its 297th Session, begin consideration of whether to adopt other measures under article 33 of the ILO Constitution. While the Employers' group understood the concerns expressed by the Government of Belarus, there could be no compromise when freedom of association and exercise of the right to collective bargaining were at stake.

150. *A Government representative of Finland* took the floor on behalf of the Governments of the Member States of the EU, Bulgaria and Romania (accession countries), Croatia, The former Yugoslav Republic of Macedonia, and Turkey (candidate Members), Albania, Bosnia and Herzegovina, Montenegro and the Republic of Serbia (countries involved in the stabilization and association process and potentially candidate Members), Norway (a Member of the European Free Trade Association (EFTA)), Ukraine and Switzerland. Considerable concern had arisen in the EU over the persistent failure to implement the recommendations made by the Commission of Inquiry to the Government of Belarus. Despite repeated appeals to the Government, the ILO's supervisory bodies had found no evidence of progress with regard to respect for democratic principles and human rights. The EU noted with interest the information concerning the repeal of a presidential decree and the plans for drafting a new trade unions act, and welcomed the initiative taken by the Government of Belarus to examine, in collaboration with the Office, any legislative amendments and overall compliance with the recommendations. It was important for all trade unions, whether or not they were registered, to be allowed to exercise their rights without hindrance as this process moved forward. It was for the CFA to undertake an assessment of the situation, the measures proposed and their effects. The Governing Body would be able to take a decision in March 2007 as to the possible inclusion of the question on the agenda of the 2007 Conference. The EU would meanwhile continue to monitor developments in Belarus closely, particularly with regard to the principles of freedom of association and collective bargaining.

151. *A Government representative of the Russian Federation* said that the progress reported by the Deputy Prime Minister of Belarus, which had been duly acknowledged by the Employers, Workers and the statement on behalf of the EU, constituted tangible evidence of interest on the part of Belarus in furthering collaboration with the ILO. Given that positive development, it would be counterproductive to rush into an examination of the possible application of article 33 of the ILO Constitution, a process which entailed serious consequences. He proposed instead that dialogue with Belarus be continued, that technical assistance be offered and that the necessary time be allowed for the implementation of the Commission of Inquiry's complex recommendations.

152. *A Worker member from the Russian Federation* said that, according to information received in Moscow from the CDTU, none of the trade unions had been able to register because the enterprise had refused to accept their official addresses. The dissolution of the National Commission had not led to any improvements in registration conditions. While one trade union member had indeed been reinstated in his post, that had not been the case for any of the others. The text of the future draft trade unions act contained certain provisions that posed a threat to the principles of freedom of association. Representation of the CDTU on the National Council for Labour and Social Issues had to follow official procedures. Officials from the ILO's Subregional Office for Eastern Europe and Central Asia needed to be able to travel to Belarus and meet freely with trade union representatives and there should be unhindered issuance of visas. The speaker considered that, in March 2007, the Governing Body should examine the possibility of applying article 33 of the ILO Constitution in the present case.

153. *A Government representative of the United States* stated that, despite the efforts made by the Office, the Government of Belarus had not honoured its international commitments. He agreed that the Governing Body should, in March 2007, examine the issue of the possible application of article 33 of the ILO Constitution.

154. *A Government representative of India* noted with satisfaction the information communicated by the Deputy Prime Minister of Belarus. In view of the decision adopted at its 292nd Session (March 2005), the Governing Body would need to examine the situation of the Government of Belarus in an appropriate fashion. The document from the Office

contained out of date information and should not be used as a basis for future discussions and decisions. The Governing Body should defer examination of the matter until the Committee of Experts on the Application of Conventions and Recommendations had undertaken its own assessment of the situation.

155. *A Government representative of Canada* considered that the sending of a high-level mission to Geneva was a telling indication of the seriousness with which the Government of Belarus was addressing the complaint, which had taken on greater gravity as a result of the failure to implement the recommendations of the Commission of Inquiry. He was extremely concerned by the flagrant violation of democratic principles and human rights in Belarus, as well as by the continued denial of freedom of association. He hoped that the Government would use the months remaining before the March 2007 session to continue its forward progress, and that the Governing Body would then be able to take a decision in the light of the examination by the Committee of Experts on the Application of Conventions and Recommendations.

156. *A Government representative of the Islamic Republic of Iran* acknowledged the openness to dialogue shown by the Government of Belarus and the progress achieved. He urged the ILO to provide the Government of Belarus with the necessary technical assistance, and requested the Governing Body to delete all references to the possible application of new measures.

157. *A Government representative of Cuba* said that, in view of the willingness demonstrated by the Government of Belarus to continue giving effect to the recommendations of the Commission of Inquiry, there was no justification for the matter to continue being included in the agenda of the Governing Body. The Committee of Experts on the Application of Conventions and Recommendations should be the only body with responsibility for monitoring the measures taken by the Government of Belarus.

158. *A Government representative of China* acknowledged the tangible effort made by the Government of Belarus since the 95th Session (2006) of the Conference to implement the recommendations of the Commission of Inquiry. She believed that the ILO and the Government of Belarus should persevere with constructive dialogue with a view to promoting Conventions Nos. 87 and 98. She was opposed to the Governing Body examining the possible application of article 33 of the ILO Constitution.

159. *A Government representative of the Bolivarian Republic of Venezuela* maintained that the Government of Belarus had provided evidence that it was complying with the recommendations of the Commission of Inquiry thanks to technical assistance from the ILO. He stated that his Government would continue to support any measures that would enable cases to be examined in a transparent manner by the ILO's supervisory bodies. He recalled that, when various members of the CFA had filed a complaint against his country's Government, the Governing Body had decided to defer examination of the case until the membership of the Committee on Freedom of Association had been renewed.

160. *A Government representative of Viet Nam* expressed opposition to any measure other than dialogue or cooperation in seeking an acceptable solution to the issue.

161. *A Government representative of Pakistan* requested that the openness to dialogue displayed by the Government of Belarus, as well as the progress achieved, be taken into account. He advised against the possible application of article 33 of the ILO Constitution.

162. *A Government representative of Belarus* said he was convinced that it would be possible to find acceptable solutions through dialogue and consultation. He explained that all the matters mentioned by the Worker member from the Russian Federation had been examined

during the consultations held in October, and that the new trade unions act, once enacted, would enable some of these matters to be resolved. The National Council for Labour and Social Issues would be collaborating with the Government to ensure that the legislation was entirely in conformity with the ILO Conventions on freedom of association. With regard to the question of visas, that had been a technical problem which had been solved immediately.

163. The speaker pointed out that the conclusions of the Committee on the Application of Standards provided for implementation of the recommendations of the Commission of Inquiry in a number of stages, and that the Governing Body could not examine the possibility of adopting other measures unless an absence of progress had been noted. In the case of the Government of Belarus, the progress achieved was clear to see, and the speaker therefore requested that all references to the possible application with respect to Belarus of article 33 of the ILO Constitution be deleted from the decisions of the 297th Session of the Governing Body. He said that any measures taken by Belarus should be assessed by the Committee of Experts on the Application of Conventions and Recommendations, which in turn would report to the Conference Committee on the Application of Standards.

164. *The Worker Vice-Chairperson* insisted that the publication released by the Government of Belarus reflected neither the principles nor the values of the ILO. He trusted that the Government would use the months remaining before the March 2007 session to provide reliable evidence of its willingness to make substantive rather than cosmetic changes.

165. *The Employer Vice-Chairperson* said that the Employers' group was not merely seeking the application of article 33 of the ILO Constitution but, rather, the respect in Belarus of the freedoms enshrined in Conventions Nos. 87 and 98, the defence of which was a matter for all stakeholders within society. He believed in the willingness shown by the Government of Belarus to bring about change, but maintained the position adopted by the Employers' group.

Governing Body decision:

166. ***The Governing Body decided to include on the agenda of its 298th Session (March 2007) an item entitled "Measures taken by the Government of Belarus to implement the recommendations of the Commission of Inquiry established to examine the observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)". In the interim, the Governing Body wished to encourage the Government of Belarus, given the urgency of the case, to continue working in collaboration with the Office on implementation of the recommendations made by the Commission of Inquiry in 2004. It urged the Government of Belarus to follow strictly the advice that it had requested on trade union-related legislation and practice, including registration. The Governing Body requested the Office to collate all relevant information, including information supplied by the ILO's supervisory bodies, in one document, thus enabling the Governing Body to examine the matter.***

Tenth item on the agenda

343RD REPORT OF THE COMMITTEE ON FREEDOM OF ASSOCIATION
(GB.297/10)

167. *The Reporter of the Committee on Freedom of Association* (CFA) informed the Governing Body that the Committee had 127 cases pending, and had examined 30 cases on their merit. Of these, 15 concerned Latin America; five concerned Africa; five concerned Asia; and five concerned North America and Europe. Urgent appeals were launched to the Governments of Argentina, Barbados, Canada, Djibouti and the United Kingdom (Jersey), which had failed to submit complete observations in respect of complaints. In following up progress regarding the Committee's recommendations, the Committee noted the reinstatement of trade union members and officials in Cases Nos. 2208 (El Salvador); 2429 (Niger); and 2087 (Uruguay). Cases Nos. 1787 (Colombia); 2449 (Eritrea); and 2313 (Zimbabwe) were listed as serious and urgent.

168. Case No. 1787, on Colombia, was before the Committee for the 19th time in 11 years. New allegations had been made by the complainant trade unions of 49 murders of trade unionists since April 2006 and of disappearances, detentions, threats and other forms of harassment. The Committee strongly urged the Government to initiate and pursue investigations, to end the situation of impunity and provide protection for all trade unionists. It was particularly concerned at the so-called "Operation Dragon", allegedly aimed at eliminating trade unionists and requested further information on the ongoing investigation. The Committee expected the tripartite agreement signed in respect of Colombia in June 2006 to yield results. On 4 November 2006, the CFA was visited by the Director of the Human Rights Division of the Attorney-General's Office of Colombia, together with the Colombian Ambassador, who provided an update on progress in judicial investigations, of which 1,369 were pending. One hundred and twenty-eight cases had been selected, after consultations with the trade unions, for priority treatment, and eight additional attorneys had been appointed to deal with this work. The Director said that links with the ILO should be strengthened to provide information on these investigations.

169. Case No. 2449, on Eritrea, concerned the arrests in March and April 2005 of three trade union leaders and their detention incommunicado since then. The CFA, in its recommendations, deplored this failure to observe fundamental human rights and urged the Government to release the prisoners and provide information on the reasons for their arrest.

170. Case No. 2445, on Guatemala, concerned the murder of two trade union officials, death threats to the wife of one of the officials, attempted murder, assault, theft of trade union property, and overall shortcomings in the institutional protection of trade union and labour rights. The Government was requested to report urgently on the inquiries and procedures under way, and should take immediate steps to safeguard the lives of those under threat of death. It should also submit observations regarding the allegations of non-compliance with judicial reinstatement orders, and establish a system of protection against acts of anti-union discrimination, with dissuasive sanctions and the possibility of reinstatement as a means of redress. An independent inquiry should be instigated in respect of the other allegations. ILO technical assistance was at the Government's disposal.

171. In Case No. 2313, on Zimbabwe, the CFA deplored the Government's failure to reply urgently to the allegations of arrest of trade unionists, harassment and beatings. The Government should take steps to drop the charges brought under the Miscellaneous Offences Act immediately, and provide proof that the trade unionists charged under the Public Order and Security Act were not simply being tried for participating in the human rights demonstrations of November 2003. The Government should instigate independent

inquiries into the allegations of beatings of Messrs Dengu, Khumalo, Mandinyenya and Munyukwi and, if necessary, compensate them, punish the guilty parties and ensure that no repetition of such acts against trade unionists recurred. The Committee again expressed deep concern at the general trade union climate in Zimbabwe.

172. Case No. 2405, on Canada (British Columbia) concerned a five-year extension of a collective agreement in the public sector, in which the Government had made recourse to retroactive legislative intervention in the collective bargaining process. The Government should refrain from this course of action. The recommendations made in the report of the Industrial Inquiry Commission should help resolve the difficulties in the British Columbia collective bargaining system, and the offer of ILO technical assistance was open to the Government in respect of Case No. 2405. In a second case concerning Canada, No. 2430 (Ontario), the Committee recommended that the Government of Ontario, in consultation with the social partners, should take the legislative measures necessary to ensure that academic and part-time staff in the colleges of applied arts and technology should enjoy fully the right to organize and bargain collectively.

173. *The spokesperson for the Employers' group* stressed that his group considered the work of the CFA to be extremely important. To strengthen a tradition of consensus, the Employers and Workers had been consulting bilaterally on an informal basis, and would continue to do so, to consider ways of improving the functioning of the Committee. The Government group and the Office would be involved in these discussions later.

174. The Employers had been concerned that in some cases recommendations were being issued without allowing the governments a reasonable chance to reply; there were however instances of genuine intransigence. A suggestion was made to distinguish clearly between these two possibilities in the text of the cases. Among those Governments ignoring requests to respond to serious allegations were Eritrea, Case No. 2449, and Zimbabwe, Case No. 2313. In the case on Eritrea, the group noted that employers as well as workers were being detained without a fair hearing.

175. In respect of Case No. 2265 concerning Switzerland, the group wished to stress the need to consider redress through paid compensation, where redress through reinstatement was not possible. The Employers had sought a balance in this case between dealing with matters expeditiously, while leaving adequate time for national processes to deal with complaints to find an internal solution. The group was alarmed at a report in the local papers stating that the Swiss authorities did not accept the legitimacy of the CFA. This had in no way been the Committee's experience in its dealings with the Government.

176. The Employers were concerned that a new edition of the *Digest of decisions and principles of the Freedom of Association Committee* had been published, without prior consultation with their group. Furthermore, the group argued, with reference to Case No. 2438 concerning Argentina, that paragraphs from the *Digest* should be quoted in full, to avoid misinterpretation and the production of new principles. In Cases Nos. 2440, on Argentina, and 2472, on Indonesia, the Employers argued that a reference to Article 8 of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), should be included in the recommendations, as well as, in the case concerning Argentina, that paragraphs 598 and 599 of the *Digest* should be referenced. These paragraphs concerned a matter of importance for employers: respect for national law by workers exercising the right to strike.

177. In respect of Case No. 2405, on Canada, which concerned public education, the Employers were concerned that the Government should remain autonomous in matters of public policy, and that tripartite consultations should only be engaged were appropriate in such

matters. They acknowledged that the ILO could play a role in this case, one of the few where the Committee suggested that the Government seek ILO technical assistance.

178. In respect of Case No. 1787, on Colombia, the Employers commended the Government for its commitment to concrete action, including the signing of the 2006 tripartite agreement, and for its detailed reporting on the situation. The text in the report included a paragraph to this effect. The visit by members of the Colombian Government to the CFA on 5 November 2006 once again bore witness to the Government's determination to redress the situation.

179. Case No. 2319, on Japan, was an example of government using internal, national processes to deal with issues successfully. The case was closed.

180. *The spokesperson for the Workers' group* endorsed the Reporter's statement and asked the Governing Body to adopt the Committee's conclusions and recommendations.

181. In respect of Case No. 1787, on Colombia, the group deplored additional reports of the murder of 44 trade unionists in 2005, five murders in 2006, one disappearance and seven cases of serious threats. There was also an alleged plan within the Department for Security to eliminate trade unionists. The group expected the Government to take measures to provide protection for trade unionists, to combat impunity and to implement the 2006 tripartite agreement.

182. In Case No. 2449, on Eritrea, the group was deeply concerned about the safety of the three trade union leaders arrested one and a half years previously. The speaker suggested that other governments in the region might be able to convince the Government to be more forthcoming regarding the prisoners' whereabouts and well-being.

183. Also of great concern was Case No. 2445, on Guatemala. The case included murders, death threats and assaults on trade unionists, and a legal system that seemed unequal to the task of providing the necessary protection. The Government should take up the offer of ILO technical assistance.

184. Case No. 2313, on Zimbabwe, involved violent harassment and mass arrests of members of the Zimbabwe Congress of Trade Unions. The group deplored the very grave situation in the country, and the fact that the Government refused to cooperate with the CFA.

185. Case No. 2443, on Cambodia, again came before the Committee. Mr Sok Vy, worker representative, and 100 of his worker colleagues, mostly trade unionists, were dismissed by the Fortune Garment Factory after a strike. Mr Sok Vy was charged with incitement to commit criminal acts and to damage property and sentenced to 14 months' prison, although there was no proof. He was further accused of falsely claiming to be over 25, the threshold, under section 286 of the existing labour law, for holding trade union office. The Committee requested the Government to ensure that Mr Sok Vy was fully reinstated; to amend the law establishing 25 years as the minimum age for trade union office; and an independent inquiry into these anti-union dismissals, with reinstatement of the workers or, if this was impossible, the payment of adequate compensation. The group was concerned that this case, and others in Cambodia, bore witness to a deteriorating trade union situation in the country.

186. In Case No. 2265, on Switzerland, the Committee requested the Government to take steps to reinstate a trade union representative that had been dismissed for anti-union discrimination. Tripartite discussion on the matter should be engaged. The Government should reply to the most recent allegations as soon as possible and take advantage of the offer of ILO technical assistance.

187. Case No. 2472, on Indonesia, concerned the refusal by the company PT Musim Mas to recognize the SP Kahutindo union. After harassment of union members, workers organized protest action; subsequently 701 of these workers were dismissed and, with their 1,000 family members, including 350 children, were evicted from the plantation housing estate at the company's request. Three hundred children were expelled from the plantation schools as a result. Criminal charges were made, and trade unionists received sentences of between 14 months and two years. In prison, the trade unionists were compelled to sign a "settlement agreement" under which they renounced their right of appeal to the Supreme Court of Indonesia, and received small financial compensation. Two hundred and eleven of the dismissed workers renounced their right to appeal against their illegal dismissals and were each paid US$123, which was also intended to bribe these workers into persuading the Building and Wood Workers' International Union to withdraw its complaint. The Committee recommended that the Government should observe the fundamental principle that no one should be penalized for taking legal strike action; that the hiring of strike replacement workers was a violation of freedom of association and that police intervention should be in proportion to the threat to public order, avoiding excessive violence.

188. In Case No. 2348, on Iraq, the Committee repeated its previous conclusions that Decree No. 16 of 28 January 2004, imposing a trade union monopoly, should be amended to allow workers to join unions of their own choice; and that the 1987 law banning strikes in public enterprises should be reviewed, and restricted to essential services in the strict sense of the term.

189. In Case No. 2432, Nigeria had failed to reply to the CFA's urgent requests for information. The recommendations urged the Government to amend its legislation to limit the definition of essential services to the strict sense of the term, to enable certain categories of public sector workers to organize and bargain collectively, and to allow workers' organizations to take strike action in protest at the Government's economic and social policy having a direct impact on their members and workers in general. The Government could take advantage of ILO technical assistance if it wished.

190. Case No. 2292, on the United States, obliged the Committee to indicate that an ever-enlarged definition of work connected to national security in the country was excluding increasing numbers of federal employees from the collective bargaining provisions of the Federal Services Labor–Management Relations Statute. These decisions should be reviewed and the 56,000 federal airport screeners should be allowed to bargain collectively, through freely chosen representatives, on terms and conditions of employment not related to national security issues. The right to organize, without a corresponding right to bargain collectively, was of limited value. The United States should seriously consider taking up the offer of ILO technical assistance in this connection.

191. In March 2006, the CFA had called on the Government of Canada (British Columbia), under Case No. 2405, to refrain from legislative intervention in the collective bargaining process for teachers. It now noted that the Government had not only failed to act on its recommendations, but had passed a new bill imposing conditions of employment with continued restrictions to the right to strike. Bill No. 19/2004 and Bill No. 12/2005 should be amended in line with freedom of association principles and the international commitments undertaken by the Government of Canada. The reference to central Government was a reminder to the Government that it was responsible for upholding such principles throughout the entire country. Technical assistance was available, if required.

192. The Workers' group hoped that the Government of the Republic of Korea would supply information in respect of Case No. 1875 as soon as possible.

193. Finally, in response to the comment by the Employer spokesperson in relation to the *Digest*, the speaker pointed out that this publication, for which the Office was responsible, contained the results of previous CFA cases and, as such, its text was not open to discussion by the groups. As with the Employers' group, the Workers' group had not been consulted on its contents.

Governing Body decision:

194. ***The Governing Body took note of the introduction to the report of the Committee on Freedom of Association and adopted the recommendations in paragraphs 229 and 247 of the report.***

195. *A Government representative of Burundi*, referring to Cases Nos. 2425 and 2426, pointed out that the larger part of the complaints in the cases dated from before August 2005, at which time Burundi was governed by a transition government, and still suffering the effects of a crisis which had begun in 1993. During this period social dialogue had been stifled by the Government's refusal to recognize certain trade unions, such as the Union of Magistrates (SYMABU) and the Confederation of Trade Unions of Burundi (COSYBU), and through the harassment of the officers of these unions. The 2005 elections had put a legitimate government into place, which entertained excellent relations with both unions and which had, by a decree of July 2006, which would enter into force on 1 January 2007, established the salary scales and other benefits as called for by the SYMABU. Negotiations had also been engaged with the new committee directing the COSYBU, and all the trade union representatives cited in the complaint had been reinstated in their functions; the Trade Union Confederation of Employers of Burundi (CESEBU) had lost its status as the most representative employers' organization of the country, and had been replaced in this role by the Employers' Association of Burundi, in conformity with the Labour Code. Other measures, such as increasing the wages of public and private sector workers had also been taken.

Governing Body decision:

196. ***The Governing Body adopted the recommendations in paragraphs 261, 285, 317, 338, 363, 374, 427, 483, 557, 597, 632, 648, 688 and 704 of the report.***

197. *A Government representative of the United States*, referring to Case No. 2292, noted serious problems in the procedure followed. The case was based on information submitted in 2004. On a request for further information from the Committee, the Government had not responded, as the request was made to both parties. The Government had therefore waited to comment on the additional material supplied by the complainant, which the Office had confirmed as standard practice. In the meantime, the complainant, the American Federation of Government Employees (AFGE), had dropped a large part of the case and had not, to the best of the Government's knowledge, submitted any additional material. It was to be regretted therefore that the CFA had proceeded to act on further information from the complainant, of which the Government had not been informed. Due consideration would nevertheless be given to the recommendations.

Governing Body decision:

198. ***The Governing Body adopted the recommendations in paragraphs 798, 823, 835, 858, 905, 928, 968, 978 and 1010 of the report.***

199. *A Government representative of Nigeria*, referring to Case No. 2432, explained that workers in essential services in his country were represented on joint consultative committees for hearing grievances with a view to attaining amicable resolution. Since this

mechanism had been in place, it was illegal for essential service workers to strike. The Constitution allowed for public gathering, but not for action "disrupting or obstructing the flow of essential services of the country". It was alleged in the complaint by the Academic Staff Union of Universities (ASUU) that the Trade Union (Amendment) Act, 2005, had not been subject to tripartite consultation. This was not the case: the Act had been discussed with the social partners, including ASUU representatives, who had provided input. The Act was not intended to weaken trade unions in Nigeria, but to allow the formation of more federations, so that Convention No. 87 might be more fully implemented. Paragraph 1020 of the complaint indicated that the Government had failed to respond to the allegations; however, the Government's response had in fact been delivered by hand to the Office at the end of May 2006.

Governing Body decision:

200. ***The Governing Body adopted the recommendations in paragraphs 1029, 1048 and 1064 of the report.***

201. *An Employer member from Switzerland*, referring to Case No. 2265, expressed astonishment at the amalgamation made in the recommendations between the Code of Obligations (the Swiss Labour Code) and the Gender Equality Act. Protection against unfair dismissal was guaranteed in private law under article 336 of the Code of Obligations with a sanction fixed at up to six months of salary, which represented a heavy penalty, especially for SMEs. The Gender Equality Act was an instrument of public law. The group regretted that the CFA's recommendation failed to take account either of the Government's or of the Swiss employers' point of view. The Right to Organise and Collective Bargaining Convention, 1949 (No. 98), was in the Employers' opinion fully respected in Switzerland, and the speaker recalled that the communication submitted by the Federal Council before ratification of the instrument was accepted by the ILO. Finally, he reminded the Governing Body that laws in Switzerland were voted by the Swiss people.

202. *The Worker spokesperson on the Committee on Freedom of Association* said the CFA simply sought to ensure that Switzerland followed its obligations under its membership of the ILO. The Committee was concerned that the Government was requesting Case No. 2265 to be closed as Convention No. 98 was not applicable in Switzerland, thus calling the legitimacy of the CFA into question.

Governing Body decision:

203. ***The Governing Body adopted the recommendations in paragraphs 1148 and 1169 and adopted the Committee's report as a whole.***

Eleventh item on the agenda

REPORTS OF THE PROGRAMME, FINANCIAL AND ADMINISTRATIVE COMMITTEE

FIRST REPORT: FINANCIAL QUESTIONS
(GB.297/11/1(Rev.))

Preview of the Programme and Budget proposals for 2008–09 and related questions

(a) Strategy for continued improvement of results-based management in the ILO

Governing Body decision:

204. ***The Governing Body***:

(a) endorsed the elements of the strategy for results-based management (RBM) in the ILO presented in GB.297/PFA/1/1, account having been taken of the views expressed by the members of the PFA Committee during the discussion;

(b) requested the Director-General to report in November 2008 on the progress made on the milestones identified in the strategy, within the context of the next Strategic Policy Framework (SPF); and

(c) requested the Office to provide detailed draft terms of reference for the review of the ILO field structure for adoption by the Governing Body in March 2007.

(GB.297/11/1(Rev.), paragraph 37.)

(b) Preview of programme and budget proposals

Governing Body decision:

205. ***The Governing Body requested the Director-General, when preparing the Programme and Budget proposals for 2008–09 for its March 2007 session, to take account of the views expressed by the members of the Committee during the discussion of this item of its agenda.***

(GB.297/11/1(Rev.), paragraph 81.)

Evaluations

(a) Annual Evaluation Report 2005

Governing Body decision:

206. ***The Governing Body noted satisfactory progress made to date in implementing the new evaluation policy and urged the Office to implement measures to further strengthen and more effectively use its evaluation capacity and draw lessons from the evaluations.***

(GB.297/11/1(Rev.), paragraph 101.)

(b) Independent evaluation of the ILO's strategy for employment-intensive investment

Governing Body decision:

207. ***The Governing Body endorsed the priority areas identified in document GB.297/PFA/2/2 and requested the Director-General to take into consideration the findings and recommendations of the evaluation, together with the deliberations of the Committee, in order to match the above strategic priorities with required funding, including through programming and budget decisions.***

(GB.279/11/1(Rev.), paragraph 115.)

(c) Country programme evaluation: The Philippines

Governing Body decision:

208. ***The Governing Body requested the Director-General to take into consideration the findings and recommendations of the evaluation, together with the deliberations of the Committee, for continuing support to the Philippines through the ILO's Decent Work Country Programme.***

(GB.297/11/1(Rev.), paragraph 124.)

Report of the Building Subcommittee

Governing Body decision:

209. ***The Governing Body authorized that 7.7 million Swiss francs of the cost of phase I of the renovation of the headquarters building be charged to the Building and Accommodation Fund; and requested the Office to present the Subcommittee at the 298th Session (March 2007), with a more detailed analysis of the financing options.***

(GB.279/11/1(Rev.), paragraph 133.)

Report of the Information and Communications Technology Subcommittee

210. *The Worker Vice-Chairperson of the PFA Committee* recalled that a request had been made for an extraordinary meeting of the Subcommittee to be scheduled during the 298th Session (March 2007) of the Governing Body.

Programme and Budget for 2006–07

Regular budget account and Working Capital Fund

211. ***The Governing Body took note of this part of the report.***

(GB.297/11/1(Rev.), paragraphs 134–146.)

International Public Sector Accounting Standards (IPSAS)

Governing Body decision:

212. ***The Governing Body:***

(a) approved the adoption of IPSAS by the ILO for its financial statements, as part of a UN system-wide adoption of IPSAS for the reporting period beginning 1 January 2010;

(b) approved the additional costs estimated at US$205,000 relating to the implementation of IPSAS in 2006–07 and that these costs be financed in the first instance from further fund-raising of extra-budgetary resources or, failing that, from savings in Part I of the budget or, failing that, through Part II; and

(c) requested the Office to provide a preliminary report in March 2007 on the implications for the Financial Regulations of the adoption of IPSAS.

(GB.297/11/1(Rev.), paragraph 163.)

Use of the 2000–01 surplus

213. ***The Governing Body took note of this part of the report.***

(GB.297/11/1(Rev.), paragraphs 164–168.)

International Training Centre of the ILO, Turin

(a) Documents submitted to the 68th Session of the Board of the Centre

(b) Report of the 68th Session of the Board of the Centre

Governing Body decision:

214. ***The Governing Body:***

(a) decided to amend article VI.2 of the Statute of the Centre, effective 1 January 2008, as indicated in paragraph 9 of document CC 68/2/Add.1 ("Amendments to the Statute of the Centre, the Financial Regulations and the Financial Rules. Introduction of the Euro for budgeting, accounting and reporting at the Centre"); and

(b) took note of the decision of the Board of the Centre to approve the proposals, investment plan and financing described in document GB.297/PFA/9/2.

(GB.297/11/1(Rev.), paragraph 176.)

Matters relating to the Joint Inspection Unit (JIU)

Report on its activities for the year ended 31 December 2005 and other reports

215. ***The Governing Body took note of this part of the report.***

(GB.297/11/1(Rev.), paragraphs 177–182.)

Other financial questions

Electronic distribution of preparatory documentation for sessions of the Governing Body

Governing Body decision:

216. ***The Governing Body approved the implementation of the procedure described in paragraphs 8–10 of document GB.297/PFA/11/1.***

(GB.297/11/1(Rev.), paragraph 188.)

SECOND REPORT: PERSONNEL QUESTIONS
(GB.297/11/2(REV.))

I. Statement by the staff representative

II. Human Resources Strategy: Annual report

III. Amendments to the Staff Regulations

217. ***The Governing Body took note of these parts of the report.***

(GB.297/11/2(Rev.), paragraphs 1–28.)

IV. Report of the International Civil Service Commission (ICSC)

Governing Body decision:

218. ***The Governing Body:***

(a) accepted the recommendations of the ICSC, subject to their approval by the UN General Assembly, on the following entitlements:

(i) an increase of 4.57 per cent in the base/floor salary scale; and

(ii) consequential increases in separation payments for staff in the Professional and higher categories with effect from 1 January 2007; and

(b) authorized the Director-General to give effect in the ILO, through amendments to the Staff Regulations (as necessary), to the measures referred to in subparagraph (a) above, subject to their approval by the General Assembly.

(GB.297/11/2(Rev.), paragraph 32.)

V. Matters relating to the Administrative Tribunal of the ILO

219. ***The Governing Body took note of this part of the report.***

(GB.297/11/2(Rev.), paragraphs 33–35.)

VI. Other personnel questions: Adoption leave

Governing Body decision:

220. ***The Governing Body decided to defer the decision on this document until its 298th Session (March 2007).***

(GB.297/11/2(Rev.), paragraph 39.)

Twelfth item on the agenda

REPORT OF THE COMMITTEE ON LEGAL ISSUES AND INTERNATIONAL LABOUR STANDARDS
(GB.297/12(REV.))

First part: Legal issues

I. Progress in the work to adapt the Manual for drafting ILO instruments

II. The ratification campaign for the 1997 Instrument of Amendment to the ILO Constitution

221. ***The Governing Body took note of these parts of the report.***

(GB.298/12(Rev.), paragraphs 1–23.)

III. The status of privileges and immunities of the International Labour Organization in member States

Governing Body decision:

222. ***The Governing Body requested the Director-General to:***

(a) renew the invitation to States that have not yet acceded to the Convention and accepted Annex I relating to the ILO to do so;

(b) invite those member States that had acceded to the Convention but not yet accepted its application to the ILO to do so by notifying the Secretary-General of the UN of their willingness to apply to the ILO the provisions of the Convention and Annex I; and

(c) report periodically on the situation of privileges and immunities in the member States, and in particular in the context of DWCPs.

(GB.297/12(Rev.), paragraph 32.)

IV. Other legal issues: Resolutions in the International Labour Conference

Governing Body decision:

223. ***The Governing Body requested the Office to prepare a second document, following consultation with the tripartite constituents, on the subject for the 298th Session (March 2007) of the Governing Body, taking into account the scope of the discussion in the Committee.***

(GB.297/12(Rev.), paragraph 48.)

Second part: International labour standards and human rights

V. Ratification and promotion of fundamental ILO Conventions

224. ***The Governing Body took note of this part of the report.***

(GB.297/12(Rev.), paragraphs 49–60.)

VI. Choice of Conventions and Recommendations on which reports should be requested in 2008 and 2009 under article 19 of the Constitution

Governing Body decision:

225. ***The Governing Body decided to invite Governments to submit reports under article 19 of the Constitution:***

(a) in 2008, on the Occupational Safety and Health Convention, 1981 (No. 155), the Protocol of 2002 to the Occupational Safety and Health Convention, 1981, and the Occupational Safety and Health Recommendation, 1981 (No. 164); and

(b) in 2009, on the Labour Relations (Public Service) Convention, 1978 (No. 151), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), the Collective Bargaining Convention, 1981 (No. 154), and the Collective Bargaining Recommendation, 1981 (No. 163).

(GB.297/12(Rev.), paragraph 87.)

VII. Other questions

Provisional agenda of the next session of the Committee on Legal Issues and International Labour Standards

226. ***The Governing Body took note of this part of the report.***

(GB.297/12(Rev.), paragraph 88.)

Thirteenth item on the agenda

REPORT OF THE SUBCOMMITTEE ON MULTINATIONAL ENTERPRISES
(GB.297/13(REV.))

Update on strategic priorities for MULTI for 2006–07

Updates on corporate social responsibility-related activities

Proposals for evaluating the effect given to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

227. ***The Governing Body took note of these parts of the report.***

(GB.297/13(Rev.), paragraphs 1–35.)

Update on planning for the event to mark the 30th anniversary of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy

Governing Body decision:

228. ***The Governing Body:***

(a) requested the Office to prepare a paper outlining the modalities of a concrete programme to advise companies on the realization of international labour standards and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). Such a programme might include, among others: research on the impact and value of private monitoring and assessment methods; tools to help countries to strengthen local inspection in respect of labour issues; identification of opportunities for public/private partnerships for inspection and enforcement; collaboration with the International Training Centre of the ILO to develop training materials for auditors and companies on labour standards; advice and guidance on assessment methods that refer to ILO instruments; and identification of other possible services in this regard;

(b) requested the Office to prepare a paper on the composition of the Global Compact local networks, outlining the level of participation by ILO constituents;

(c) endorsed the recommendation to conduct, in the upcoming biennium, a ninth evaluation of the effect given to the MNE Declaration and postponed the decision on the form of such an evaluation until after the 30th anniversary event;

(d) convened a tripartite working group of the Subcommittee, through its Officers, to analyse the different possibilities for the form of the ninth evaluation and prepare a proposal for the March 2007 session of the Governing Body; and

(e) endorsed the proposals set out by the Subcommittee concerning the arrangements related to the 30th anniversary of the MNE Declaration.

(GB.297/13(Rev.), paragraph 43.)

Fourteenth item on the agenda

REPORT OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL POLICY
(GB.297/14(REV.))

A. Implementation of past decisions taken by the Committee on Employment and Social Policy

Governing Body decision:

229. ***The Governing Body requested the Office:***

(i) in preparing documents for consideration by the Committee, to give due regard to identifying areas where guidance and/or points for decision are required; and

(ii) to report at each November session of the Committee on Employment and Social Policy on progress made in giving effect to the general guidance of the Committee.

(GB.297/14(Rev.), paragraph 24.)

B. Strategies and practices for labour inspection

Governing Body decision:

230. ***The Governing Body invited the Office to develop, evaluate and implement a strategy for the support of the modernization and reinvigoration of labour inspection, with international collaboration as required to achieve these goals.***

(GB.297/14(Rev.), paragraph 57.)

C. (i) Implementation of the Global Employment Agenda: An update

(ii) Youth employment

D. Implementation of Decent Work Country Programmes: Checklist of policy areas on social protection

E. Business environment, labour law, and micro- and small enterprises

231. ***The Governing Body took note of these parts of the document.***

(GB.297/14(Rev.), paragraphs 58–157.)

Fifteenth item on the agenda

REPORT OF THE COMMITTEE ON SECTORAL AND TECHNICAL MEETINGS AND RELATED ISSUES
(GB.297/15(REV.))

I. Purpose, duration and composition of sectoral meetings to be held in 2007

(a) Tripartite Meeting to examine the Impact of Global Food Chains on Employment

(b) Meeting of Experts to Examine Instruments, Knowledge, Advocacy, Technical Cooperation and International Collaboration as Tools with a View to Developing a Policy Framework for Hazardous Substances

Governing Body decision:

232. ***The Governing Body decided that:***

(a) the Meeting to examine the Impact of Global Food Chains on Employment would be held for four days in the week beginning 24 September 2007, and the purpose of the Meeting would be to put emphasis on the need to strengthen social dialogue in order to achieve better policy coherence;

(b) the purpose of the Meeting of Experts to Examine Instruments, Knowledge, Advocacy, Technical Cooperation and International Collaboration as Tools with a View to Developing a Policy Framework for Hazardous Substances would be to discuss how ILO instruments and other tools concerning occupational safety and health and hazardous substances could be best incorporated into a new policy framework and action plan. The Meeting of Experts could also examine best practices and appropriate national legal frameworks to promote safe and healthy working environments; review the roles of governments, and employers' and workers' organizations; and examine ways of establishing tripartite consultation mechanisms on occupational safety and health, and of ensuring that workers and their organizations participate in the consultation mechanisms and thereby build a preventative safety and health culture at work. The Meeting of Experts should also consider the impact of new and ongoing initiatives related to hazardous substances, including the UN-wide Strategic Approach to International Chemicals Management (SAICM). The Meeting could adopt recommendations that would be the basis of subsequent ILO action;

(c) the duration of the Meeting of Experts would be for four calendar days from 10 to 13 December 2007;

(d) after consultation with the groups of the Governing Body, a knowledgeable chairperson from outside the Meeting of Experts would be appointed to chair the Meeting;

(e) the Governments of Australia, China, Egypt, France, Germany, India, Japan, Mexico, Russian Federation, South Africa, United Kingdom and United States would be invited to nominate experts to participate in the Meeting of Experts in their personal capacity, and the Governments of Belgium, Brazil, Bulgaria, Canada, Colombia, Denmark, Islamic Republic

of Iran, Italy, Republic of Korea, Kuwait, Malaysia, Morocco, Netherlands, New Zealand, Nigeria, Poland, Qatar, Saudi Arabia, Singapore, Spain, Switzerland or the Bolivarian Republic of Venezuela would be placed on a reserve list to nominate an expert, if any, of the abovementioned Governments declined to do so;

(f) twelve experts would be nominated after consultation with the Employers' group and 12 after consultation with the Workers' group of the Governing Body; and

(g) experts from other member States might take part as observers if they wished.

(GB.297/15(Rev.), paragraph 23.)

II. Effect to be given to the recommendations of sectoral and technical meetings

(a) Meeting of Experts on Safety and Health in Coal Mines
(Geneva, 8–13 May 2006)

Governing Body decision:

233. ***The Governing Body:***

(a) took note of the report of the Meeting of Experts on Safety and Health in Coal Mines and authorized the Director-General to publish the code of practice on safety and health in underground coalmines;

(b) requested the Director-General to bear in mind, when drawing up proposals for the future work of the Office, the wishes expressed by the Meeting in the recommendations for follow-up action by the ILO.

(GB. 297/15(Rev.), paragraph 32.)

(b) Tripartite Meeting on the Social and Labour Implications of the Increased Use of Advanced Retail Technologies
(Geneva, 18–20 September 2006)

Governing Body decision:

234. ***The Governing Body:***

(a) requested the Director-General to communicate the **Note on the proceedings** ***of the Tripartite Meeting on the Social and Labour Implications of the Increased Use of Advanced Retail Technologies:***

(i) to governments, requesting them to communicate the text to the employers' and workers' organizations concerned;

(ii) to the international employers' and workers' organizations concerned; and

(iii) to the international organizations concerned; and

(b) requested the Director-General to bear in mind, when drawing up proposals for the future work of the Office, the wishes expressed by the Meeting in paragraphs 26–32 of the conclusions concerning future ILO activities.

(GB.297/15(Rev.), paragraph 32.)

III. Tripartite Meeting on Labour and Social Issues Arising from Problems of Cross-border Mobility of International Drivers in the Road Transport Sector
(Geneva, 23–26 October 2006)

IV. Joint ILO/UNESCO Committee of Experts on the Application of the Recommendations concerning Teaching Personnel (CEART), Ninth Session
(Geneva, 30 October–3 November 2006)

235. ***The Governing Body took note of these parts of the report.***

(GB.297/15(Rev.), paragraphs 33–36.)

V. Invitation by the International Maritime Organization (IMO) to the ILO to participate in the development of safety standards for small fishing vessels: Further developments

Governing Body decision:

236. ***Bearing in mind the decision of the Governing Body at its 295th Session (March 2006), and the decisions taken by the related IMO body (SLF 49) to establish a new correspondence group to submit its report to SLF 50 (London, 30 April–4 May 2007), the Governing Body:***

(a) authorized the continued participation by the Office in the development of safety recommendations for decked fishing vessels of less than 12 metres in length and undecked fishing vessels;

(b) invited Governments and the Employers' and Workers' groups of the ILO each to nominate a representative to participate, at no cost to the Office, in the work of the correspondence group and in the ILO delegation to the 50th Session of the IMO's Sub-Committee on Stability and Load Lines and on Fishing Vessels' Safety in 2007; and

(c) requested the Office to continue to report to the Committee on any new developments concerning this work.

(GB.297/15(Rev.), paragraph 41.)

VI. Joint ILO-IMO-Basel Convention Working Group on Ship Scrapping

VII. Evaluation report of the sectoral action programmes and the future orientation of the Sectoral Activities Programme

237. ***The Governing Body took note of these parts of the report.***

(GB.297/15(Rev.), paragraphs 42–72.)

Sixteenth item on the agenda

REPORT OF THE COMMITTEE ON TECHNICAL COOPERATION
(GB.297/16(Rev.))

I. Progress in implementation of Decent Work Country Programmes

238. *The Employer Vice-Chairperson* suggested that the Office organize a substantive debate during a plenary sitting of the Governing Body on the theme of DWCPs.

239. *An Employer member from India* requested that commitments entered into at Regional Meetings be taken into account during the preparation of detailed programmes.

Governing Body decision:

240. ***The Governing Body called upon the Office to take into account the comments and observations made by the Committee during its current session; and to provide in its future sessions, on an annual basis, status reports highlighting the outcome and impact of DWCPs.***

(GB.297/16(Rev.), paragraph 44.)

II. Resource mobilization for technical cooperation: Policy and implementation status

Governing Body decision:

241. ***The Governing Body endorsed the ILO's proposals to:***

(a) expand the number of partnership agreements with donor agencies and focus their content around ILO strategic objectives, mainstreamed strategies and DWCP priorities;

(b) enhance field offices' capacity to generate extra-budgetary resources for the implementation of DWCPs, taking into account the outcomes of the foreseen field structure review;

(c) make a special resource mobilization effort for Africa;

(d) mainstream tripartism and support for social partners in donor partnership programmes;

(e) mainstream gender equality in donor partnership programmes;

(f) organize periodic planning and review meetings with the donor community;

(g) develop clear guidelines for public/private partnerships; and

(h) report regularly to the Committee on Technical Cooperation on the progress made in the implementation of the recommendations.

(GB.297/16(Rev.), paragraph 55.)

III. Follow-up to the resolution on technical cooperation adopted by the 95th Session (2006) of the International Labour Conference

Governing Body decision:

242. ***The Governing Body called upon the Office to:***

(a) take due account of the deliberations of the Committee and continue with the implementation of the conclusions of the International Labour Conference referred to above; and

(b) provide a midterm implementation report to the Committee on Technical Cooperation for its November 2008 session to enable it to make an in-depth assessment of the progress made, provide guidance and thereby fulfil its governance function.

(GB.297/16(Rev.), paragraph 69.)

IV. Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work: Technical cooperation priorities and action plans regarding abolition of child labour

Governing Body decision:

243. ***The Governing Body:***

(a) endorsed the action plan as summarized in the appendix to document GB.297/TC/4;

(b) welcomed the global target set out in paragraph 368 of the Global Report under the Declaration follow-up, and quoted in paragraph 6 of GB.297/TC/4;

(c) requested the Director-General, when writing to the member States asking them to commit themselves to the targets set out in paragraph 368 of the Global Report, to take specifically into account the measures outlined in paragraphs 7 and 8 of GB.297/TC/4;

(d) specifically endorsed the proposed focus on sub-Saharan Africa and called upon member States and international development partners to support the endeavours of African countries to meet their commitments;

(e) reconfirmed the Governing Body's commitment to the elimination of child labour as one of the Organization's highest priorities, and endorsed ILO/IPEC strategies and programme approaches to support a worldwide movement against child labour and strengthen national capacities;

(f) instructed the Office to continue the efforts to strengthen the involvement of employers' and workers' organizations in the combat against child labour; and

(g) instructed the Office to continue the promotion of universal ratification and implementation of both Conventions Nos. 138 and 182.

(GB.298/16(Rev.), paragraph 84.)

V. Other questions

(a) ILO response to the post-crisis situation in Lebanon

244. *An Employer member from Saudi Arabia*, granted special permission by the Officers to take the floor, commended the ILO for its efforts and the post-crisis measures put in place in Lebanon. The tripartite Arab members of the Governing Body hoped that the Organization would provide concrete and effective assistance to workers and employers in that country. They requested that a meeting of all stakeholders be organized under the auspices of the ILO for the purpose of finalizing a clear technical cooperation plan that would fall within the ILO's mandate.

(b) Colombia: Tripartite agreement on freedom of association and democracy

245. ***The Governing Body took note of these sections of the report.***

(GB.297/16(Rev.), paragraphs 85–92.)

Seventeenth item on the agenda

REPORT OF THE WORKING PARTY ON THE SOCIAL DIMENSION OF GLOBALIZATION
(GB.297/17)

246. ***The Governing Body took note of the oral report given by the Chairperson of the Working Party.***

Eighteenth item on the agenda

INTERNATIONAL INSTITUTE FOR LABOUR STUDIES
REPORT OF THE 48TH SESSION OF THE BOARD
(GB.297/18)

247. ***The Governing Body took note of the report of the 48th Session of the Board of the International Institute for Labour Studies.***

Nineteenth item on the agenda

REPORT OF THE DIRECTOR-GENERAL
(GB.297/19)

I. Obituaries

Governing Body decision:

248. ***The Governing Body invited the Director-General to convey its sympathy to the family of Mr Edilbert Razafindralambo and to the Government of Madagascar, as well as to the family of Mr Abraham Julio Galer and to the Government of Argentina.***

(GB.297/19, paragraphs 5 and 11.)

II. Composition of the Organization

III. Progress in international labour legislation

249. *A Government representative of El Salvador* stated that, on 6 September, her country had ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Workers' Representatives Convention, 1971 (No. 135) and the Labour Relations (Public Service) Convention, 1978 (No. 151).

250. *The Worker Vice-Chairperson* welcomed the accession of the Republic of Montenegro and the new ratifications registered, which demonstrated the relevance of the Organization in the modern world.

251. *The Employer Vice-Chairperson* stressed the importance of standards, in terms of their ratification and implementation, and of the consequent need for relevant standards which were both universal and sufficiently flexible. The Employers expressed their wish to receive information similar to that provided in the document on the Organization's other instruments.

IV. Internal administration

252. ***The Governing Body took note of these parts of the report.***

(GB.297/19, paragraphs 12–17.)

First Supplementary Report: Appointment of Regional Directors
(GB.297/19/1)

253. *Mr Jean Maninat* was appointed Director of the ILO Regional Office for Latin America and the Caribbean, and *Mr Gek-Boo Ng* Director of the Regional Office for Asia and the Pacific, both with the rank of Assistant Director-General. They took and signed the declaration of loyalty provided for under article 1.4(b) of the ILO Staff Regulations.

Second Supplementary Report: Strategic Approach to International Chemicals Management
(GB.297/19/2)

254. *The Employer Vice-Chairperson* supported the point for decision contained in the Office report.

255. *The Worker Vice-Chairperson* supported the point for decision but insisted on the need to translate the Strategic Approach into other languages in order to ensure that it was disseminated as widely as possible. Steps should also be taken to allocate the resources needed to secure the involvement of the Organization.

256. *A Government representative of Finland*, speaking on behalf of the Member States of the EU, recalled that the Strategic Approach was the first global agreement to manage chemicals and that the EU had actively participated in its development. He proposed a slight reformulation of the point for decision in order to emphasize the Organization's commitment, with the replacement of the expression "took note of the outcomes of" with "approved".

257. *A Government representative of Argentina* supported the point for decision and requested the Organization to adopt the Strategic Approach by integrating its objectives into its programme of work.

258. *A Government representative of Nigeria* supported the suggestion that the ILO and relevant international organizations that had participated in the strategic approach initiative should incorporate its objectives into their programmes of work. He recalled that the report had revealed the failings regarding the application of the Chemicals Convention, 1990 (No. 170), and the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), in the face of the dangers linked to the improper use of chemical substances.

259. *A representative of the Director-General* welcomed the support lent to the Strategic Approach and assured the constituents that the ILO would continue to work very closely with them to promote Conventions Nos. 170 and 174, which were an important contribution to the sound management of chemicals.

Governing Body decision:

260. ***The Governing Body:***

(i) approved the Strategic Approach to International Chemicals Management; and

(ii) endorsed the follow-up action proposed in paragraphs 8 and 9 of the Office report.

(GB.297/19/2, paragraph 10, as amended.)

Third Supplementary Report: Developments in relation to the drafting of an international instrument on shipbreaking/ship recycling
(GB.297/19/3)

261. *A representative of the Director-General* explained that the International Maritime Organization (IMO) had developed a new proposed draft Convention on ship recycling which would have important consequences for workers. It was therefore important to ensure that there was no conflict between the binding provisions of the proposed Convention and ILO occupational safety and health standards. Through its participation in the 55th Session of the Marine Environment Protection Committee (MEPC) of the IMO, the ILO had introduced amendments to the proposed Convention designed to bring it more into line with the principles contained in the international labour standards and codes of practice. Nevertheless, there remained a number of discrepancies with regard to which work needed to be carried out. Moreover, in a reply to a letter sent by the ILO, the Director of the Marine Environment Division (MED) of the IMO had affirmed the desire of his Organization to continue to cooperate with the ILO in the development of the proposed Convention. The ILO might wish to continue the work in that spirit of policy coherence and dialogue. The speaker emphasized the importance of avoiding conflicts between the standards of different organizations, of developing complementarity among standards, and of ensuring effective coordination between different organizations, especially in the area of ship recycling. She expressed the hope that the Governing Body would allow the ILO to pursue its dialogue with the IMO.

262. *The Employer Vice-Chairperson* took note of the documents and endorsed the remarks made by the representative of the Director-General. He encouraged her to continue to follow the path which had already been taken.

263. *The Worker Vice-Chairperson* felt that the Joint ILO/IMO/Basel Convention Working Group should be the channel through which the work was continued.

264. *A Government representative of Japan* welcomed the ILO's contribution to the development of a new IMO Convention. He recognized that there was room for improvement in the proposed Convention, and encouraged the Office to continue to contribute to the work. The speaker stressed that, as had been pointed out during the discussions within the Committee on Sectoral and Technical Meetings and Related Issues (STM), no provision had, as yet, been made for a meeting of the Joint ILO/IMO/Basel Convention Working Group.

265. ***The Governing Body took note of the report.***

(GB. 297/19/3 and Add.)

Fourth Supplementary Report: Developments in relation to possible collaboration between the International Labour Organization and the International Organization for Standardization on occupational safety and health management systems
(GB.297/19/4)

266. *A representative of the Director-General* pointed out that the International Organization for Standardization (ISO) had contacted the ILO with a view to collaborating in the development of a new guidance standard on occupational safety and health management systems (OSH-MS). This work would not involve the development of a new OSH-MS standard but rather the establishment of "guidance" based on the ILO *Guidelines on occupational safety and health management systems (ILO-OSH 2001).* Such collaboration would involve risks for the ILO, but so would non-engagement in the ISO process. Both scenarios should therefore be considered. Moreover, the ISO had proposed, subject to ILO agreement, that it should conduct a survey of ISO member bodies in 120 countries with a view to better understanding their needs and expectations with regard to an ISO standard and to gauging opinion on collaboration with the ILO.

267. *The Worker Vice-Chairperson* recalled that occupational safety and health issues were of fundamental importance to the Workers. It seemed, however, that the ILO had overlooked those issues to such an extent that the Office was not able to respond to the needs of the constituents, who were turning to other bodies, such as the ISO. If the ISO were to take over with regard to those issues, might it not also establish standards in other fields? The speaker proposed amending the point for decision in order to invite the Governing Body to reaffirm the ILO's mandate in the matter of occupational safety and health issues, and to ask the ISO to refrain from conducting a survey on the possibility of developing an OSH-MS international standard. Furthermore, he hoped that the Office would prepare, for the March 2007 session, a paper in order to facilitate a substantive debate on the ISO and the mandate of the ILO.

268. *The Employer Vice-Chairperson* supported the amendments to the point for decision proposed by the Worker Vice-Chairperson. He did so, firstly, because efforts should be made to avoid any confusion that might arise with regard to the various types of standard existing in the field. Secondly, the issue of occupational safety and health was a field in its own right, involving the development on a tripartite basis not only of standards but also of principles and a culture of prevention. The Governing Body, before entering into a process of collaboration, the limits of which were not clearly defined, should hold a substantive debate on the issue. The speaker opposed the idea of a survey not carried out by the ILO, which would encroach upon the Organization's field of competence.

269. *A Government representative of France* stressed what was at stake in this field. The increase in the number of private voluntary standards had important repercussions for the conditions in which enterprises and workers operated. Should the ILO remain on the sidelines with regard to that phenomenon, or should it attempt to influence matters, through joint initiatives with other bodies such as the ISO? The speaker proposed holding a discussion on the second option, while ensuring that measures be put in place to preserve and promote the values of the Organization.

270. *A Government representative of Argentina* recalled that his Government attached a great deal of importance to the ILO *Guidelines on occupational safety and health management systems (ILO-OSH 2001)*, which were applied in his country. He requested that the document to be submitted by the Office to the Governing Body in March 2007 address the issue in depth, from both technical and legal points of view, with special emphasis on the importance of the Organization's tripartite approach to standard setting.

271. *A Government representative of China*, speaking on behalf of the Governments of ASPAG, stated that she shared the concerns previously expressed. Should collaboration with the ISO regarding the development of such a standard prove to be inevitable, then a formal agreement should be concluded setting out the conditions of that collaboration, along with safeguards. ILO objectives should not be compromised, especially those contained in Part 2 of the ILO *Guidelines on occupational safety and health management systems (ILO-OSH 2001)*, which allowed countries to adapt guidelines to national needs, conditions and practices. ASPAG requested the Office to prepare a document for discussion during the March session of the Governing Body.

272. *A Government representative of Japan* associated himself with the preceding statement and the concerns expressed during the debate. He was opposed to the development by the ISO of an international OSH-MS standard, and requested, should such a step prove to be inevitable, that all the necessary measures be taken to ensure the primacy of the ILO in that field. Moreover, he stated that the consequences of non-collaboration should also be taken into account. The Governing Body should examine the issue at its March 2007 session.

Governing Body decision:

273. ***The Governing Body:***

(a) reaffirmed the ILO's mandate in the matter of occupational safety and health, and accordingly asked the ISO to refrain from conducting a survey on the possibility of developing an OSH-MS international standard; and

(b) invited the Office to submit a paper at its 298th Session in March 2007, with a view to facilitating a substantive debate on the ISO and the specific mandate of the ILO.

(GB.297/19/4, paragraph 6, as amended.)

Fifth Supplementary Report: Report and conclusions of the technical workshop on avian flu and the workplace: Preparedness and response
(GB.297/19/5)

274. ***The Governing Body took note of the report.***

(GB.297/19/5.)

Sixth Supplementary Report: Follow-up to the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)
(GB.297/19/6)

275. ***The Governing Body took note of the report.***

(GB.297/19/6.)

Seventh Supplementary Report: Application for general consultative status by the International Trade Union Confederation (ITUC)
(GB.297/19/7)

276. *The Director-General* said that the founding of the International Trade Union Confederation (ITUC), which brought together the members of the former International Confederation of Free Trade Unions (ICFTU) and the World Confederation of Labour (WCL), as well as other independent national trade union confederations, was an historic event. The history of the world trade union movement and that of the ILO were closely intertwined, as were their futures, and there was no doubt that the ITUC was going to be an important partner for the ILO. The General Secretary of the ITUC was well known to the Office. He was a trade unionist with an open approach, and a profound respect for tripartism, a leader unafraid of hard decisions needed to take a forward-looking movement, and a timeless cause, confidently into the future.

277. *The General Secretary of the ITUC* pointed out that, with 306 affiliated unions in 154 countries and territories and 168 million individual members, the ITUC constituted the most representative unified trade union international in the history of the trade union movement. Its objective was to forge a new international trade union movement, capable of providing effective representation for working people in the globalized economy. General consultative status would allow the ITUC to cooperate with the ILO in ways which would be crucial to the Confederation's future. The aims set out in the ITUC Constitution included strengthening the role of the ILO and the setting, and universal application, of international labour standards. The Constitution also committed the ITUC to promoting social dialogue with employers' organizations, and the programme adopted at the founding Vienna Congress on 31 October 2006 underlined the ITUC's attachment to tripartism. It was in that spirit that he made an appeal to the Employers and Governments for constructive dialogue to advance the unchanging objectives of the ILO – social progress and social justice.

278. *The Employer Vice-Chairperson*, also speaking in his role as Executive Vice-President of the International Organisation of Employers (IOE), recalled that the IOE had always sought to establish social dialogue and the consensus necessary for the smooth running of industry. He welcomed the merger which had given rise to the ITUC. Globalization had shown that unity was indispensable if the challenges of the twenty-first century were to be met. He was pleased at this opportunity, within the Governing Body, to welcome the Employers' future counterparts, not in a spirit of confrontation, but in the joint search for solutions to the difficult issues facing the modern world.

279. *The Worker Vice-Chairperson* assured the General Secretary of the ITUC that the Workers' group gave him its full support and confidence. In the presence of the Employers' and Government groups, he pledged that, under the leadership of the new body, the search for social progress and the development of nations across the globe would continue.

Governing Body decision:

280. ***The Governing Body decided, in the light of the information presented in the Office report, to grant general consultative status to the International Trade Union Confederation (ITUC) and to request the Office to adjust the list of organizations with general consultative status accordingly.***

(GB.297/19/7, paragraph 3.)

Twentieth item on the agenda

REPORTS OF THE OFFICERS OF THE GOVERNING BODY

First report: Representation alleging failure by Argentina to secure the observance of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Union of Education Workers of Río Negro (UNTER), a member of the Confederation of Education Workers of the Republic of Argentina (CTERA)
(GB.297/20/1)

Governing Body decision:

281. ***The Governing Body:***

(a) decided that the representation was receivable; and

(b) appointed members of the committee for the examination thereof.

(GB.297/20/1, paragraph 6.)

Third report: Representation alleging failure by Turkey to secure the observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made under article 24 of the ILO Constitution by Yapi-Yol Sen
(GB.297/20/3)

Governing Body decision:

282. ***The Governing Body:***

(a) decided that the representation was receivable; and

(b) referred the allegations to the Committee on Freedom of Association.

(GB.297/20/3, paragraph 5.)

Fourth report: Representation of the International Association of Economic and Social Councils and Similar Institutions (IAESCSI) at ILO meetings
(GB.297/20/4)

Governing Body decision:

283. ***Having noted that the Director-General had received assurance that the ILO would be invited to all the IAESCSI meetings of interest to it, the Governing Body decided to permanently authorize the Director-General to invite the***

IAESCSI to be represented at the annual sessions of the Conference and at other ILO meetings in which it had a technical interest, including meetings of the Governing Body at which issues of concern to the IAESCSI were to be discussed.

(GB.297/20/4, paragraph 2.)

Twenty-first item on the agenda

COMPOSITION AND AGENDA OF STANDING BODIES AND MEETINGS
(GB.297/21)

Committee of Experts on the Application of Conventions and Recommendations

Governing Body decision:

284. ***The Governing Body, on the recommendation of its Officers, reappointed the following members of the Committee of Experts on the Application of Conventions and Recommendations for a period of three years:***

- ***Mr Anwar Ahmad Rashed Al-Fuzaie (Kuwait);***
- ***Ms Janice R. Bellace (United States);***
- ***Mr Michael Halton Cheadle (South Africa);***
- ***Ms Laura Cox (United Kingdom);***
- ***Ms Blanca Ruth Esponda Espinosa (Mexico);***
- ***Mr Pierre Lyon-Caen (France);***
- ***Ms Angelika Nussberger (Germany); and***
- ***Mr Miguel Rodriguez Piñero y Bravo Ferrer (Spain).***

(GB.297/21, paragraph 1.)

Governing Body decision:

285. ***The Governing Body, on the recommendation of its Officers, requested the Director-General to convey to Mr Sergey Petrovitch Mavrin (Russian Federation) its deep gratitude for the services he has rendered to the ILO.***

(GB.297/21, paragraph 3.)

Joint Maritime Commission

Governing Body decision:

286. ***The Governing Body, on the recommendation of its Officers, approved the appointment of Mr M. Dickinson (United Kingdom) as a regular member and of Mr E.O. Suarez (Argentina) as a deputy member of the Commission, both representing the Seafarers.***

(GB.297/21, paragraphs 4–5.)

11th African Regional Meeting
(Addis Ababa, 24–27 April 2007)

Governing Body decision:

287. ***The Governing Body authorized the Director-General to invite the following international non-governmental organizations to be represented at the Meeting as observers:***

- ***African Regional Organization of the International Confederation of Free Trade Unions (AFRO-ICFTU);***
- ***Democratic Organization of African Workers' Trade Unions (DOAWTU);***
- ***General Union of Chambers of Commerce, Industry and Agriculture for Arab Countries (GUCCIAAC);***
- ***International Confederation of Arab Trade Unions (ICATU);***
- ***Organization of African Trade Union Unity (OATUU); and***
- ***Pan-African Employers' Confederation (PEC).***

(GB.297/21, paragraph 9.)

Tripartite Meeting on the Production of Electronic Components for the IT Industries: Changing Labour Force Requirements in a Global Economy
(Geneva, 16–18 April 2007)

Governing Body decision:

288. ***The Governing Body authorized the Director-General to invite the International Metalworkers' Federation (IMF) to be represented at the Meeting as an observer.***

(GB.297/21, paragraph 12.)

Appointment of Governing Body representatives on various bodies

Tripartite Meeting on the Production of Electronic Components for the IT Industries: Changing Labour Force Requirements in a Global Economy

Governing Body decision:

289. ***The Governing Body appointed Mr Shigeru Nakajima (Worker, Japan), who will also chair the Meeting.***

(GB.297/21, paragraph 13.)

Information notes

PROGRAMME OF MEETINGS AS APPROVED BY THE OFFICERS OF THE GOVERNING BODY
(GB.297/Inf.1)

APPROVED SYMPOSIA, SEMINARS, WORKSHOPS AND SIMILAR MEETINGS
(GB.297/Inf.2)

REQUESTS FROM INTERNATIONAL NON-GOVERNMENTAL ORGANIZATIONS WISHING TO BE REPRESENTED AT THE 96TH SESSION (2007) OF THE INTERNATIONAL LABOUR CONFERENCE
(GB.297/Inf.3)

290. ***The Governing Body took note of this information.***

Annexe / Appendix / Anexo

297e session – Genève – novembre 2006
297th Session – Geneva – November 2006
297.a reunión – Ginebra – noviembre de 2006

Liste des personnes assistant à la session

List of persons attending the session

Lista de las personas presentes en la reunión

Membres gouvernementaux titulaires — Regular Government members — Miembros gubernamentales titulares

Président du Conseil d'administration: Chairperson of the Governing Body: Presidente del Consejo de Administración:	**Mr M.M.S. MDLADLANA (South Africa)**

Afrique du Sud — South Africa — Sudáfrica

Mr M.M.S. MDLADLANA, President of the ILO Governing Body and Minister of Labour.

substitute(s):

Ms G. MTSHALI, Ambassador, Permanent Mission, Geneva.
Mr L. KETTLEDAS, Deputy Director-General, Department of Labour.
Mr S. NDEBELE, Counsellor (Labour), Permanent Mission, Geneva.

accompanied by:

Ms N. NONJONJO, Protocol Officer to the Minister of Labour.
Ms N. PLATZMAN, Secretary, Permanent Mission, Geneva.

Allemagne — Germany — Alemania

Mr W. KOBERSKI, Director for European Policy, Federal Ministry of Economic Affairs and Labour.

substitute(s):

Mr E. KREUZALER, Director, International Employment and Social Policy Department, Federal Ministry of Economic Affairs and Labour.
Ms B. ZEITZ, Deputy Head, ILO and UN Department, Federal Ministry of Economic Affairs and Labour.
Ms S. HOFFMANN, Counsellor, Permanent Mission, Geneva.

accompanied by:

Mr G. ANDRES, Parliamentary Secretary of State, Federal Ministry of Economic Affairs and Labour.
Ms C. KÖNIG, Head of Department.

Arabie saoudite Saudi Arabia Arabia Saudita

Mr A. AL-GHORRI, Legal Adviser, International Organizations Directorate, Ministry of Labour.

Argentine Argentina Argentina

Sr. C. TOMADA, Ministro de Trabajo, Empleo y Seguridad Social.

suplente(s):

Sra. N. RIAL, Secretaria de Trabajo, Ministerio de Trabajo, Empleo y Seguridad Social.

acompañado(s) de:

Sr. A. DUMONT, Embajador, Misión Permanente, Ginebra.
Sr. E. MARTINEZ GONDRA, Ministro, Representante Permanente Alterno, Misión Permanente, Ginebra.
Sr. E. VARELA, Asesor, Ministerio de Trabajo, Empleo y Seguridad Social.
Sr. D. CELAYA ALVAREZ, Consejero, Misión Permanente, Ginebra.
Sr. G. CORRES, Subcoordinador de Asuntos Internacionales, Ministerio de Trabajo, Empleo y Seguridad Social.
Sra. M. ARES, Secretaria del Ministro.
Sr. A. NEGRO, Director de Ceremonial y Relaciones Institucionales.

Australie Australia Australia

Mr J. SMYTHE, Minister (Labour), Permanent Mission, Geneva.

accompanied by:

Ms L. LIPP, Executive Director, International Relations Branch, Department of Employment and Workplace Relations.
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Bélarus Belarus Belarús

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Cameroun Cameroon Camerún

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Maroc Morocco Marruecos

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Mr M. GRUSZKA, Policy Adviser, Ministry of Foreign Affairs.
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Mr E. GEORGE, Permanent Secretary, Ministry of Labour and Small and Micro-Enterprise Development.

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Tunisie Tunisia Túnez

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Venezuela (Bolivarian Rep.)
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Mr V. VU, First Secretary, Permanent Mission, Geneva.

Membres employeurs titulaires Regular Employer members Miembros empleadores titulares

Vice-président du Conseil d'administration: **Vice-Chairperson of the Governing Body:** **Vicepresidente del Consejo de Administración:**	**Sr. D. FUNES DE RIOJA (Argentina)**
Secrétaire du groupe des employeurs: **Secretary of the Employers' group:** **Secretario del Grupo de los Empleadores:**	**Sr. A. PEÑALOSA (IOE)**
Secrétaire adjoint du groupe des employeurs: **Deputy Secretary of the Employers' group:** **Secretario adjunto del Grupo de los Empleadores:**	**Mr B. WILTON (IOE)**

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Mr A. DAHLAN (Saudi Arabia), Representative, Council of Saudi Chamber of Commerce and Industry.

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Mr A. JEETUN (Mauritius), Director, Mauritius Employers' Federation.

Mr M. LAMBERT (United Kingdom), representative, Confederation of British Industry.

Mr D. LIMA GODOY (Brazil), Vicepresidente, Confederación Nacional de la Industria (CNI).

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Mr A. TABANI (Pakistan), President, Employers' Federation of Pakistan.

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* * *

Ms A. GERSTEIN, accompanying Ms Hornung-Draus.

Mr A. GREENE, accompanying Ms Goldberg.

Membres employeurs adjoints Deputy Employer members Miembros empleadores adjuntos

Mr A. ABU RAGHEB (Jordan), Secretary-General, Jordan Chamber of Industry.

Mr I. ANAND (India), Chairperson, Shivathene Corporate Centre.

M^me^ F. AWASSI ATSIMADJA (Gabon), Représentante, Confédération patronale gabonaise.

M. M. BARDE (Suisse), Secrétaire général, Fédération des syndicats patronaux.

Mr L. CHEN (China), Vice-President, China Enterprise Confederation.

Sr. B. DE ARBELOA (Venezuela (República Bolivariana de)), Presidente, Comisión OIT/OIE, FEDECAMARAS.

Sr. J. DE REGIL (México), Vicepresidente, Comisión de Trabajo, Confederación de Cámaras Industriales de los Estados Unidos Mexicanos.

Mr O. EREMEEV (Russian Federation), Chairperson, Coordinating Council of Employers' Unions of Russia (CCEUR).

Mr A. FINLAY (Canada), Vice-President and Assistant General Counsel, Employee Relations and Employment Group, The Bank of Nova Scotia.

Mr S. GOH HOCK LI (Singapore), Council Member, Singapore National Employers Federation.

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Mr O.A. OSHINOWO (Nigeria), Director-General, Nigeria Employers' Consultative Association.

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Mr V. VAN VUUREN (South Africa), Chief Operations Officer, Business Unity South Africa.

* * *

Mr S.M. DEWAN, accompanying Mr Anand.

Mr P. KOLAROV, accompanying Mr Eremeev.

Mr O. KOVALEV, accompanying Mr Eremeev.

Mr A. POLOUEKTOV, accompanying Mr Eremeev.

Mr K. SARANCHOUK, accompanying Mr Eremeev.

Ms H. LIU, accompanying Mr Chen.

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Substitute members attending the session:
Miembros suplentes presentes en la reunión:

Mr M. PILIKOS (Cyprus), Director-General, Cyprus Employers' and Industrialists' Federation.

Mr P. PRIOR (Czech Republic), Confederation of Industry of the Czech Republic.

Mr P. TOMEK (Austria), representative, Federation of Austrian Industry.

Membres travailleurs titulaires Regular Worker members
Miembros trabajadores titulares

Vice-président du Conseil d'administration: **Vice-Chairperson of the Governing Body:** **Vicepresidente del Consejo de Administración:**	**Sir Roy TROTMAN (Barbados)**
Secrétaire du groupe des travailleurs: **Secretary of the Workers' group:** **Secretaria del Grupo de los Trabajadores:**	**Ms A. BIONDI** **(ITUC)**
Secrétaire adjointe du groupe des travailleurs: **Deputy Secretary of the Workers' group:** **Secretaria adjunta del Grupo de los Trabajadores:**	**Sra. R. GONZÁLEZ** **(ITUC)**

Mr N. ADYANTHAYA (India), Vice-President, Indian National Trade Union Congress.

Ms S. BURROW (Australia), President, Australian Council of Trade Unions.

Ms B. BYERS (Canada), Executive Vice-President, Canadian Labour Congress.

M^me^ R. DIALLO (Guinée), Secrétaire générale, Confédération nationale des travailleurs de Guinée (CNTG).

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Ms U. ENGELEN-KEFER (Germany), Vice-President, German Confederation of Trade Unions (DGB).

Sr. J. GÓMEZ ESGUERRA (Colombia), Secretario General, Confederación General del Trabajo (CGT).

Mr S. NAKAJIMA (Japan), Executive Director, Department of International Affairs, Japanese Trade Union Confederation – JTUC-RENGO.

Mr A. OSHIOMHOLE (Nigeria), President, Nigeria Labour Congress (NLC).

M. A. SIDI SAÏD (Algérie), Secrétaire général, Union générale des travailleurs algériens.

Mr E. SIDOROV (Russian Federation), Secretary, Federation of Independent Trade Unions of Russia (FNPR).

Mr S. STEYNE (United Kingdom), International Officer, EU and International Relations Department, Trades Union Congress.

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Mr J. ZELLHOEFER (United States), European Representative, AFL-CIO European Office.

* * *

Ms M. HAYASHIBALA, accompanying Mr Nakajima.

Ms B. KÜHL, accompanying Ms Engelen-Kefer.

Membres travailleurs adjoints Deputy Worker members
Miembros trabajadores adjuntos

Mr K. AHMED (Pakistan), General Secretary, All Pakistan Federation of Trade Unions.

Mr M. AL-MA'AYTA (Jordan), President, General Federation of Jordanian Trade Unions.

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* * *

Membres suppléants assistant à la session:
Substitute members attending the session:
Miembros suplentes presentes en la reunión:

Sr. P. PARRA (Paraguay), Miembro, Central Nacional de Trabajadores.

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Representatives of other member States of the Organization present at the session
Representantes de otros Estados Miembros de la Organización presentes en la reunión

Algérie Algeria Argelia

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République dominicaine
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Soudan Sudan Sudán

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Zambie Zambia Zambia

Mr L. MTESA, Ambassador, Permanent Mission, Geneva.
Mr M. DAKA, Deputy Permanent Representative, Permanent Mission, Geneva.
Ms I. LEMBA, First Secretary, Permanent Mission, Geneva.
Ms A. CHIFUNGULA, Auditor General, Permanent Mission, Geneva.
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Mr D. MULENGA, Permanent Mission, Geneva.

Représentants d'organisations internationales gouvernementales
Representatives of international governmental organizations
Representantes de organizaciones internacionales gubernamentales

Haut Commissariat des Nations Unies pour les réfugiés
Office of the United Nations High Commissioner for Refugees
Oficina del Alto Comisionado de las Naciones Unidas para los Refugiados

Mr A. VERNON, Head, Organization Development and Management Services.
Ms C. LINNÉR, Head of the Inter-Organization Desk.

Organisation des Nations Unies pour l'alimentation et l'agriculture
Food and Agriculture Organization of the United Nations
Organización de las Naciones Unidas para la Agricultura y la Alimentación

Mr T. MASUKU, Director, FAO Liaison Office with the United Nations in Geneva.
Mr P. KONANDREAS, Senior Liaison Officer.
Mr P. PAREDES-PORTELLA, Liaison Officer, Geneva Office.
Ms I. GALLETTI, Volunteer with the FAO Liaison Office with the United Nations in Geneva.

Organisation mondiale de la santé
World Health Organization
Organización Mundial de la Salud

Mr L. TILLFORS, External Relations Officer, Department of Governance.

Fonds monétaire international
International Monetary Fund
Fondo Monetario Internacional

Mr R. MARINOV, Consultant, Geneva Office.
Ms G. WEDER, Consultant, Geneva Office.
Ms I. HAMDAN, Consultant, Geneva Office.
Mr G. BARNARD, IMF Representative to the WTO.

Organisation des Nations Unies pour le développement industriel
United Nations Industrial Development Organization
Organización de las Naciones Unidas para el Desarrollo Industrial

Mr J. M. DEROY, Director.
Mr J. TOWARA, Liaison Assistant.

Organisation mondiale du commerce
World Trade Organization
Organización Mundial del Comercio

Ms V. KULAÇOGLU, Director, Trade and Environment Division.
Mr P. RATA, Counsellor, Trade and Environment Division.
Mr S. EL HACHIMI, Counsellor, External Relations Division.

Organisation internationale de la francophonie

Organización Internacional de la Francofonía

M. L. BARARUNYERETSE, Ambassadeur, Représentant permanent.
M[me] S. COULIBALY LEROY, Représentant permanent adjoint.
M[me] M. JULIA, Assistante.

Union africaine

African Union

Unión Africana

Ms K. MASRI, Ambassador and Permanent Observer.
Mr D. NEGOUSSE, Minister Counsellor.
Mr F. GSOUMA, First Secretary.
Ms B. NAIDO, First Secretary.

Organisation arabe du travail

Arab Labour Organization

Organización Árabe del Trabajo

Dr. I. GUIDER, Director-General.
Mr A. HUMSI, Head of the permanent delegation in Geneva.
Ms A. HILAL, Permanent delegation in Geneva.
Ms Z. KASBAOUI, Permanent delegation in Geneva.

Ligue des Etats arabes

League of Arab States

Liga de Estados Árabes

Mr S. ALFARARGI, Ambassador, Permanent Observer.
Mr A. EL-FATHI, Ministre Plénipotentiaire.
Mr H. TOUNSI, Membre.

Commission européenne

European Commission

Comisión Europea

Mr C. TROJAN, Ambassador, Head of permanent delegation, Geneva.
Mr T. BÉCHET, Head of UN Section, Permanent Delegation Office, Geneva.
Mr R. DELARUE, Official, DG Employment, Brussels.
Mr C. DUFOUR, UN Section, Permanent Delegation Office, Geneva.

****

Mr G. HOUTTUIN, Head, Liaison Office of the General Secretariat, Geneva, Council.
Mr O. ALLEN, Counsellor, Liaison Office of the General Secretariat, Geneva, Council.
Mr J. LILLIEHÖÖK, Counsellor, Liaison Office of the General Secretariat, Geneva, Council.
Mr S. VAN THIEL, Counsellor, Liaison Office of the General Secretariat, Geneva, Council.

Représentants d'organisations internationales non gouvernementales assistant à titre d'observateurs
Representatives of international non-governmental organizations as observers
Representantes de organizaciones internacionales no gubernamentales presentes con carácter de observadores

Alliance coopérative internationale

International Co-operative Alliance

Alianza Cooperativa Internacional

Mr I. MACDONALD, Director-General.
Ms M. CHAVEZ HERTIG, Deputy Director-General.

Confédération syndicale internationale

International Trade Union Confederation

Confederación Sindical Internacional

Mr G. RYDER, General Secretary.
Ms A. BIONDI, Director, Geneva Office.
Mr J. DWIGHT, Multinationals, Organizing and Recruitment.
Mr J. KUCZKIEWICZ, Director, Trade Union Rights Department.
Ms M. CISSÉ, Assistant General Secretary.
Ms R. GONZALEZ, Assistant Director.
M. H. SEA, Représentant à Genève.
Ms E. BUSSER, Assistant, Geneva Office.
Ms V. DE BLONAY, Administrative Secretary.
Ms E. BLUMER, Secretary, Geneva Office.

Fédération syndicale mondiale

World Federation of Trade Unions

Federación Sindical Mundial

Ms A. AVELLA, Adviser, Geneva Office.
Mr J. AVELLA GARCIA, Collaborator, Geneva Office.
Srta O. OVIEDO DE LA TORRE, Representative, Geneva Office.

Organisation internationale des employeurs

International Organization of Employers

Organización Internacional de Empleadores

Mr A. PEÑALOSA, Secretary-General.
Mr B. WILTON, Deputy Secretary-General.

Organisation de l'unité syndicale africaine

Organization of African Trade Union Unity

Organización para la Unidad Sindical Africana

Mr H. SUNMONU, Secretary-General.
Mr D. DIOP, Assistant Secretary-General.
Mr A. DIALLO, Permanent Representative to the ILO and UN Mission in Geneva.

Association internationale de la sécurité sociale

International Social Security Association

Asociación Internacional de la Seguridad Social

Mr H. KONKOLEWSKY, Secretary-General.
Mr J. THIRION, Chief of Finance and Administration.

Mouvement de libération
Liberation movement
Movimiento de liberación

Palestine Palestine Palestina

Mr M. ABU-KOASH, Ambassador, Permanent Observer Mission of Palestine in Geneva.
Mr O. MOHAMMED, Counsellor, Permanent Observer Mission of Palestine in Geneva.
Mr I. MUSA, First secretary, Permanent Observer Mission of Palestine in Geneva.

Annex 2

CONSTITUTION & STANDING ORDERS:

- Congress
- General Council
- Executive Bureau

As amended by the 6th Extraordinary World Congress (Online, October 2023)

ITUC CSI IGB

INTERNATIONAL TRADE UNION CONFEDERATION

CONSTITUTION

Adopted at the Founding Congress (Vienna, November 2006)

As amended by the 2nd World Congress
(Vancouver, Canada, June 2010)

As amended by the 3rd World Congress
(Berlin, Germany, May 2014)

As amended by the 4th World Congress
(Copenhagen, Denmark, December 2018)

As amended by the 5th World Congress
(Melbourne, Australia, November 2022)

As amended by the 6th Extraordinary World Congress
(Online, October 2023)

Contents

INTERNATIONAL TRADE UNION CONFEDERATION

CONSTITUTION

DECLARATION OF PRINCIPLES

The International Trade Union Confederation (ITUC) salutes the sacrifice and conquests of generations of working women and men who through their trade union struggle have fought for the cause of social justice, freedom, democracy, peace and equality. It pledges to carry forward their struggle for the emancipation of working people and a world in which the dignity and rights of all human beings are assured, and each is able to pursue their well-being and to realise their potential at work and in society.

The Confederation recognises the urgent need to transform social, economic and political structures and relations which stand as obstacles to that vision. It assumes the task of combating poverty, hunger, exploitation, oppression, and inequality through the international action required by the conditions of the globalised economy, and for its democratic governance in the interests of labour, which it holds superior to those of capital.

The Confederation exists to unite and mobilise the democratic and independent forces of world trade unionism in giving effective representation to working people, wherever they work and in whatever conditions. It is committed to provide practical solidarity to all in need of it, and to confront the global strategies of capital with global strategies of labour.

The Confederation considers universal respect of the rights of workers, and access to decent work as indispensable to just and sustainable development. Their denial anywhere constitutes an immediate threat to human security everywhere.

The Confederation commits itself to promote and to act for the protection of democracy everywhere, so that the conditions for the full exercise of all human rights, universal, indivisible and inalienable, may be enjoyed by all. It shall defend everywhere collective rights and individual liberties, including freedom of thought, expression and assembly.

The Confederation further commits itself to securing comprehensive and equitable economic and social development for workers everywhere, in particular where poverty and exploitation are greatest.

The Confederation condemns all forms of discrimination as an affront to human dignity and to the equality into which each person is born and has the right to live, and pledges to uphold respect for diversity at work and in society.

The Confederation upholds fervently the maintenance and strengthening of peace and commits itself to a world free of weapons of mass destruction and to general disarmament. It proclaims the right of all peoples to self-determination and to live free from aggression and totalitarianism under a government of their own choosing. It rejects recourse to war to resolve conflict, and condemns terrorism, colonialism and militarism, as well as racism and sexism.

The Confederation expresses unwavering support for the principles and role of the United Nations, and for its unique legitimacy and authority to stand as an effective guarantee of peace, security and development, commanding the respect and adherence of all in the international community.

Unitary and pluralist, the Confederation is open to affiliation by democratic, independent, and representative trade union centres, respecting their autonomy and the diversity of their sources of inspiration, and their organisational forms. Its rules are to guarantee internal democracy, full participation of affiliates, and that the composition of the Confederation's governing bodies and its representation respect its pluralist character.

The Confederation's decisions are taken, and its activities implemented, in full independence of all external influence, be they state, political, employer, religious, economic, or other.

AIMS

The Confederation is inspired by the profound conviction that organisation in democratic and independent trade unions and collective bargaining are

crucial to achieving the well-being of working people and their families and to security, social progress and sustainable development for all.

It has been the historic role of trade unionism, and remains its mission, to better the conditions of work and life of working women and men and their families, and to strive for human rights, social justice, gender equality, peace, freedom and democracy. More than ever in its history, confronted by unbridled capitalist globalisation, effective internationalism is essential to the future strength of trade unionism and its capacity to realise that mission.

The Confederation calls on the workers of the world to unite in its ranks, to make of it the instrument needed to call forth a better future for them and for all humanity.

It shall be the permanent responsibility of the Confederation:

To defend and promote the rights and interests of all working people, without distinction, and to obtain, in particular, a fair return for their labour in conditions of dignity, justice, and safety at work and in society in general.

- It shall strive for the universal respect of fundamental rights at work, until child labour and forced labour in all their forms are abolished, discrimination at work eliminated and the trade union rights of all workers observed fully and everywhere.

- It shall denounce violations of freedom of association, of the right to strike including cross-border action, and of the right to collective bargaining, and shall mobilise international solidarity to have them brought to an end.

- It shall fight for the right to freely chosen, productive employment and social security for all.

- It shall act to end all discrimination on the basis of sex, religion, colour, nationality, ethnicity, sexual orientation, gender identity, political opinion, social origin, age or disability, and to uphold respect for diversity in society and employment.

To promote the growth and strength of the independent and democratic trade union movement.

- It shall render practical support to strengthen the capacities and membership of national trade union movements, through the coordinated provision of international development assistance.

- It shall initiate and support action to increase the representativeness of trade unions through the recruitment of women and men working in the informal as well as the formal economy, through extension of full rights and protection to those performing precarious and unprotected work, and through lending assistance to organising strategies and campaigns.

To be a countervailing force in the global economy, committed to securing a fair distribution of wealth and income within and between countries, protection of the environment, universal access to public goods and services, comprehensive social protection, life-long learning and decent work opportunities for all.

- It shall work to strengthen the role of the ILO, and for the setting and universal application of international labour standards, and to win representation at other international and regional organisations with a view to having their policies and activities contribute coherently to the achievement of decent work, social justice and sustainable development.

- In cooperation with the Global Union Federations and TUAC, it shall promote and support the coordination of international trade union policies and activities on multinational enterprises and social dialogue with international employer organisations.

To make the trade union movement inclusive, and responsive to the views and needs of all sectors of the global workforce.

- It shall advance women's rights and gender equality, guarantee the full integration of women in trade unions and promote actively full

gender parity in their leadership bodies and in their activities at all levels.

- It shall combat racism, xenophobia and exclusion and defend the rights and interests of migrant workers and their families and work for tolerance, equality and dialogue between different cultures.

- It shall ensure the full integration of young people in the trade union movement and act to support the access of young people to adequate education and training and to decent work, and to oppose precarity in working life.

- It shall strengthen solidarity between generations and support the rights of retired workers to decent incomes, and work to advance their interests.

- It shall defend and promote the rights of working women and men with disabilities.

To mobilise the strength, energy, resources, commitment, and talent of its affiliates and their members in the achievement of these goals, making trade union internationalism an integral part of their daily work.

- It shall promote and organise campaigns, solidarity activities, days of action, and other mobilisations considered necessary to this end and gather and disseminate information required to ensure the timely and effective provision of global solidarity.

- It shall seek to establish arrangements for optimal cooperation with other trade union organisations sharing its aims in order to maximise the coherence and impact of action at the different levels of the democratic and independent international trade union movement.

- It shall develop links and cooperation with other civil society organisations and political groupings, without compromising trade union independence, in pursuit of the objectives of the Confederation.

The Confederation, with the highest standards of democratic governance, transparency and accountability historically embedded in the organisation, pledges to pursue these goals with determination, and in accordance with the enduring trade union values of solidarity, democracy and justice. It will not desist from their achievement nor be deterred by the enemies of progress, sure in the conviction that it lies in the hands of working people to determine their own future.

MEMBERSHIP

Article I: Affiliation

(a) All democratic, independent and representative national trade union centres adhering to the Constitution of the Confederation shall be eligible for membership.

(b) The General Council shall have the power to decide on applications for affiliation. It may admit organisations into membership where it is satisfied that the applicant meets, both in its principles and its practices, the criteria established in Article I (a), and that its affiliation is desirable and in the interests of the Confederation.

(c) The General Council shall, on the basis of affiliation procedures laid down by the General Council, decide on applications for affiliation by a majority of three-quarters of its members and report its decisions to the Congress for ratification.

Article II: Rights and Responsibilities

(a) Member organisations shall have equal rights and responsibilities. Each has the right to be regularly informed of, and to participate in the life and the activities of the Confederation in line with the provisions of this Constitution and to receive the solidarity and assistance of the Confederation in case of need.

(b) Member organisations shall retain their full autonomy at national level. They shall be responsible to take into account in their policy formulations the decisions of the Congress and governing bodies of the Confederation, to keep the Confederation informed of their activities, and to fulfil their financial obligations to the Confederation.

Article III: Withdrawal

(a) An organisation shall have the right to withdraw from the Confederation subject to giving three months' notice.

(b) In order for a notice of withdrawal to be valid the organisation should not be in arrears with respect to the payment of affiliation fees. An organisation which ceases affiliation with arrears owing to the Confederation becomes liable, in the event of its subsequently applying for re-affiliation, to the payment of an entrance fee of an amount to be fixed by the General Council.

Article IV: Suspension and Expulsion

(a) The General Council shall have the right to suspend, and the Congress shall have the right to expel, any member organisation for action, or lack thereof, deemed by those bodies to be in violation of this Constitution, or against the interests of the Confederation. Provision shall be made for a hearing of charges before a decision is rendered, on the basis of a procedure laid down by the General Council. Decisions shall be taken by a majority of three-quarters of General Council members, or by a three-quarters majority of the Congress.

(b) Where an organisation is suspended from membership, the mandates of its representatives in the Confederation's statutory bodies shall expire automatically, whereas the rights and duties of the organisation shall be dormant until the decision of the Congress.

RELATIONS

Article V: Associated Organisations

(a) The General Council may grant the status of associated organisation to national trade union centres which are unable to comply with all conditions of Article I (a) due to political repression, violations of human and trade union rights, other forms of persecution and repression or extraordinary events such as wars or natural disaster, but which subscribe to the Declaration of Principles and aims of the Confederation, or where, exceptionally, specific circumstances justify the granting of this status. Such status will be granted with a view to assisting them to overcome obstacles to affiliation.

(b) The General Council shall take decisions on associated organisation status based on a special procedure laid out by the General Council, and shall subject such decisions to review at least once every two years.

(c) Associated organisations shall have the responsibilities set out in Article II(b) except that they shall have no financial obligations towards the Confederation.

(d) The General Council shall determine the conditions under which associated organisations may participate in the activities of the Confederation and at Congress.

Article VI: Global Union Federations and the Council of Global Unions

(a) The Confederation recognises the autonomy and responsibility of the global union federations with regard to representation and trade union action in their respective sectors and in relevant multinational enterprises, and the importance of sectoral action to the trade union movement as a whole.

(b) Concerned to ensure the greatest possible degree of cohesion and effectiveness within the international trade union movement, the Confederation shall work in a structured partnership with the global union federations and the Trade Union Advisory Committee to the OECD (TUAC) through the Council of Global Unions (CGU). Global union federations, of which one per sector shall be recognised by the Confederation, shall be represented, with speaking rights, in the latter's governing bodies.

Article VII: The Trade Union Advisory Committee to the OECD (TUAC)

The Trade Union Advisory Committee to the OECD (TUAC) shall be represented, with speaking rights, in the Confederation's governing bodies.

Article VIII: Decision-Making Bodies

The Decision-Making Bodies of the Confederation in order of authority shall be:

(a) The Congress
(b) The General Council
(c) The Executive Bureau
(d) The General Secretary

CONGRESS

Article IX: Ordinary Sessions

(a) In the determination of the programme and policy of the Confederation and in the interpretation of this Constitution, the supreme authority shall be the Congress.

(b) Ordinary Congress sessions shall be convened at least once every four years. Their date and place shall be fixed by the General Council on the basis of proposals made by member organisations, and shall

be communicated to member organisations not later than twelve months prior to the Congress.

(c) The Congress shall consider and decide upon:

(i) reports on activities of the Confederation, including financial reports;
(ii) general trade union policy questions;
(iii) proposals for the activity of the Confederation during the period to follow;
(iv) proposals for amendments to the Constitution;
(v) any other proposal submitted by member organisations;
(vi) reports on the activities of the regional organisations;
(vii) reports on the structured partnership with the global union federations and TUAC.

(d) The Congress shall elect the General Council, the General Secretary and the Auditors.

Article X: Extraordinary Sessions

(a) An extraordinary Congress shall be called on the authority of the General Council or if one-third of member organisations representing at least 25% of the Confederation's membership apply for it.

(b) In such a case the General Council shall decide the procedure for establishing the agenda and for the consideration of proposals from member organisations, whenever it is not practical to apply the normal procedure as laid down in this Constitution.

Article XI: Composition

The Congress is composed of delegates representing member organisations, subject to the provisions of Article XXXVI, on the basis of their paying membership and according to the following scale:

Up to 50,000 members	1 delegate
Between 50,001 and 100,000 members	2 delegates
Between 100,001 and 250,000 members	4 delegates
Between 250,001 and 500,000 members	6 delegates
Between 500,001 and 1,000,000 members	8 delegates
Between 1,000,001 and 2,500,000 members	10 delegates
Between 2,500,001 and 5,000,000 members	12 delegates
Between 5,000,001 and 7,500,000 members	16 delegates
Over 7,500,000 members	20 delegates

Article XII: Delegations and Representatives

(a) Member organisations shall select their delegates taking into account the aim to actively promote and achieve gender parity in their leadership bodies and activities at all levels. Women shall constitute half of the delegations of organisations having 2 or more delegates. Any organisation sending one delegate to Congress shall designate a woman delegate, if women represent 50% or more of its membership or where it fails to declare the gender composition of its membership.

(b) In the event that the overall composition of Congress delegations is less than 50% women, the Credentials Committee shall accept all the nominations from organisations which nominate more than 50% women in their delegation.

(c) Taking into account the aim to integrate young workers into the trade union movement, the General Council will set a target of not less than 10% before each Congress for the level of youth participation.

(d) Delegates shall have the right to speak and to vote.

(e) Delegations may be accompanied by up to four advisers, who may take the floor on behalf of their delegations and with the agreement of the Chairperson but may not vote. Delegations may also be accompanied by not more than two persons who may act as

secretaries or interpreters. These persons will have neither the right to speak nor the right to vote.

(f) The number of representatives of associated organisations shall be determined by the General Council before each Congress. They shall have the right to speak, with the agreement of the Chairperson, but not to vote.

(g) The global union federations recognised by the Confederation in accordance with Article VI of this Constitution are each entitled to send up to six representatives having the right to take part in the debates but not to vote.

(h) The provisions of sub-article (e) above shall also apply to delegations of the global union federations.

(i) The Trade Union Advisory Committee to the OECD is entitled to send one representative and one adviser, having the right to take part in debates but not to vote.

(j) The expenses of delegations and representatives at the Congress shall be borne by their respective organisations.

Article XIII: Observers and Guests

(a) Representatives of other trade union organisations and governmental or non-governmental organisations with which the Confederation maintains friendly relations, may be invited by the General Council to attend the Congress and shall be allowed to address Congress at the invitation of the Chairperson.

(b) Guests invited to attend the Congress by the General Council will be permitted to address the Congress at the invitation of the Chairperson.

(c) Members of the General Council who are not members of an accredited delegation shall have the right to attend the Congress as

observers and take part in the debates, but shall not have the right to vote.

Article XIV: Credentials and Nominations

(a) Member organisations must submit the names of their representatives to the General Secretary not later than three months prior to the Congress.

(b) By the same time limit they shall submit their nominations for:

(i) the Credentials Committee;
(ii) the Standing Orders Committee;
(iii) the General Secretary
(iv) the Auditors

Article XV: Agenda

(a) The agenda of the Congress shall be prepared by the General Council following consultations with member organisations. It shall include items as stipulated in Article X(c) of this Constitution.

(b) The General Secretary shall communicate to member organisations the agenda not later than six months prior to the Congress, and invite them to send in proposals related to various items of the agenda. These proposals shall be so forwarded as to reach the General Secretary not later than three months prior to the Congress.

(c) The proposals received shall, prior to their submission to the Congress, be reviewed by the General Council which may direct the General Secretary to circulate any or all of them to member organisations in advance to enable amendments thereto to be forwarded. In this event the General Council shall fix the time limit for submission of the amendments.

(d) The General Council shall have the power to make recommendations in regard to proposals and amendments. The General Council shall

be also empowered to submit proposals directly to the Congress, either on general questions or on matters of emergency which have arisen during or immediately prior to the Congress.

(e) All proposals or draft resolutions submitted by member organisations after the time limit fixed in paragraph (b) shall be referred to the General Council. The General Council may decide to submit them to the Congress as in paragraph (d) above, but its decision will be final.

Article XVI: Statutory Committees

(a) On the basis of the nominations received from member organisations and applying the principle of gender balance, the General Council shall appoint:

(i) the Credentials Committee of seven members,

(ii) the Standing Orders Committee of fifteen members.

(b) These two committees shall be convened immediately prior to the Congress and shall submit their first reports to the first working session of the Congress. In considering these reports the Congress shall also be requested to ratify the composition of the committees.

(c) The Credentials Committee shall:

(i) prepare a list of persons attending the Congress;

(ii) report to the Congress on the composition of delegations and on their voting power;

(iii) consider any objections to the credentials of delegates;

(iv) examine the eligibility of nominees for the General Council and the posts of President, Deputy Presidents, General Secretary, Deputy General Secretaries and Auditors and report to the Congress thereon;

(v) ensure that any rules and procedures adopted by the General Council relating to integrity, anti-corruption and the conduct of

election campaigns, shall be implemented, and have the power to recommend to the General Council sanctions on candidates for breaches of such rules and procedures, up to and including removal of their eligibility as a candidate;

(vi) attempt to effect agreement, in consultation with the regional organisation concerned, in cases where there are more nominations than seats allocated for those regions on the General Council and report to the Congress thereon;

(vii) In the event that there is more than one candidate for election as General Secretary, the Credentials Committee be constituted by the General Council well in advance of Congress in order to enable it to oversee the conduct of that election.

(d) The Standing Orders Committee shall, taking into account any recommendations from the General Council concerning the Congress programme and proposals for Congress decisions:

(i) consider the draft Standing Orders and report on them to the Congress;

(ii) fix the time-table and order of business for the Congress;

(iii) make proposals relating to the setting-up, composition, terms of reference and agenda of special Congress committees;

(iv) consider amendments to the Constitution and report on them to the Congress;

(v) report to the Congress on any other questions requiring a decision for the proper conduct of its business;

(vi) consider requests for the circulation to the Congress of documents or materials other than official Congress documents.

(e) In the event of a constitutional impasse which neither the Credentials Committee nor the Standing Orders Committee is able to resolve, the Congress shall convene a special session of the General Council to break the impasse.

Article XVII: Congress Presidency

(a) The Congress Presidency shall consist of the President, the two Deputy Presidents, the Vice-Presidents and the General Secretary of the Confederation.

(b) The President of the Confederation shall chair the Congress. In carrying out his or her duties the person concerned shall adhere to this Constitution and the Congress Standing Orders.

(c) In the absence of or at the request of the President during a sitting or any part thereof, one of the Deputy Presidents, or in their absence one of the Vice-Presidents of the Confederation shall preside.

Article XVIII: Congress Secretariat

The General Secretary of the Confederation shall be the Secretary-General of the Congress, assisted by the Deputy General Secretaries. He or she shall act under the President as the principal administrator of the Congress.

Article XIX: Voting

(a) The endeavour of the Congress shall be to secure the widest possible measure of agreement on any decisions taken. When a vote is called, however, the decision of the Congress shall be by an absolute majority of delegates except where otherwise provided in this Constitution.

(b) In the case of amendments to the Constitution, a two-thirds majority of delegates to the Congress shall be required, except for changes to the Declaration of Principles, Article XI and Article XIX, for which a three-quarters majority of delegates to the Congress shall be required.

(c) Voting shall, as a rule, be by show of hands., Where the President considers that there is no obvious consensus on a matter to be decided by Congress, the President may call for an indicative show of hands. Where the President considers that a formal vote is necessary, the matter shall be put to a vote by show of hands without further

debate being allowed, unless delegations representing at least 25% of the total membership credentialled to the Congress request the President, in writing, for a vote to be held in which each delegation shall cast its vote as a unit, where the number of votes to which each delegation is entitled shall be equal to the total membership of that organisation credentialled to the Congress. Votes shall be counted by ITUC staff appointed as tellers.

Article XX: Virtual or hybrid Congresses

Where a global public health or other emergency would substantially affect the representativeness of the Congress due to restrictions precluding the physical participation of delegates, provision shall be made for at-distance participation of delegates by electronic means. In line with Article XXV (d) and under this provision, when at-distance participation in a Congress is foreseen the General Secretary, in consultation with the President and Deputy Presidents, shall make the necessary arrangements subject to approval as soon as possible by the Executive Bureau. These arrangements must respect the voting rights and effective participation in the formal proceedings of the Congress of all credentialed delegates; and where some delegates can attend in person but others cannot, the arrangements must ensure gender balance among those attending, including ensuring that a delegation may only attend in person if it respects the rules on gender balance.

GENERAL COUNCIL

Article XXI: Composition

(a) The General Council, elected by Congress, shall be composed as follows:

70 members according to the following regional distribution:

- Africa 11
- Americas 18
- Asia-Pacific 15
- Europe 26

In each region, the allocation of seats shall reflect their paid membership, territorial composition and diversity.

- six members at large based on nominations by the Women's Committee
- two members at large, applying the principle of gender parity, based on nomination by the Youth Committee.

(b) Taking into account the aim to actively promote gender parity, the General Council shall set a progressive target before each Congress, starting at 40%, for minimum women's membership on the Council. The Congress shall ensure that, in addition to the members nominated by the Women's Committee, each region contributes fairly to the achievement of this target. This provision shall apply to titular and first and second substitute membership of the Council.

(c) All member organisations represented at the Congress shall have the right to participate in the arrangements for considering nominations for membership of the General Council from their particular region. A classification of member organisations by region for the purpose of the election shall be made by the General Council.

(d) The General Council shall determine the procedure for proposals to be received and considered by the Women's Committee and the Youth Committee for the nomination by these committees of candidates for the members to be elected at large.

(e) The Congress shall elect a first and second substitute for each member of the General Council on the basis set out above.

(f) The global union federations and the TUAC shall each have the right to send a representative to meetings of the General Council.

Article XXII: Authority of the General Council

The General Council shall be the supreme authority of the Confederation between Congresses.

Article XXIII: Mandate of Members

(a) The members of the General Council and their substitutes shall be regarded as representing the Confederation as a whole. Each member shall have one vote.

(b) No person shall be entitled to serve on the General Council or Executive Bureau whose organisation, without valid reason approved by the General Council, is in arrears of four quarters or more with payment of affiliation fees, or who has ceased to be an accredited representative of the member organisation to which he or she belonged at the time of election.

(c) The mandate of the members and their substitutes shall expire at each Congress, but they are immediately re-eligible.

Article XXIV: Vacancies

(a) In the event of the Congress leaving a vacancy on the General Council, the Congress shall be deemed to have delegated the power of election to the General Council, full freedom as to the manner of nomination being left with the region concerned or the Women's Committee or the Youth Committee as the case may be.

(b) Vacancies on the General Council arising between two Congresses among members or substitutes from different regions shall be filled as follows:

(i) in the event of a vacancy arising owing to the decease or the resignation of a member or substitute, full freedom as to the manner of replacing the person concerned will be left to the organisation to which he or she belonged, subject to ratification by the General Council;

(ii) in the event of a vacancy arising owing to the fact that a member or substitute has ceased to be an accredited representative of the organisation to which he or she belonged at the time of

election, his or her place will be taken by a person nominated by the organisation concerned, subject to ratification by the General Council;

(iii) in the event of a vacancy arising pursuant to the application of Article III or Article IV, full freedom as to the manner of replacing the member or substitute will be left to the region concerned, subject to ratification by the General Council.

(c) The provisions of Article XXIV and Article XXV (b) shall apply also to the members and substitute members of the General Council nominated by the Women's Committee and the Youth Committee. Vacancies thus arising shall be filled by a person nominated by the Women's Committee or the Youth Committee as the case may be, subject to ratification by the General Council.

Article XXV: Meetings

(a) The General Council shall meet not less than once per year. The date of the meeting shall be notified to member organisations at the same time as to the members of the General Council. One-half of the members or their accredited substitute members shall constitute a quorum for meetings of the General Council.

(b) In the event of a member being unable to attend a meeting of the General Council, the member shall inform the secretariat in due time. In a case when the first substitute is from the same organisation as the member, the latter shall invite the first substitute in his or her place. If the first substitute is from a different organisation from the member, the secretariat shall invite the first substitute. Should the first substitute also be prevented from attending, the same procedure shall be followed regarding the second substitute.

(c) For the proper conduct of its meetings, the General Council shall adopt its own Standing Orders, without prejudice to the obligations arising from this Constitution.

(d) Whilst in principle General Council meetings will be held physically, in accordance with the provision stipulated in Article XX, if a global public health or other emergency would substantially affect the operations of the General Council due to restrictions precluding the physical participation of the Members, provision shall be made for at-distance participation of Members by electronic means. When at-distance participation in a meeting is foreseen, the General Secretary, in consultation with the President and Deputy Presidents, shall make the necessary arrangements in adopting a written resolution as soon as possible by the Executive Bureau. These arrangements shall respect the voting rights and effective participation in the formal proceedings of the meeting.

Article XXVI: Competence

(a) The General Council shall be responsible for directing the activities of the Confederation and giving effect to the decisions and recommendations of the Congress.

(b) The General Council shall establish the annual budget and adopt the annual financial report of the Confederation.

(c) The General Council should promote networks or working groups on issues it considers to be of major priority, to improve the quality of policy and the effectiveness of action and provide opportunities to involve smaller affiliates in substantive discussions.

(d) The General Council shall ensure regular and objective evaluations of action plans, projects, strategies and campaigns.

(e) The General Council shall ensure that regular financial reports are disseminated to all affiliates.

Article XXVII: Agenda

(a) The final draft agenda and appropriate documents for the General Council meeting shall be prepared by the General Secretary in

compliance with the provisions stipulated in Article XXVI (a) and (b) and circulated to reach members of the Council not less than one month in advance of the meeting in the language they were originally written in; and the final documents not less than two weeks in advance of the meeting.

(b) Any member organisation has the right to submit suggestions for the agenda of the General Council, which shall decide if and when discussion of the item is appropriate. Such suggestions must be received in writing by the General Secretary not less than three weeks prior to the date of the General Council meeting.

Article XXVIII: Committees

(a) The General Council shall establish a Women's Committee and a Youth Committee and determine their composition and terms of reference.

(b) The General Council may establish a Human and Trade Union Rights Committee and such other committees as it deems appropriate and determine their duration, composition and terms of reference.

EXECUTIVE BUREAU

Article XXIX: Executive Bureau

(a) At its meeting during the Congress, the newly elected General Council shall elect an Executive Bureau composed of the President, the General Secretary and up to twenty-five titular members of the General Council, including the Chairperson and Vice-Chairperson of the Women's Committee and the Chairperson of the Youth Committee.

(b) Taking into account the aim to actively promote gender parity, the General Council shall set a progressive target before each Congress, starting at 30%, for minimum women's membership on the Executive Bureau, applying the same principles as provided for in Article XIX(b).

(c) For each member of the Executive Bureau the General Council shall elect from among its number a first and second substitute.

(d) The Executive Bureau shall have the authority to deal with general and specific trade union policy questions of urgency or importance that arise between any two meetings of the General Council, or which may be entrusted to it by the General Council. It shall also have the role of preparing the General Council's decisions concerning finances and the annual budget. It shall meet not less than twice a year.

(e) For the proper conduct of its meetings the Executive Bureau shall adopt its own Standing Orders.

(f) A majority of the members or their accredited substitutes shall constitute a quorum for meetings of the Executive Bureau.

(g) Whilst n principle Executive Bureau meetings will be held physically, in accordance with the provisions stipulated in Article XX and Article XXV (d), if a global public health or other emergency would substantially affect the operations of the Executive Bureau due to restrictions precluding the physical participation of Members, or if it appears that there is not a sufficient volume of business to be conducted to require physical participation of Members, provision shall be made for at-distance participation of Members by electronic means. When at-distance participation at a meeting is foreseen, the General Secretary, in consultation with the President and Deputy Presidents, shall make the necessary arrangements in a written resolution for adoption at the beginning of the meeting. These arrangements must respect the voting rights and effective participation in the formal proceedings of the meeting.

REGIONAL ORGANISATIONS AND STRUCTURES

Article XXX

(a) The Congress shall determine the regions for each of which a regional organisation or structure shall be established. The regional organisations shall be organic parts of the Confederation.

(b) The role of the Regional Organisations and Structures is to advance the policies of the Confederation and to act in coordination with and on behalf of the Confederation in their regional particularities. Regions and structures may conduct interregional coordination under the guidance and with the support of the Confederation.

(c) Only organisations affiliated with the Confederation shall be eligible for membership of a regional organisation or structure. When an organisation is suspended or expelled at world level, the decision shall also apply at regional level.

(d) The regional organisations shall be autonomous in determining their leadership, policies and action regarding regional matters, while being responsible for promoting the priorities and policies of the Confederation in their respective regions.

(e) The regional organisations shall establish democratic structures, with elected leaders, respecting the same principles of gender representation applying to the Confederation. Their rules shall be subject to the approval of the General Council.

(f) The General Secretary of each regional organisation shall also hold the status of Deputy General Secretary of the Confederation, following confirmation of their election by the General Council.

(g) The regional organisations shall have their own finance. The confederation shall allocate a reasonable share of the budget to the regions to enable them to fulfil their tasks. They shall have the power to fix and collect affiliation fees from their member organisations. They shall submit their annual budgets and accounts to the Confederation for approval by the General Council.

(h) The regional organisations shall be accountable for their actions to the Confederation, and shall submit annual reports on the decisions of their governing bodies and their activities and finances to the General Council.

(i) The regional organisations may establish sub-regional structures to meet the needs for representation and trade union action in specific contexts. These decisions shall be subject to ratification by the General Council.

(j) The General Council may, following consultations with the Regional Organisations, establish sub regional structures in the event that the membership of that such sub regional structures would include members of more than one ITUC Regional Organisation.

(k) The General Secretary and Deputy General Secretaries shall meet with General Secretaries of Regional Organisations and structures prior to the meetings of the General Council and Executive Bureau or when such a need arises so that the General Secretary can be apprised of general and specific trade union policy questions.

GENERAL SECRETARY

Article XXXI

(a) The General Secretary shall be elected by the Congress from nominations received from a minimum of either 10% of the total paying membership of the ITUC or 10% of the total number of ITUC affiliates or both and shall be eligible for re-election at each Congress. Where there is more than one candidate, a secret vote shall take place, in which each delegation shall vote as a unit with its voting strength being equal to the number of paying members it has affiliated to the ITUC. No candidate for the position of General Secretary shall make use of ITUC resources for the sole and specific purpose of conducting their campaign, and nonelected staff members of the ITUC shall play no part in the election campaign of any such candidate.

(b) The General Secretary shall, ex officio, be a member of the General Council and the Executive Bureau with the right to vote.

(c) The General Secretary shall be the representative and spokesperson of the Confederation. The General Secretary shall lead the Secretariat and shall be responsible for implementing the decisions of Congress and the General Council and the general administration of the Confederation. He or she shall report to the General Council and Congress on his or her activities.

(d) The General Secretary shall remain in office between Congresses as long as he or she enjoys the confidence of the General Council.

(e) In the event of the office of the General Secretary becoming vacant between two Congresses, the General Council shall appoint an acting General Secretary for the remaining period until the next Congress. The President, in consultation with the Deputy Presidents, shall nominate, as an interim measure, one of the Deputy General Secretaries as acting General Secretary until such time as the General Council meets.

DEPUTY GENERAL SECRETARIES

Article XXXII

(a) As set out in Article IX (d), Congress shall, also elect the new members of the General Council.

(b) At its meeting during the Congress, the newly-elected General Council shall elect, on the basis of nominations received from member organisations, the positions of Deputy General Secretaries, who shall comprise the Secretariat under the leadership of the General Secretary. The Council shall determine the number of Deputy General Secretaries and the procedure for their election where there are more candidates than posts. At least one of the positions of General Secretary or Deputy General Secretary shall be held by a woman. The decision of the General Council shall then be transmitted to the Congress for ratification.

(c) Deputy General Secretaries shall remain in office between Congresses as long as they enjoy the confidence of the General Council and shall be eligible for re-election.

(d) Deputy General Secretaries shall be ex-officio members of the General Council and the Executive Bureau, without the right to vote.

PRESIDENT

Article XXXIII

(a) The newly elected General Council shall at its meeting during the Congress, elect a President. The position of President shall rotate at each Congress among the regions for which a regional organisation or structure has been established, while taking into account the principle that the General Secretary and the President shall not come from the same region. The decision of the General Council shall then be transmitted to the Congress for ratification.

(b) The President shall chair all meetings of the Congress and the General Council and shall have the right to attend all other meetings of the Confederation.

(c) The President shall have voting rights in the governing bodies of the Confederation.

DEPUTY PRESIDENTS AND VICE-PRESIDENTS

Article XXXIV

(a) The newly elected General Council shall at its meeting during the Congress, elect two Deputy Presidents, one of whom shall serve as Chairperson of the Executive Bureau and the other as Chairperson of the Solidarity Fund Management Board. At least one of the posts of President and Deputy Presidents shall be held by a woman. The

decision of the General Council shall then be transmitted to the Congress for ratification.

(b) The General Council shall, applying the principle of gender parity, elect at least seven of its members as Vice-Presidents, including the Chairperson of the Women's Committee, the Chairperson of the Youth Committee and the Presidents of the Regional Organisations.

ELECTED LEADERSHIP GROUP

Article XXXV

The President, Deputy Presidents, General Secretary, Deputy General Secretaries and the Presidents and General Secretaries of the Regional Organisations and Structures, shall meet not less than three times per year, as the ITUC Elected Leadership Group (ELG). These meetings shall provide advice to the ITUC's full-time elected officials on political and economic trends and issues, support the most effective coordination and planning of activities between the ITUC Headquarters and the Regional Organisations and Structures, and assist in the resolution of matters of priority concern. The General Secretary shall report on the meetings of the Elected Leadership Group to the Executive Bureau and General Council.

FINANCE

Article XXXVI: Affiliation Fees

(a) The activities of the Confederation shall be financed by annual affiliation fees, payable by member organisations and calculated for each thousand members or part thereof. The rate will be established each year by the General Council. These fees shall be payable in Euro or the equivalent in other currencies. Notwithstanding the above provisions, no member organisation shall pay less than a minimum affiliation fee of 100 euros per year. In specific cases, the General Council shall be empowered to reduce this amount by half.

(b) All member organisations shall notify the General Secretary by 15 October each year of their paying membership, which shall be used as a basis for the calculation of affiliation fees throughout the following year. This notification shall include the percentage gender composition of their membership.

(c) Affiliation fees shall be paid quarterly in advance, on 1 January, 1 April, 1 July and 1 October of each year. Any organisation owing two but fewer than four quarters' affiliation fees shall be allowed to be represented at the Congress but without voting rights. Organisations owing four but fewer than eight quarters' affiliation fees shall not be permitted to be represented at the Congress. Organisations owing eight or more quarters' affiliation fees shall be regarded as having withdrawn.

(d) The General Council shall have the authority to fix different rates for those member organisations where general economic and social or political conditions do not permit them to pay at the full rate, without prejudice to their rights to representation or to vote. These arrangements shall be reviewed from time to time. The General Council shall moreover be empowered to exempt, in exceptional circumstances, a member organisation from paying affiliation fees for as long as such circumstances exist, its rights and privileges as a member organisation thereby not being affected. Any action taken in this connection shall be included in the report on activities submitted to the Congress for endorsement.

(e) Affiliation fees shall not be receivable from member organisations in respect of which the General Council has taken action provided under Article IV.

(f) The General Council shall determine the distribution rate of the ITUC affiliation fees income to the Regional Organisations and Structures based on their local currencies.

Article XXXVII: Solidarity Fund

(a) The Confederation shall maintain a Solidarity Fund, financed by contributions from member organisations, to support the development and practice of democratic, independent and representative trade unionism and to come to the aid of victims of repression or other actions hostile to the practice of trade union freedoms.

(b) The Fund shall operate under the authority of a Management Board elected, and in accordance with rules set, by the General Council.

Article XXXVIII: Other Financial Sources

(a) The Congress may empower the General Council to raise levies on member organisations. In so doing the General Council shall also decide the nature, duration and purpose of such levies.

(b) The General Secretary, reporting to the General Council, may decide to organise fund-raising campaigns, based on voluntary contributions, for defined purposes.

(c) The General Secretary, reporting to the General Council, may, for defined purposes, apply for financing from public and private sources, in conditions which guarantee fully its independence and freedom of action.

Article XXXIX: Auditors

(a) The Congress shall elect three auditors, at least one of whom shall be a woman. The auditors shall hold at least an annual audit of the accounts of the Confederation. Members of the General Council shall not be eligible as auditors. The auditors shall submit their report to the General Council and to the Congress and, after endorsement by one of these bodies, the report shall be circulated to member organisations.

(b) In the event of the office of one of the auditors becoming vacant between two Congresses, the General Council shall have the authority to fill the vacancy.

Article XL: Expenses to be borne by the Confederation

The expenses of members of the General Council and of the Executive Bureau as well as those of the auditors in the performance of their duties shall be borne by the Confederation up to an amount determined by the General Council.

HEADQUARTERS

Article XLI

The headquarters of the Confederation shall be determined by the Congress.

DISSOLUTION

Article XLII

(a) Dissolution of the Confederation shall be by decision of a Congress especially convened for that purpose.

(b) Such a decision shall require a three quarters majority of delegates to Congress.

AUTHORITATIVE TEXT

Article XLIII

In the case of a conflict in meaning between different language versions of the text of the Constitution, the English text shall prevail.

CONGRESS STANDING ORDERS

Article I: General

The present Standing Orders shall supplement the provisions relating to the Congress contained in the Constitution (Articles IX-XX).

Article II: Plenary Sittings

(a) The plenary sittings of the Congress shall be public except when the Congress expressly decides to go into private session.

(b) Seats in the Congress hall shall be assigned by the Secretary- General.

Article III: Opening of the Congress

(a) The Congress shall be opened by the President.

(b) Immediately after the opening the Congress shall proceed with the following business:

(i) Addresses of Welcome;
(ii) President's Address;
(iii) Consideration of the First Report of the Credentials Committee;
(iv) Ratification of the composition of the Credentials Committee;
(v) Consideration of the First Report of the Standing Orders Committee;
(vi) Ratification of the composition of the Standing Orders Committee.

Article IV: Objections to Credentials

(a) Objections raised to the seating of any delegate shall be submitted to the Secretary-General not later than 24 hours after the opening of the Congress, or 12 hours after the seating of that delegate has been made public.

(b) The Secretary-General shall submit these objections to the Credentials Committee, together with any relevant information.

(c) The Credentials Committee shall report to the Congress as soon as possible. Pending final decision by the Congress on his or her admission, any delegate whose credentials are being challenged shall enjoy full rights as a delegate.

(d) Any delegation that is unable to comply with the Constitutional provision of Article XII(a) related to gender parity must provide an explanation to the Credentials Committee, which shall take such explanation into account in its report to Congress and make appropriate recommendations, based on guidelines drawn up by the General Council.

Article V: Committees

(a) The sessions of the Credentials Committee, the Standing Orders Committee and special committees shall be private.

(b) The only persons authorised to attend the meeting of these Committees shall be:

(i) delegates duly appointed by the Congress to serve on such Committees;

(ii) delegates appointed as substitutes to any such delegates and designated in writing to the Congress; such substitutes shall have the right to take part in the debates and to vote only in the absence of the regular members for whom they duly act as substitutes;

(iii) advisers designated in writing to the Chairperson of the Congress by delegates; such advisers may take part in the debates with the permission of the Chairperson of the Committee but shall not have the right to vote;

(iv) a secretary or interpreter designated in writing to the Chairperson of the Congress by a delegate serving on the Committee; such a person shall not have the right to take part in the debates or to vote;

(v) staff members appointed by the Secretary-General;

(vi) representatives of the Global Union Federations and the TUAC, who may attend meetings of special committees as observers; such persons shall have the right to take part in the debates and make proposals concerning their substance, but not to vote.

(c) If a Committee is discussing a resolution moved by an organisation which is not represented on that Committee, it may invite a delegate from that organisation to attend the Committee meeting for the duration of the discussion of the resolution.

(d) The statutory and special Congress Committees shall elect their own Chairperson and Rapporteur.

(e) The Secretary-General shall appoint the Secretary of each Committee.

(f) Voting in Committees shall be by show of hands.

Article VI: Languages

(a) The official languages of the Congress shall be English, French, German and Spanish.

(b) The Congress may decide to adopt other working languages.

(c) Any delegate wishing to speak in any other language must provide a translation into one of the official languages.

Article VII: Right to address the Congress

(a) Applications to speak shall be handed to the Chairperson in writing except on a point of order or procedure.

(b) A delegate shall speak only once on any subject unless otherwise agreed by the Congress, except that the rapporteur of any Committee shall have the right of reply at the close of the debate. The mover of a motion, resolution or amendment (except on a point of order or procedure) shall have the same right.

(c) The Secretary-General shall at all times have the right to speak on any subject.

(d) If a motion of closure has been made, the Chairperson shall read to the Congress the names of the delegates who have notified him or her of their desire to speak.

(e) Should the Chairperson consider that there is no real difference of opinion among the delegates, he or she shall have the power to close the debate and if so required proceed to the taking of a vote.

(f) The Chairperson may require speakers to resume their seat if their remarks are not relevant to the subject under discussion.

(g) Unless otherwise agreed by the Congress, no speech shall exceed five minutes exclusive of the time for interpretation, except that special guest speakers, delegates appointed to introduce agenda items, and rapporteurs when presenting a report, may at the discretion of the Chairperson be allowed a time limit of longer than five minutes.

Article VIII: Motions, resolutions, amendments

(a) Motions, resolutions and amendments submitted through the procedure set out in Article XV of the Constitution shall be circulated in the four official languages. They shall be deemed to have been duly moved and seconded.

(b) Motions and resolutions on matters of urgency may be submitted directly to the Congress by affiliated organisations or by their delegations. Such motions (other than those on a point of order or on

procedure) and resolutions shall be submitted in writing in one of the official languages to the Secretary-General and, in the first instance, be referred to the Standing Orders Committee of the Congress.

(c) No motion or resolution submitted under paragraph (b) above shall be discussed by the Congress unless it has been seconded and circulated in the four official languages. The same shall apply also to amendments.

(d) Amendments may be submitted to the Congress during a sitting for immediate discussion. Such amendments shall be submitted in writing in one of the official languages.

(e) If there are several amendments to a motion or resolution the Chairperson shall determine the order in which they shall be discussed and, if necessary, put to a vote.

(f) Any amendment may be withdrawn by the delegate who moved it unless an amendment to it is under consideration or has been adopted. Any amendment so withdrawn may be moved without previous notice by any other delegate.

(g) A delegate may not submit a motion, resolution or amendment (except on a point of order or on procedure) in a personal capacity, but only on behalf of a delegation.

(h) Motions of procedure may be moved verbally and without previous notice.

Motions of procedure include the following:

(i) a motion to refer the matter back;
(ii) a motion to postpone consideration of the question;
(iii) a motion to adjourn the sitting;
(iv) a motion to adjourn the debate on a particular question;

(v) a motion to vote on the subject under discussion;

(vi) a motion that the Congress proceed with the next item on the agenda;

(vii) a motion to suspend Standing Orders.

(j) A motion on procedure shall be put immediately to the vote. The Chairperson may allow one delegate to speak in favour of it and one against it.

(k) No motion, resolution or amendment shall be declared carried if an equal number of votes is cast for and against it.

(l) Any delegate at any time may draw attention to the fact that the Standing Orders or the Constitution of the Confederation are not being observed, and the Chairperson shall give an immediate ruling on any question so raised.

(m) A motion challenging the Chairperson's ruling on any matter shall be put immediately to the vote and one delegate shall be allowed to speak in favour of such a motion and one other to speak against it.

Article IX: Voting

(a) In the event that voting takes place under Article XIX(a) or (b) of the Constitution, the basis for calculation of the absolute, two-thirds or three-quarters majority required for a decision shall be the total number of delegates credentialed to the Congress.

(b) In the event that voting takes place under Article XIX(c) of the Constitution, the basis for calculation shall be the total credentialed membership of the delegations at Congress.

(c) In the event that voting takes place for the election of General Secretary under Article XXXI(a) of the Constitution, the following

procedure shall apply: where there are two candidates for the position, the election shall be decided by an absolute majority; where there are more than two candidates for the position, a candidate receiving an absolute majority shall be declared the winner. In the event that a ballot does not produce an absolute majority, the candidate receiving the lowest number of votes in that ballot and each subsequent ballot shall be eliminated, until one candidate receives an absolute majority.

GENERAL COUNCIL STANDING ORDERS

Article I: General

The present Standing Orders shall supplement the provisions relating to the General Council in the Constitution (Articles XXI - XXVIII).

Article II: Sessions of the General Council

(a) General Council meetings shall be held not less than once per year. A meeting of the General Council shall be arranged to immediately precede the Congress, and the newly elected General Council shall meet during the Congress. At each meeting the General Council will decide on the date of the following meeting. Should it become necessary in the interval between meetings to alter the date decided on, the President and the General Secretary will make the necessary alterations.

(b) The President may convene a special meeting should he/she deem it necessary to do so, and will be bound to convene a special meeting on receipt of a written request to that effect signed by at least 25% of the General Council.

(c) The sessions of the General Council shall be held at the headquarters of the Confederation or elsewhere in the locality, unless the General Council shall otherwise expressly determine.

(d) In the event that a virtual meeting takes place, a quorum shall be established on the basis of the number of the logged-in Titular Members or their Substitute Members.

Article III: Admission to Meetings

(a) Substitute members of the General Council who have not been called upon to replace a titular member as provided for in Article XXV (b) of the Constitution may attend the meetings of the General Council without the right to speak or vote, but their expenses will not be met by the Confederation.

(b) In exceptional circumstances, if a titular member and his/her two elected substitutes are unable to attend a complete session, the General Council may authorise, on the basis of an advance request in writing, a personal substitute to attend on behalf of an elected member.

(c) As a general rule the sittings are private. Nevertheless, the President may authorise representatives of affiliated organisations and other visitors to attend and also, at the General Secretary's request, members of the staff of the Confederation.

(d) The President may authorise technical advisers to be present at the sittings during the discussions on points of the agenda where their special advice may be required.

(e) Representatives of Global Union Federations and the TUAC may participate in accordance with the provisions of Articles VI(b) and VII of the Constitution.

(f) The General Secretary of the Pan European Regional Council (PERC) and the Executive Secretary of the Arab Trade Union Confederation (ATUC) may also participate.

Article IV: Agenda

Matters of urgent business may be added to the agenda fixed in accordance with Article XXVII of the Constitution.

Article V: President, Deputy Presidents and Vice-Presidents

(a) The President shall declare the opening and the closure of each sitting. Before proceeding with the agenda he/she shall bring before the General Council any communication which may concern it. He/she shall direct the debates, maintain order, ensure observance of the Standing Orders, put questions to the vote and announce the result of the vote.

(b) In the absence of the President, one of the Deputy Presidents shall preside. In the absence of the President and the Deputy Presidents, the General Council shall appoint one of the Vice-Presidents to act in their stead.

(c) The President may be invested with such functions as the General Council may deem proper to delegate to him/her for the joint signature or the visa of certain documents, for preliminary approval of enquiries or for the despatch of official representatives of the Confederation to meetings, conferences or congresses.

Article VI: Special Committees

In addition to the Women's Committee and the Youth Committee, the General Council may establish any Special Committee and decide its composition and terms of reference.

Article VII: Right to Vote and Methods of Voting

(a) None other than titular members, or elected substitute members attending in place of an absent titular member, shall have the right to vote in the General Council or its Committees.

(b) As a rule, voting will be by show of hands.

(c) The President shall endeavour to secure the widest possible measure of agreement on any decisions taken. When a vote is called for, however, decisions shall be by absolute majority of the full General Council, except that decisions to accept applications for affiliation, to suspend member organisations, or to grant the status of associated organisation, shall require a three-quarters majority of the full General Council.

Article VIII: Resolutions, Amendments and Motions

(a) Any member of the General Council or any substitute occupying the seat of a titular member may move resolutions, amendments or motions in accordance with the rules which follow.

(b) The text of any resolution, amendment or motion shall be submitted in writing to the President. This text will, whenever possible, be distributed before being put to the vote. Distribution will be compulsory if six members of the General Council so request.

(c) If there are several amendments to a motion or resolution, the President will determine the order in which they are discussed and, if necessary, put to the vote.

(d) A member may withdraw an amendment which he/she has moved, unless an amendment to it is under discussion or has been adopted.

(e) In the case of motions as to procedure, no notice in writing need be handed to the President or be distributed. Motions as to procedure include the following:

- a motion to refer a matter back;
- a motion to postpone consideration of a question;
- a motion to adjourn the sitting;
- a motion to adjourn a debate on a particular question or incident;
- a motion that the General Council proceed with another item on the agenda of the sitting.

(f) No resolution, motion or amendment shall be discussed unless it has been seconded.

Article IX: Reports, Minutes and Communiqués

(a) A verbatim record of the sittings of the General Council shall be kept. This shall not be published or distributed.

(b) The General Secretary shall keep the minutes of the meetings. They shall not be published. At the commencement of each meeting, a summarised report of the previous meeting shall be approved.

(c) Documents prepared by the General Secretary and dealing with the items on the agenda of the General Council shall be circulated to members of the General Council before the beginning of each session. They shall not be made public until the question with which they deal has been discussed by the General Council. After each meeting the General Secretary shall classify the documents into three categories:

A. CONFIDENTIAL:

Not for distribution or publication.

B. FOR INFORMATION ONLY:

Not for publication (can be issued to interested persons or organisations).

C. FOR PUBLICATION.

(d) The General Secretary shall be entitled to issue to the media, in addition to the documents classified “for publication”, suitable information before, during and after the meeting of the General Council.

(e) Decisions of the General Council which call for specific action by any or all affiliated organisations shall be communicated to those organisations with the request that the General Secretary be notified of the measures taken to apply these decisions. The General Secretary shall report to the General Council on the action taken.

EXECUTIVE BUREAU STANDING ORDERS

Article I: Membership

(a) Unless the General Council determines otherwise, the Executive Bureau elected by the General Council during an ordinary Congress in accordance with Article XXIX of the Constitution shall maintain the same composition until the next ordinary Congress except for the filling of such vacancies as may arise in between.

(b) No person who has ceased to be a member of the General Council shall remain a member of the Executive Bureau.

(c) Unless the General Council determines otherwise, the vacancy that arises on account of a member having ceased to be a General Council member shall be filled by the person who replaces him/her on the General Council.

Article II: Sessions

(a) As a general rule the Executive Bureau shall meet at least twice each year.

(b) Meetings of the Executive Bureau shall be chaired by the Deputy President elected by the General Council to serve as Executive Bureau Chairperson. In case he/she is absent for the whole or part of its sitting, the Executive Bureau shall each time designate a member to take the chair during his/her absence.

(c) Additional meetings of the Executive Bureau shall be convened if the General Secretary deems it necessary in consultation with the Chairperson. Such a meeting shall also be convened if a written request to that effect, signed by at least 25% of the Executive Bureau's titular members, is received.

(d) The Executive Bureau shall normally meet at the headquarters of the Confederation.

(e) In the event that a virtual meeting takes place, a quorum shall be established on the basis of the number of the logged-in Titular Members or their Substitute Members.

Article III: Admission to meetings

(a) The sittings of the Executive Bureau are private, restricted to titular members and the substitute members called upon to replace the titular members who are unable to attend. Procedures for the substitution of titular members are as provided for under Article XXV(b) of the Constitution in respect of the General Council meetings.

(b) The only other persons who are authorised to attend meetings of the Executive Bureau shall be:

(i) Not more than one person accompanying a titular member, or the substitute member replacing him/her, as his/her technical adviser or interpreter;

(ii) Two representatives of Global Union Federations or their substitutes, and one representative of the TUAC, attending in a consultative capacity;

(iii) The Deputy President of the ITUC serving as the Chairperson of the Solidarity Fund Management Board and the Deputy General Secretaries of the ITUC;

(iv) The General Secretary of the Pan European Regional Council (PERC);

(v) The Executive Secretary of the Arab Trade Union Confederation (ATUC);

(vi) The members of the ITUC staff who are designated by the General Secretary to service the meeting.

(c) In exceptional circumstances, if a titular member and his/her two elected substitutes are unable to attend a complete session, the Executive Bureau may authorise, on the basis of an advance request in writing, a personal substitute to attend on behalf of an elected member.

Article IV: Agenda

(a) Before each scheduled meeting of the Executive Bureau, the General Secretary shall prepare a draft agenda and forward it to the Executive Bureau members, together with documentation where appropriate, at least two weeks prior to the date of the meeting.

(b) Matters of urgent importance may be added to the agenda.

Article V: Voting

(a) None other than titular members, or substitute members attending in place of absent titular members, have the right to vote.

(b) The Executive Bureau shall endeavour to secure the widest possible measure of agreement rather than carry decisions by vote. When a vote is called for, however, decisions shall be by absolute majority of the full Executive Bureau.

(c) As a rule the voting shall be by show of hands.

Article VI: Records and reports

(a) A verbatim record of the meeting of the Executive Bureau shall be kept. It shall not be published or distributed.

(b) A summarised report of each meeting shall be prepared by the General Secretary for submission to the General Council at its next meeting.

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Annex 3

ILO Centenary Declaration for the Future of Work

ILO Centenary Declaration for the Future of Work

International Labour Organization

ILO Centenary Declaration for the Future of Work

The International Labour Conference, meeting in Geneva at its One Hundred and Eighth Session on the occasion of the Centenary of the International Labour Organization (ILO),

Considering that the experience of the past century has confirmed that the continuous and concerted action of governments and representatives of employers and workers is essential to the achievement of social justice, democracy and the promotion of universal and lasting peace;

Acknowledging that such action has brought historic advances in economic and social progress that have resulted in more humane conditions of work;

Considering also that persistent poverty, inequalities and injustices, conflict, disasters and other humanitarian emergencies in many parts of the world constitute a threat to those advances and to securing shared prosperity and decent work for all;

Recalling and reaffirming the aims, purposes, principles and mandate set out in the ILO Constitution and the Declaration of Philadelphia (1944);

Underlining the importance of the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the ILO Declaration on Social Justice for a Fair Globalization (2008);

Moved by the imperative of social justice that gave birth to the ILO one hundred years ago, and the conviction that it lies within the reach of the governments, employers and workers of the world to reinvigorate the Organization and shape a future of work that realizes its founding vision;

Recognizing that social dialogue contributes to the overall cohesion of societies and is crucial for a well-functioning and productive economy;

Recognizing also the importance of the role of sustainable enterprises as generators of employment and promoters of innovation and decent work;

Reaffirming that labour is not a commodity;

Committing to a world of work free from violence and harassment;

Underlining also the significance of promoting multilateralism, particularly in shaping the future of work that we want and in dealing with the challenges of the world of work;

Calling up on all constituents of the ILO to reaffirm their unwavering commitment and to reinvigorate their efforts to achieve social justice and universal and lasting peace to which they agreed in 1919 and 1944; and

Desiring to democratize ILO governance by ensuring a fair representation of all regions and establishing the principle of equality among member States.

Adopts this twenty-first day of June of the year two thousand and nineteen the ILO Centenary Declaration for the Future of Work.

I The Conference declares that:

A. The ILO marks its Centenary at a time of transformative change in the world of work, driven by technological innovations, demographic shifts, environmental and climate change, and globalization, as well as at a time of persistent inequalities, which have profound impacts on the nature and future of work, and on the place and dignity of people in it.

B. It is imperative to act with urgency to seize the opportunities and address the challenges to shape a fair, inclusive and secure future of work with full, productive and freely chosen employment and decent work for all.

C. Such a future of work is fundamental for sustainable development that puts an end to poverty and leaves no one behind.

D. The ILO must carry forward into its second century with unrelenting vigour its constitutional mandate for social justice by further developing its human-centred approach to the future of work, which puts workers' rights and the needs, aspirations and rights of all people at the heart of economic, social and environmental policies.

E. The growth of the Organization over the past 100 years towards universal membership means that social justice can be achieved in all regions of the world and that the full contribution of the ILO's constituents to this endeavour can be assured only through their full, equal and democratic participation in its tripartite governance.

II The Conference declares that:

A. In discharging its constitutional mandate, taking into account the profound transformations in the world of work, and further developing its human-centred approach to the future of work, the ILO must direct its efforts to:

(i) ensuring a just transition to a future of work that contributes to sustainable development in its economic, social and environmental dimensions;

(ii) harnessing the fullest potential of technological progress and productivity growth, including through social dialogue, to achieve decent work and sustainable development, which ensure dignity, self-fulfilment and a just sharing of the benefits for all;

(iii) promoting the acquisition of skills, competencies and qualifications for all workers throughout their working lives as a joint responsibility of governments and social partners in order to:

- address existing and anticipated skills gaps;
- pay particular attention to ensuring that education and training systems are responsive to labour market needs, taking into account the evolution of work; and

– enhance workers' capacity to make use of the opportunities available for decent work;

(iv) developing effective policies aimed at generating full, productive and freely chosen employment and decent work opportunities for all, and in particular facilitating the transition from education and training to work, with an emphasis on the effective integration of young people into the world of work;

(v) supporting measures that help older workers to expand their choices, optimizing their opportunities to work in good-quality, productive and healthy conditions until their retirement, and to enable active ageing;

(vi) promoting workers' rights as a key element for the attainment of inclusive and sustainable growth, with a focus on freedom of association and the effective recognition of the right to collective bargaining as enabling rights;

(vii) achieving gender equality at work through a transformative agenda, with regular evaluation of progress made, which:

– ensures equal opportunities, equal participation and equal treatment, including equal remuneration for women and men for work of equal value;

– enables a more balanced sharing of family responsibilities;

– provides scope for achieving better work–life balance by enabling workers and employers to agree on solutions, including on working time, that consider their respective needs and benefits; and;

– promotes investment in the care economy;

(viii) ensuring equal opportunities and treatment in the world of work for persons with disabilities, as well as for other persons in vulnerable situations;

(ix) supporting the role of the private sector as a principal source of economic growth and job creation by promoting an enabling

environment for entrepreneurship and sustainable enterprises, in particular micro, small and medium-sized enterprises, as well as cooperatives and the social and solidarity economy, in order to generate decent work, productive employment and improved living standards for all;

(x) supporting the role of the public sector as a significant employer and provider of quality public services;

(xi) strengthening labour administration and inspection;

(xii) ensuring that diverse forms of work arrangements, production and business models, including in domestic and global supply chains, leverage opportunities for social and economic progress, provide for decent work and are conducive to full, productive and freely chosen employment;

(xiii) eradicating forced and child labour and promoting decent work for all and fostering cross-border cooperation, including in areas or sectors of high international integration;

(xiv) promoting the transition from the informal to the formal economy, while giving due attention to rural areas;

(xv) developing and enhancing social protection systems, which are adequate, sustainable and adapted to developments in the world of work;

(xvi) deepening and scaling up its work on international labour migration in response to constituents' needs and taking a leadership role in decent work in labour migration; and

(xvii) intensifying engagement and cooperation within the multilateral system with a view to strengthening policy coherence, in line with the recognition that:

- decent work is key to sustainable development, addressing income inequality and ending poverty, paying special attention to areas affected by conflict, disaster and other humanitarian emergencies; and;

– in conditions of globalization, the failure of any country to adopt humane conditions of labour is more than ever an obstacle to progress in all other countries.

B. Social dialogue, including collective bargaining and tripartite cooperation, provides an essential foundation of all ILO action and contributes to successful policy and decision-making in its member States.

C. Effective workplace cooperation is a tool to help ensure safe and productive workplaces, in such a way that it respects collective bargaining and its outcomes, and does not undermine the role of trade unions.

D. Safe and healthy working conditions are fundamental to decent work.

III

The Conference calls upon all Members, taking into account national circumstances, to work individually and collectively, on the basis of tripartism and social dialogue, and with the support of the ILO, to further develop its human-centred approach to the future of work by:

A. Strengthening the capacities of all people to benefit from the opportunities of a changing world of work through:

(i) the effective realization of gender equality in opportunities and treatment;

(ii) effective lifelong learning and quality education for all;

(iii) universal access to comprehensive and sustainable social protection; and

(iv) effective measures to support people through the transitions they will face throughout their working lives.

B. Strengthening the institutions of work to ensure adequate protection of all workers, and reaffirming the continued relevance of the employment relationship as a means of providing certainty and legal protection to workers, while recognizing the extent of informality and the need to ensure effective action to achieve transition to formality. All workers should enjoy adequate protection in accordance with the Decent Work Agenda, taking into account:

(i) respect for their fundamental rights;

(ii) an adequate minimum wage, statutory or negotiated;

(iii) maximum limits on working time; and

(iv) safety and health at work.

C. Promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all through:

(i) macroeconomic policies that have those aims as their central objective;

(ii) trade, industrial and sectoral policies that promote decent work, and enhance productivity;

(iii) investment in infrastructure and in strategic sectors to address the drivers of transformative change in the world of work;

(iv) policies and incentives that promote sustainable and inclusive economic growth, the creation and development of sustainable enterprises, innovation, and the transition from the informal to the formal economy, and that promote the alignment of business practices with the objectives of this Declaration; and

(v) policies and measures that ensure appropriate privacy and personal data protection, and respond to challenges and opportunities in the world of work relating to the digital transformation of work, including platform work.

IV The Conference declares that:

A. The setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO. This requires the Organization to have and promote a clear, robust, up-to-date body of international labour standards and to further enhance transparency. International labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises, and be subject to authoritative and effective supervision. The ILO will assist its Members in the ratification and effective application of standards.

B. All Members should work towards the ratification and implementation of the ILO fundamental Conventions and periodically consider, in consultation with employers' and workers' organizations, the ratification of other ILO standards.

C. It is incumbent on the ILO to strengthen the capacity of its tripartite constituents to:

(i) encourage the development of strong and representative social partner organizations;

(ii) engage in all relevant processes, including with labour market institutions, programmes and policies, within and across borders; and

(iii) address all fundamental principles and rights at work, at all levels, as appropriate, through strong, influential and inclusive mechanisms of social dialogue,

in the conviction that such representation and dialogue contribute to the overall cohesion of societies and are a matter of public interest, and are crucial for a well-functioning and productive economy.

D. The services that the ILO offers to its member States and social partners, notably through development cooperation, must be consistent with its mandate and based on a thorough

understanding of, and attention to, their diverse circumstances, needs, priorities and levels of development, including through expanded South–South and triangular cooperation.

E. The ILO should maintain the highest levels of statistical, research and knowledge management capacities and expertise in order to further strengthen the quality of its evidence-based policy advice.

F. On the basis of its constitutional mandate, the ILO must take an important role in the multilateral system, by reinforcing its cooperation and developing institutional arrangements with other organizations to promote policy coherence in pursuit of its human-centred approach to the future of work, recognizing the strong, complex and crucial links between social, trade, financial, economic and environmental policies.

The foregoing is the ILO Centenary Declaration for the Future of Work, duly adopted by the General Conference of the International Labour Organization during its One Hundred and Eighth (Centenary) Session which was held at Geneva and declared closed on 21 June 2019.

IN FAITH WHEREOF we have appended our signatures this twenty-first day of June 2019:

The President of the Conference,

JEAN-JACQUES ELMIGER

The Director-General of the International Labour Office,

GUY RYDER

Advancing social justice, promoting decent work
Faire progresser la justice sociale, promouvoir le travail décent
Impulsar la justicia social, promover el trabajo decente

ISBN: 9789220315545

Annex 4

EMPLOYERS' STATEMENT IN THE COMMITTEE ON THE APPLICATION OF STANDARDS OF THE INTERNATIONAL LABOUR CONFERENCE ON 4 JUNE 2012

In advance of this year's 101st session of the International Labour Conference, the ILO's Committee of Experts ("Experts") published a General Survey on the eight Fundamental Conventions of the ILO.

The General Survey is a guide to the CAS ("Conference Committee") to assist it with its work when supervising the application of ratified labour standards by member states of the ILO. The General Survey, like the report of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), is not an agreed or authoritative text of the ILO tripartite constituents; namely, the Governments, Employers and Workers. Outside the ILO, this important distinction is either misunderstood or forgotten, and General Surveys are seen as being the position of the ILO, which they are not. The Employers have, for many years, consistently stated this position concerning General Surveys and the reports of the CEACR.

The role of the International Labour Office is to serve its tripartite constituents to the best of its abilities. The ILO is the Governments, Workers and Employers.

Both the General Survey and the report of the CEACR are created with the assistance of the International Labour Office. The Governments, Employers and Workers are not involved in their creation or publication. The first opportunity for the Governments, Employers and Workers to consider these publications as groups is at the International Labour Conference.

The eight Fundamental Conventions are important not only within the ILO, but also because other international institutions regularly use them in their activities. The Fundamental Conventions are embedded in the UN Global Compact, the Organisation for Economic Co-operation and Development's (OECD) Guidelines for Multinational Enterprises, and the UN Human Rights Council's 'protect, respect and remedy' framework. The ILO's supervisory machinery relates to Member States only, not to businesses, so it is vital when other international institutions use the Fundamental Conventions that such use is correct. A correct understanding of the Fundamental Conventions is imperative for businesses because they are used in International Framework Agreements, Transnational Company Agreements and in European Framework Agreements with global trade unions, where they are often not defined.

Accordingly, this year's General Survey has particular contextual importance for Employers. Within the General Survey, the commentary on Convention 87 concerning Freedom of Association included interpretations by the Experts on the exercise of the "right to strike".

Interpretations of a "right to strike" by the Experts are fundamentally unacceptable to the Employers. Christopher Syder, the Employers' spokesperson, made it clear last week to the Conference Committee that the Employers are of the view that the Committee of Experts' position regarding the "right to strike" outlined in this year's General Survey does not reflect the views of the Employers and the Workers in the Conference Committee.

The Employers have a long held policy position in the ILO on this matter. They have repeatedly expressed their opposition to any attempt by the Experts to interpret the ways by which the right to strike, where it is recognised in national law, can be exercised.

This issue is complicated by the fact that Convention 87 itself is silent on the right to strike and, in the view of the Employers, is therefore not an issue upon which the Experts should express any opinion. The mandate of the Experts is to comment on the "application" of Convention 87 and not to "interpret" a "right to strike" into Convention 87. The General Survey is simply meant to be used by the Conference Committee, to inform its work, leaving it for the tripartite constituents to determine, where consensus exists, the position of the ILO, with regard to the supervision of Conventions.

Further, under Article 37 of the ILO Constitution, only the International Court of Justice can give a definitive interpretation of international labour conventions. If the Constitution is to be applied, then given the absence of any reference to a right to strike in the actual text of Convention 87, then internationally accepted rules of interpretation require Convention 87 to be interpreted without a "right

to strike".

In addition, it should be noted that the principle of freedom of association contained in Convention 87 has a separate supervisory procedure; namely the Committee on Freedom of Association (CFA). The Employers have also objected for many years about the use of CFA cases by the Experts when examining Convention 87, the use of CFA cases when interpreting the "right to strike", and the use of the Experts' interpretations of the "right to strike" in the CFA.. The Employers are critical of the confusion and lack of certainty that the supervisory system creates.

In the Employers' view, Convention 87 cases that concern a nationally recognised "right to strike" should be supervised only in the CFA in order to ensure certainty and coherence. The Employers object to any view that the Experts' interpretations of the "right to strike" are legal jurisprudence, as the Experts do not have a judicial mandate within the ILO. Constitutionally, the Experts do not have a determinative role within the ILO supervisory machinery. The Experts do not supervise labour standards; rather the ILO tripartite constituents do. Referring their interpretations of the "right to strike" within Convention 87 to the International Court of Justice is therefore inappropriate. The CFA produces recommendations to the Governing Body for adoption. The Governing Body does not have a judicial role either; it also does not supervise labour standards. For the same reason, referring the CFA recommendations to the International Court of Justice is also inappropriate.

The interpretation of the "right to strike" is important because Employers assert that it is for national governments to establish their own rules/practices concerning the "right to strike" when considering how to resolve national breakdowns in industrial relations. It is important in the context of the international human rights debate that a correct use of Convention 87 is made because an incorrect inclusion of the "right to strike" risks the Experts' interpretation of the "right to strike" becoming an internationally accepted human right to strike, which will restrict the ability of national governments to define their "right to strike". This restricts the role of governments in, for example, the circumstances when a lawful strike can be called and the definition of essential services. This is unacceptable to the Employers. There is no legal requirement for governments that have ratified Convention 87 to address the Experts' interpretation of the "right to strike". The Employers cannot agree to the Experts' interpretation of the "right to strike" because of the risk that it will be misused.

This Year's Conference

Given the Employers' longstanding objections to the Experts' interpretation of the "right to strike", Mr Syder sought to clarify the mandate of the Experts with regard to the General Survey. Mr Syder brought this important issue to the attention of the Workers' spokesperson and together they negotiated and formulated the following draft clarification:

"*The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents*".

Mr Syder's proposal was that the International Labour Office would be instructed to immediately insert the clarification in future hard copy and ILO website publications of this year's General Survey and the Report of the Committee of Experts on the Application of Conventions and Recommendations. It is not possible to simply remove the Experts' interpretations, as the International Labour Office has already published the General Survey containing the Experts' interpretation of the "right to strike".

Mr Syder made it clear that without the above-mentioned clarification in respect to the General Survey, in order for the Employers' consideration of the cases in the Conference Committee to be coherent, he could not accept the supervision of Convention 87 cases that included interpretations by the Experts regarding the "right to strike".

After much confidential negotiation with the Workers, regrettably, these negotiations irretrievably broke down.

On Friday, 1 June 2012, after the negotiations irretrievably broke down, Mr Syder returned to the Committee room, as he was informed that the Workers' spokesperson had done so. His position was that the negotiations had failed, so there was confusion concerning why it was necessary to return to the Committee room. During the period he was in the room, he observed the Officers of the

International Labour Office in discussions with the Workers and Governments. It is important to be aware that the Employers had made it clear that the list of cases to be supervised can only be agreed in direct negotiation with the Workers. The Governments cannot be involved as they have a conflict of national interest. The International Labour Office cannot be involved as it is not an ILO constituent and must be impartial. Members of the Employers' Group had been waiting in the Committee room from 17:00 awaiting confirmation concerning the negotiations. Mr Syder informed the Employers that the negotiations had failed. At 20:31, when the meeting was 91 minutes past its scheduled close of 19:00, as no-one from the International Labour Office had communicated to Mr. Syder what was happening, he then informed the Deputy-Director for the Labour Standards Department that the Employers were leaving the Committee room for the evening. The Employers then left. There was no meeting of the Conference Committee occurring at the time, so it was not a walk out. The Employers left the room after the scheduled close of the meeting and while private meetings involving others were happening, about which the Employers knew nothing. Many other delegates had either left or were leaving. The Employers attended the next scheduled meeting.

On Saturday, 2 June 2012, following a request from the Government regional co-ordinators for an informal meeting with the Employer and Worker spokespersons, Mr Syder attended the informal meeting and explained that he would not negotiate a list of cases with the involvement of the Governments. He confirmed that he would provide a statement of the Employers' position with regard to the failed negotiations for a list of cases.

The Way Forward

- The Employers remain supportive of the application of labour standards and the ILO's supervisory system, provided there is respect for genuine tripartism of the ILO constituents.

- The proposed clarification to clearly appear in all International Labour Office and Experts' documentation prepared for a debate and discussion by the International Labour Conference or the Governing Body.

- An urgent review of the working methods and mandate of the international labour standards supervisory system (including its interaction with other areas of the ILO), including the Experts, the Conference Committee and the International Labour Office, is required.

- The Employer and Worker spokespersons to meet with the Experts before they start their work each year and for the Experts to have far greater interaction with Employer and Worker bureaux within the ILO in order to strengthen co-operation and governance. The Experts should have a tripartite agreed framework in which to do their work. In past years, the Employers have proposed changes to the format of Reports of the Experts with a view to ensuring that tripartite views are better reflected. More precisely, the Employers propose that there should be possibilities for Employers, Workers and Governments to set out in the reports of the Experts their views on standards supervision-related issues, including on the application and interpretation of particular Conventions.

- An urgent review of the International Labour Office's labour standards department. The role of officers requires respect for tripartism and impartiality in their work. Their role is to support and facilitate the work of the ILO tripartite constituents, which requires neutrality and balance. It requires staffing with politically neutral international civil servants that support the work of the Experts, not the Experts supporting the work of the Office. Neutrality will help create mature and respectful international industrial relations between the Governments, Employers and Workers.

- Respect for the relationships with other international agencies to ensure that the views of the ILO are those of the tripartite constituents.

Conclusion

The ILO is now facing a multi-faceted crisis concerning the interpretation of the “right to strike” in connection with Convention 87. It is not acceptable for anyone to be confused or misled as to the true status of any ILO text simply because it bears its logo or is silent as to its proper status. This is now more than just an issue involving the General Survey as it affects the Convention 87 cases to be supervised in the Conference Committee. The absence of an express “right to strike” in Convention 87 means that the Experts are effectively making policy, which is outside of their mandate. Policy making is the exclusive domain of the Governments, Employers and Workers through the International Labour Conference.. The Experts can advise on the application of labour standards, not determine application on behalf of the ILO, and certainly cannot determine new rights and obligations regarding a “right to strike” within Convention 87.

This is not new. This is not a change. It is important that all Governments, Employers and Workers alert their constituents and relevant authorities as to the true status of the Experts’ interpretation of the “right to strike” in respect of Convention 87.

4 June 2012

Annex 5

INTERNATIONAL LABOUR OFFICE

Governing Body

317th Session, Geneva, 6–28 March 2013

GB.317/INS/4/1

Institutional Section

INS

Date: 7 March 2013
Original: English

FOURTH ITEM ON THE AGENDA

Matters arising out of the work of the International Labour Conference

Follow-up to the decision adopted by the International Labour Conference on certain matters arising out of the report of the Committee on the Application of Standards

Summary report concerning the informal tripartite consultations held on 19–20 February 2013

Introduction

1. At its 316th Session (November 2012), the Governing Body was provided with a Summary report on the informal tripartite consultations held on 19 September 2012 pursuant to the decision on the follow-up to the discussions in the Committee on the Application of Standards (CAS) taken at the 101st Session (2012) of the International Labour Conference (ILC),[1] including the decision taken by the Governing Body at its 315th Session (June

[1] The Conference invited the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session (*Provisional Record* No. 19, Part 1 (Rev.), International Labour Conference, 101st Session, Geneva, 2012, para. 208).

2012). [2] At the same time, the Employers' group read out a statement to clarify the Employers' position. [3]

2. The outcome of the discussion [4] was as follows: "The Governing Body, noting the outcome of the informal tripartite consultations which had taken place on 19 September 2012 and the commitment to pursue discussions in a constructive manner, invited the Officers of the Governing Body to pursue informal tripartite consultations and to report to the Governing Body at its 317th Session (March 2013)".

3. Informal tripartite consultations were held on 19–20 February 2013. Upon the recommendation of the Director-General, the Officers of the Governing Body had invited the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to meet with constituents in the framework of the consultations. Six members had been designated to that end by the CEACR. [5] Thus, the tripartite meeting began with an exchange of views between the constituents and the members of the CEACR, in the presence of the Director-General. A tripartite discussion then took place. The Chairperson of the Governing Body chaired the consultations, while the Employer member, Mr John Kloosterman, and the Worker Vice-Chairperson of the Governing Body, Mr Luc Cortebeeck, spoke on behalf of the Employers' and the Workers' groups, respectively.

4. The Office had prepared an information paper on the history and development of the mandate of the Committee of Experts, in light of the outcome of the informal tripartite consultations in September 2012. The paper also set out possible ways forward. This paper, together with relevant excerpts from the General Report of the Committee of Experts adopted at its 83rd Session (November–December 2012), [6] was circulated prior to the consultations to assist the constituents. During the consultations, the foreword of the General Survey of the CEACR on labour relations and collective bargaining in the public service, to be discussed at the 102nd Session (June 2013) of the ILC, was also distributed. [7]

5. In line with the indications provided by the constituents participating in the consultations, the Officers have agreed that this summary report on the informal consultations be submitted to the 317th Session of the Governing Body (March 2013).

[2] GB.316/INS/5/4; GB.315/INS/4; dec-GB.315/INS/4.

[3] GB.316/PV/Draft, para. 98.

[4] ibid., paras 98–115.

[5] The six experts who attended the consultations were: Judge Bentes Corrêa, Professor Brudney, Judge Koroma (incoming Chairperson), Judge Lyon-Caen, Professor Owens and Professor Yokota (outgoing Chairperson).

[6] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), International Labour Conference, 102nd Session, Geneva, 2013 (hereinafter "General Report"), paras 8–36.

[7] *Collective bargaining in the public service: A way forward, General Survey concerning labour relations and collective bargaining in the public service*, Report III (Part 1B), International Labour Conference, 102nd Session, Geneva, 2013 (hereinafter "General Survey"). The General Survey is on the Labour Relations (Public Service) Convention, 1978 (No. 151), and Recommendation, 1978 (No. 159), and the Collective Bargaining Convention, 1981 (No. 154), and Recommendation, 1981 (No. 163).

I. Opening statements

6. The informal tripartite consultations were opened by the Chairperson of the Governing Body, who welcomed the participation of the Director-General and the six members of the CEACR. He stressed the urgency of holding tripartite discussions on the ILO supervisory system, the gravity of that matter of critical importance for the ILO, and the constituents' responsibility to identify ways forward. The Director-General indicated that he shared the sense of urgency, gravity and responsibility noted by the Chairperson of the Governing Body. A supervisory system that lacked credibility, authority and the support of all of its parties would not equip the ILO to undertake its essential functions. The ongoing process of reform in the ILO would not have great effect or purpose unless the subject at hand was resolved successfully and without undue delay. Thus, the current tripartite discussions were important to the future of the Organization. At the same time, the Director-General emphasized the need to balance an appreciation of the current difficulties with an equal appreciation of the good work and global impact of the standards system, including the manner in which the supervisory system had concretely made a difference in member States and, in many cases, in peoples' lives. That should urge constituents forward in a spirit of openness and dialogue and in a direction of compromise.

II. Exchange of views with the members of the CEACR

7. In being invited by the Chairperson of the Governing Body to present brief introductory remarks, the Chairperson of the CEACR expressed, on behalf of the CEACR, his gratitude to the Officers of the Governing Body and the Director-General for the opportunity to participate in an exchange with the constituents. The CEACR and the CAS were the two pillars of the ILO's supervisory machinery and were part of the ILO standards system under the ILC and the Governing Body. Ever since their creation in 1926, the two committees had worked together in a spirit of mutual respect, cooperation and responsibility. The committees were complementary, with different mandates and compositions. These differences had led, at times, to different views. The CEACR had found very useful the practice and arrangements under which each committee would participate in the work of the other. Since 2002, the CEACR, through its subcommittee on working methods, had made a number of improvements, mainly in response to comments from the CAS. Another member of the CEACR referred to the excerpts from the General Report of the 83rd Session of the CEACR and summarized the views expressed therein by the CEACR on its mandate, the non-binding nature of its opinions and recommendations, and the proposal made by the Employers' group to add a caveat or disclaimer in the future reports of the CEACR.

8. The exchange of views consisted mainly of questions posed by the constituents to the six members of the CEACR. A representative of the Employers' group asked the experts, in light of the changes in the world over the past 40 years, how they saw their future role in the supervisory system. In response, the members of the CEACR provided the following elements. They recalled that the Governing Body had defined the terms of reference for the CEACR. Since its establishment in 1926, the role of the CEACR was a response to needs identified by the Governing Body and the ILC with regard to the ILO standards system, including its supervisory system. Over the years, the CEACR had been given additional responsibilities under articles 19 and 23 of the Constitution, not of its own volition but rather as a result of assignments decided by the constituents. In its current role, the CEACR was a body composed of independent members with a function to perform. In so doing, the CEACR sought to comply strictly with its terms of reference while being guided by the ILO Constitution. The definition of its future role fell under the responsibility of the constituents. Balancing the work of the CAS and the CEACR would provide great insight,

taking into account the need for possible changes and adaptations to address new issues in a globalized world.

9. The Worker spokesperson asked for clarification as to the views expressed by the CEACR in its General Report, paragraph 36(b), that the addition of a caveat or a disclaimer would interfere with its independence. In response, the members of the CEACR noted that the request for such an addition had come from one group of constituents and was being contested by another group. If the Governing Body were to indicate that the constituents had agreed on a particular statement to be included in the General Surveys and reports, then the CEACR was at the service of the Governing Body and would follow accordingly, since doing so would not compromise its independence.

10. A Government representative of Niger, speaking on behalf of the Africa group, asked whether the number of members of the CEACR should not be increased to reflect the increase in ILO Members and the number of Conventions adopted since 1926. In addition, she asked whether the experts had any suggestions to overcome the current situation in the supervisory system which had arisen since the 101st Session (June 2012) of the ILC. In response, the members of the CEACR provided the following elements. Regarding the number of CEACR members, it was recalled that, when the CEACR had been created, all of its members had been European, and since that time it had gradually diversified to include non-Europeans, and it had become more gender balanced. The Office and the Director-General were aware of further needs for gender, linguistic and geographic balance, and future appointments should give appropriate attention to those issues. At the same time, it was noted that the CEACR was not currently functioning at its full capacity. In order to accelerate the filling of vacancies in the CEACR, it was suggested to change the existing arrangements under which, for each vacant position, the Office had to propose to the Governing Body five names of qualified candidates. With respect to suggestions as to how the current situation might be resolved, it was recalled that the issues surrounding the mandate of the CEACR and the right to strike under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), had existed for decades and further constructive dialogue was necessary to reach consensus among the different constituents. Meanwhile, both the CEACR and the Committee on Freedom of Association were required to make statements on country-specific cases. While the views of the CEACR were non-binding, governments still needed expert answers to certain questions they raised. The CEACR carried out its task in a context of ongoing dialogue with governments and other constituents. It was also recalled that the CEACR was continuing to explore ways to improve its working methods in order to cope with its increasing workload. Lastly, it was pointed out that there were concrete institutional solutions to the current situation where constituents disagreed with the views expressed by the CEACR on the meaning of the provisions of Conventions. The ILC could always revise a particular Convention. Alternatively, one of the two mechanisms set forth in article 37 of the Constitution for the interpretation of ILO Conventions could be implemented. The use of those institutional solutions was the responsibility of the constituents.

11. A Government representative of Greece, speaking on behalf of the Western European countries, indicated that to his understanding there were ongoing discussions on the proposed caveat or disclaimer. He asked about the specific language of the most recent proposal. A representative of the Employers' group explained that since the 101st Session (June 2012) of the ILC, the group had been seeking clarification regarding the issue of the mandate of the CEACR and, more specifically, the legal status of its views and observations, which was not clearly set out in its reports. The possibility of introducing a caveat or disclaimer had arisen in that context. Thus, the Employers' group had requested the CEACR to consider the issue with a view to providing the necessary clarity in all of its future reports. In particular, during the special sitting of the 83rd Session of the CEACR with the Employer Vice-Chairperson and the Worker Vice-Chairperson of the CAS, the

group had proposed that a text should be inserted to indicate that the General Surveys and reports did not necessarily reflect the views of the ILO's tripartite constituents. The text would also indicate that the ILO Constitution did not permit the CEACR to give authoritative interpretation of ILO Conventions and Recommendations, and that the only body with authority to do so was the International Court of Justice (ICJ). Referring to paragraph 29 of the General Report of the 83rd Session of the CEACR concerning the legal nature and effect of its comments, he indicated that it was not for his group to start clarifying the paragraph, which reflected the views of the CEACR. The issue for the group remained the views expressed by the CEACR on the right to strike under Convention No. 87, and in particular those set out in paragraph 31 of the General Report. A representative of the Workers' group questioned the addition of a caveat or disclaimer in the reports of the CEACR from the standpoint of the legal certainty of the ILO standards system, noting that the whole system relied on those reports. The members of the CEACR also addressed the issue and the Employers' reference to the General Report. In particular, they drew attention to paragraph 6 of the foreword of the General Survey, concerning the non-binding nature of the opinions and recommendations of the CEACR. Further explanations were also provided on the issue of the right to strike and Convention No. 87.

12. A representative of the Employers' group inquired how the CEACR could undertake its work in all independence during a session which lasted only three weeks, without relying heavily on the Office's support. In response, the members of the CEACR provided the following elements. It was highlighted that it was not possible to become a member of the CEACR without demonstrated independence. The support of the Office was admittedly very important. However, that support did not mean that the Committee's decisions and report were the work of the Office: it was the CEACR's work. By way of illustration, concrete and detailed explanations were provided on the working methods of processing article 22 files and the preparatory work for and during the CEACR sessions. Lastly, the fact that the CEACR adopted its decisions by consensus did not mean that its members always agreed; rather, they had thorough and long discussions. Nonetheless, they had to reach consensus.

13. Additional explanations were also provided by the members of the CEACR as to the need for its meetings to be held in private. The issues addressed by the CEACR in its comments were sometimes of a sensitive nature, based not only on government information but also on comments sent by organizations of workers and employers. In 2012, the CEACR had received more than 1,000 such comments. Based on that information, it engaged in a dialogue with governments. It would be premature to unveil that information or make it public before the dialogue process had been completed. Further, owing to the complementary nature of the work of the two committees, the observations made by the CEACR were discussed by the CAS, which held its sessions in public and therefore offered the opportunity to engage in public debate. Since the work of the CEACR was undertaken with a view to submission to the CAS session, as a matter of respect for due process of law, it was important for governments to have the opportunity to react to the comments from workers and employers before that information was made public.

14. To conclude the exchange of views with the members of the CEACR, the Worker spokesperson emphasized that the General Report of the 83rd Session of the CEACR provided valuable guidance to governments, employers and workers on the issues raised at the 101st Session (June 2012) of the ILC with regard to the mandate of the CEACR, including the logical need for the CEACR to interpret Conventions in order to fulfil its mandate, which should be seen in the light of the Constitution. Through the General Surveys, the CEACR had also provided clarification on the scope of certain provisions of Conventions. While definitive interpretations could only be given by the International Court of Justice or a tribunal appointed under article 37, paragraph 2, of the Constitution, the CEACR's interpretations had nonetheless taken on considerable importance, as

reflected, in particular, in the jurisprudence of national courts throughout the world, as well as that of regional human rights tribunals, which highlight their value and authority. Legal certainty was not only crucial to worker protection, but essential for both governments and employers. The CEACR's opinions, on which governments relied, were widely accepted, in particular because of the qualifications, experience and independence of its members.

15. With regard to the Employers' proposal to insert some form of disclaimer in the CEACR's General Surveys and reports, the Worker spokesperson duly noted paragraph 36 of the General Report, reaffirming that a disclaimer was not necessary, and emphasized that the moral authority of the CEACR derived from the fact that, although it was appointed by the Governing Body – a tripartite body – it had remained independent and impartial for 85 years. The Workers noted paragraph 6 of the foreword to the General Survey to be discussed at the 102nd Session (June 2013) of the ILC, and considered that that paragraph met the concerns expressed by the Employers.

16. Recalling the position expressed by the Worker Vice-Chairperson of the Committee on the Application of Standards at the special sitting of the 83rd Session of the CEACR, the Worker spokesperson reaffirmed that the mandate of the CEACR was the result of a dynamic process led by the Governing Body in the light of the constitutional objectives, that tripartite dialogue at the national level should feed into the work of the CEACR, that the latter's mandate should not be interpreted in different ways depending on the circumstances, and that the CEACR's comments could not be changed according to differences or variations of opinion. In examining that mandate, it should also be borne in mind that the supervisory system as a whole had also evolved over time, mainly as a result of decisions taken by two tripartite bodies: the ILC and the Governing Body. Even if the supervisory bodies had taken certain decisions with regard to their own working methods, those decisions had been accepted by the two tripartite bodies. Lastly, with regard to the composition of the CEACR, the Worker spokesperson pointed out that since 1979 the number of experts had stood at 20 and had not increased, despite the growth in the number of member States and Conventions.

17. The Employer spokesperson acknowledged that the Office did a substantial amount of preparatory work for the members of the CEACR. That observation was not a criticism, but rather a statement of fact. The members of the CEACR worked hard as experts. In referring to preparatory work performed by the Office, his group was not questioning the independence of the CEACR. Regarding paragraphs 6–7 of the foreword of the General Survey, his group appreciated those paragraphs and thought that they were fair statements. On the other hand, paragraph 8 of the foreword was not accurate. That paragraph mentioned the CEACR's views on the legal effects of its comments, expressed in its report submitted to the 77th Session (1990) of the ILC. He recalled that those views had been subject to debate in the CAS at the time and that that debate had led the CEACR to reconsider its position, as reflected in its report to the 78th Session (1991) of the ILC. The fact that the 1990 statement had returned was troubling to the Employers' group. Moreover, he noted the General Report's review of the position of the Employers' group over the years in paragraph 27, and the implication that the group had historically accepted the CEACR's interpretive role. He understood that, as part of applying a Convention, the CEACR had to do a certain amount of interpretation. However, since 1990, his group had been voicing its disagreement with interpretation as part of the CEACR's mandate. To indicate that his group had historically accepted that interpretive role as part of the CEACR's mandate was not therefore an accurate statement.

III. Tripartite discussion

18. The constituents acknowledged that the meeting with the members of the CEACR had provided a useful opportunity to exchange views. On the basis of the agenda proposed by the Chairperson of the Governing Body, the constituents turned to the information paper on the history and development of the mandate of the CEACR. They acknowledged that neither section A (The mandate of the CEACR: Historical background) nor section B (Interpretation of ILO Conventions: Role of the CEACR and the constitutional process of referral to the International Court of Justice) warranted discussion. Accordingly, the remainder of the discussion focused on section C (Main issues and possible ways forward) and other questions, including the 102nd Session (June 2013) of the ILC.

19. The Employer spokesperson indicated that there was consensus in his group that the ILO supervisory system was broken. It could alternatively be described as a system in crisis. The system had broken under its own weight and that had caused a crisis. Several reasons could be identified, including the following. First, the CAS and the CEACR were intended to represent the "twin pillars of the supervisory system". However, as his group had been stating since 1990, the CEACR was overstepping its mandate. It had been given a clear mandate in 1926, namely that of a technical committee without judicial capacity. However, without amendment to the ILO Constitution or the Standing Orders of the Governing Body, the mandate had expanded over the years to a point where the CEACR was fulfilling what he described as "a sub-article 37, paragraph 2, tribunal role" concerning in particular Convention No. 87 but also other Conventions. Second, in a context of increasing workload, there was an important institutional sustainability issue. Third, the establishment of a list of cases with a view to its submission for adoption by the CAS had become increasingly difficult over recent years. The situation had reached a crisis point. Fourth, there was the impact of globalization, which had resulted in the use of ILO standards, and in particular the eight fundamental Conventions, by other instruments or schemes outside the ILO. In that respect, the speaker referred to a variety of corporate social responsibility initiatives such as the United Nations Global Compact or codes of conduct, but also international framework agreements, transnational company agreements and European framework agreements with global trade unions. Often, the mechanisms established at the international level set out globally recognized labour standards, some of which were filtering down into national legislation. In defining such global labour standards, policy-makers would look to the views of the CEACR, whose title conveyed a certain authority when determining terms such as the right to strike. In that context, he also noted that, under the ILO Declaration on Social Justice for a Fair Globalization, 2008, the ILO had been mandated to promote standards outside of the ILO. He also referred to certain training courses at the International Training Centre of the ILO (Turin Centre), which were aimed at promoting the use by national courts of standards and the work of the supervisory bodies.

20. The Employer spokesperson stated that, as the system had reached a "rupture point", maintaining the status quo was not possible. His group was trying to make the system work and believed that it could be mended. To identify solutions, it was important for there to be a shared recognition among the constituents that the system was broken. With regard to the options set out in paragraphs 115–118 of the information paper, he observed that recourse to the ICJ was not easy, and the procedure was not well-known. There were many uncertainties surrounding the implementation of that option, in particular with regard to whether the result would be an advisory opinion, whether there would be a distinction between a "question" and a "dispute", whether the social partners would be permitted to contribute, and who would be responsible for referring the issue to the ICJ. Regarding the appointment of a tribunal under article 37, paragraph 2, of the Constitution, his group was not sure that that was the best option and he recalled that the group had pulled out of the consultations thereon in 2010 for a variety of reasons. The option for a quasi-tribunal, in

other words a mechanism within the spirit of article 37, paragraph 2, referred to in paragraph 116 of the paper, could be worth exploring. In addition to the options presented in the paper, he referred to another proposal, contained in a forthcoming academic article, which was worthy of further examination. Finally, he noted that the Employers' group could distribute a paper setting out their proposed solutions.

21. The Worker spokesperson reiterated that the supervisory system as a whole, and not just the CEACR, had evolved substantially over the years, mainly owing to decisions of the ILC and the Governing Body, and that the supervisory bodies had taken a number of decisions relating to their own methods of work and procedures, which had been generally accepted by the ILC and the Governing Body. His group considered that the CEACR was fulfilling its constitutional role. He did not agree with the Employers' suggestion that the CEACR was fulfilling the role of what had been referred to as a "sub-article 37, paragraph 2, tribunal role". His group could work with the present system. However, he acknowledged that, if one of the constituent groups was indicating that the present system was broken, there was a problem that required fixing. Concerning the possible ways forward set out in the information paper, he noted that consideration might be given to seeking an advisory opinion from the ICJ, under article 37, paragraph 1, of the Constitution, regarding the issue of the right to strike. Turning to the implementation of an article 37, paragraph 2, tribunal, he recalled that the proposal had been the subject of informal tripartite consultations in the recent past. Should there be a willingness to reopen the debate, his group would be open to new discussions. Regarding the proposal set out in paragraph 118 of the information paper, concerning strengthening existing practices and approaches by underlining mutual supervision, he sought clarifications and further information from the Office. He indicated that he had not read the academic article referred to by the Employers. More importantly, it was necessary to discuss possible ways forward, even if it was too early to provide a concrete answer.

22. The Government representative of Botswana, speaking on behalf of the Government group, reiterated the full commitment of her group to the ILO supervisory system, including the analysis of individual cases by the CAS. Her group recognized the importance of the independence, objectivity and impartiality of the members of the CEACR. On behalf of the group, she expressed the hope that the current informal tripartite consultations would contribute to a successful outcome and underlined the importance of an inclusive, tripartite and constituent-led process for overcoming the challenges ahead.

23. Speaking on behalf of the group of industrialized market economy countries (IMEC), the Government representative of Australia indicated that his group did not consider that there was a problem with the mandate of the CEACR. However, he recognized that different views had been expressed by other constituents on the matter. With regard to the use of the work of the CEACR by external courts, he emphasized that the CEACR was producing non-binding decisions and not judgments. If judges were looking to the views of the ILO, it was important for the counsel involved in those cases, or representatives of workers' and employers' organizations, to bring the relevant sources of information to the attention of the judges, including the different views voiced by constituents and the views expressed by the CEACR. With regard to possible ways forward, he emphasized that his group was prepared to enter into further discussions on all the options set out in the information paper in paragraphs 116–118. The Office should further examine those options. The social partners may also wish to put forward any additional options that they considered suitable.

24. A Government representative of Colombia, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), regretted that despite the importance of the matter under discussion, the tripartite exchange was limited. She stressed that neither the CEACR nor any other supervisory body was mandated to interpret international labour Conventions. That competence rested with the International Court of Justice. The

overstepping of its mandate by the CEACR resulted in legal uncertainty and was a disincentive to the ratification of Conventions. GRULAC considered that the problem that had arisen during the previous meeting of the CAS did not relate to the right to strike in itself, but rather to the CEACR's interpretation of that right in the framework of Convention No. 87. The right to strike was a constitutional right in the GRULAC countries, and was fully developed in the national legislation of its members. Consequently, the exercise of that right did not depend on the interpretation of Convention No. 87.

25. GRULAC considered paragraph 83 of the Office document to lack objectivity and be general, apparently indicating broad support for the CEACR interpretation. It highlighted and appreciated the clarity of paragraphs 107–110 and emphasized that both the Governing Body and the Conference could resort to the advisory jurisdiction of the International Court of Justice. With regard to paragraph 112, while recognizing that the CEACR and the CAS had complementary functions that could not be fulfilled by the other, GRULAC expressed its concerns regarding the phrase "nor is one body hierarchically superior to the other". It considered the body whose considerations were the result of tripartite debate and strict compliance with its terms of reference to have greater legitimacy. With respect to paragraphs 115–116, relating to article 37, paragraph 2, of the ILO Constitution, she recalled that in 2010 no agreement had been reached regarding the relevance of instituting a tribunal for the expeditious determination of disputes relating to the interpretation of Conventions. GRULAC supported the option of going to the International Court of Justice. Concerning paragraph 117, GRULAC did not agree that the CEACR's interpretative views of Conventions should be understood as advisory. Paragraph 118 contained a new proposal that deserved further examination on the basis of a comprehensive and explanatory Office document. The constituents' views could not be considered to be a binding interpretation, even if the parties were to decide to accept it and not go to the International Court of Justice. Moreover, she asked what the solution would be if opinions to diverge in the tripartite sphere and whether tripartite consensus would be upheld or whether priority would be given to the majority position, without taking into account the fact that sometimes governments failed to reach a single opinion.

26. Speaking on behalf of the Western European countries, the Government representative of Greece asked whether the current consultations could rather focus on the issue of the inclusion of a caveat, or disclaimer, in the light of the foreword of the 2013 General Survey concerning labour relations and collective bargaining in the public service, which he considered to be a very promising development. The issue raised by the Employers with regard to the supervisory system appeared to be a longer-term issue. Speaking on behalf of the Africa group, the Government representatives of Botswana and Niger both expressed the group's full commitment to reforms aimed at strengthening the ILO supervisory system. The group took the view that a legal opinion should be sought on the possible ways forward set out in the Office's information paper, and in particular on the options set out in paragraph 117, which concerned placing emphasis on the role of the ICJ as the authoritative body for interpreting ILO Conventions and the Constitution, and in paragraph 118, which referred to "mutual supervision". Further consultations should take place as soon as possible. Speaking on behalf of the Asia and Pacific group (ASPAG), the Government representative of the Islamic Republic of Iran indicated that the mandate of the CEACR needed to be discussed in the context of the ILO Constitution and historical developments in the ILO but also in the context of the mandate of other United Nations organizations. He reiterated his group's full support for tripartite consultations that were transparent and its hope that an amicable solution could be achieved as soon as possible.

27. The Government representative of the Russian Federation expressed surprise at the contention of the Employers' group that the system was broken, as his Government was quite satisfied with the ILO supervisory system. He suggested limiting the discussion to

possible ways forward in the spirit of tripartism. The Government representative of the United States expressed support for the supervisory system and cautioned against inadvertently weakening or undermining that system. She emphasized that there was a crisis but that did not mean that the system was broken. The CEACR clearly lacked the authority to make definitive interpretations, but it had neither sought nor assumed that authority. The proposed disclaimer was neither necessary nor appropriate. She further noted that the constituents could not accept the status quo. There were no obvious solutions, and it would be unrealistic for a solution to be agreed upon immediately as it would take time to find the right one, one that was agreeable to all the constituents. She emphasized that the constituents did, however, need to ensure that the CAS could work effectively during its next session, in June 2013. That statement was supported by the Government representative of Switzerland, who also underlined that it was important to rebuild trust between the parties, and in particular between the social partners, and that a constructive discussion should focus on the possible ways forward presented by the Office in paragraphs 116–118. She indicated that she did not object to examining the option set out in the academic article referred to by the Employers, but that an agreement among the constituents would be necessary in order to do so.

28. A representative of the Workers' group emphasized that the role of the CEACR was very clear: it was to monitor the application of standards. Every possible interpretation was put forward in a specific case and served to clarify the situation. In support of that statement, he asked several specific questions concerning the right to strike and the arrangements for exercising that right, to demonstrate the need for the CEACR to interpret the provisions of the Conventions in order to give specific answers to questions. The current experts and their predecessors had built a social legacy, and prohibiting them from interpreting standards to give them practical meaning and content would be tantamount to prohibiting the functioning of the supervisory system. It should be noted that the experts examined situations on a case-by-case basis, as in a "common law" system, and their possible interpretations were never definitive. If definitive interpretations were wanted, then another institution should be approached. Another representative of the Workers' group said that the ILO should take up the evolving issue of multinational enterprises, building in particular on the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. With regard to the content of Convention No. 87, it should be noted that the Convention fell under the competence of the Committee on Freedom of Association, a tripartite body whose conclusions were adopted by the Governing Body and which, since 1952, had built up a body of case-law which was adapted on a case-by-case basis to each complaint that was examined. He stated that the right to strike had for a long time been among the rights of workers, and stressed that it was important for it to be within the ILO, and not elsewhere, that workers, employers and governments could together say what was meant by Convention No. 87.

29. The tripartite discussion also addressed the issue of the submission of a list of individual cases on the application of ratified Conventions for adoption by the CAS at the 102nd Session (June 2013) of the ILC. In that regard, the Government representative of Australia, speaking on behalf of IMEC, recalled the commitment made previously to such a list and the guarantees made by the social partners to governments in September and November of last year. He emphasized that governments attached importance to that commitment. In the event that agreement could not be reached on the matter, there should nonetheless be an alternative mechanism in place to ensure a list of country cases for consideration by the CAS that year. That statement was supported by the Government representative of Greece, speaking on behalf of the Western European countries. The Government representative of Botswana, speaking on behalf of the Africa group, recalled her group's position regarding the criteria that should be adopted concerning the list, and indicated that the group attached great importance to the transparency of the process, in the sense that the governments concerned should be given early notifications of the nature of

the cases. Her group also favoured a balanced selection of countries and Conventions in that regard. A Government representative of Colombia, speaking on behalf of GRULAC, expressed concern that the issue of the list was being addressed, as her group had not prepared that item and consequently could not provide its views.

IV. Outcome of the consultations

30. Regarding the short term, and more specifically the question of the list of individual cases on the application of ratified Conventions, the Worker spokesperson reiterated that the Employers' group and the Workers' group were committed to agree on a list for the 102nd Session (June 2013) of the ILC, but they still needed time to agree on the modalities for preparing such a list. Regarding the long term, he said that the problems had been analysed and that the path to be taken towards a solution still had to be considered. The assistance of the Office would be needed in that regard. However, there would be no specific solution by the 317th Session (March 2013) of the Governing Body. At the current time, the only option was to present to the Governing Body a summary report of the discussions that had taken place during the consultations. The Employer spokesperson agreed with that statement.

31. A representative of the Director-General (the Director of the International Labour Standards Department) indicated that it was of the utmost importance for the Office to assist the tripartite constituents. To do so, the Office needed clear directions from the constituents. To that end, she invited concrete proposals from all the constituents for further examination. She recalled that the Office had set out three proposals in the information paper that could be further examined, if so requested. Constituents needed to indicate clearly which proposals, whether already set out or from alternative sources, needed further exploration. She observed that each of the proposals set out in the paper could be contained in separate documents, as they invoked complex issues. Any further document would not be available in time for discussion at the 317th Session (March 2013) of the Governing Body or the 102nd Session (June 2013) of the ILC. Moreover, it was important that clear priorities be identified by the constituents in terms of the documents to be prepared for the 319th Session (October 2013) of the Governing Body.

32. The Chairperson of the Governing Body closed the informal tripartite consultations by suggesting that the Office should analyse the options set out in paragraphs 116, 117 and 118 of the information paper, as well as other options. Further discussions could take place once that analysis had been completed. A workplan for the next steps would be established during the 317th Session (March 2013) of the Governing Body.

Draft decision

33. ***In the light of the decision taken at the 101st Session (2012) of the Conference, the Governing Body is invited to provide further guidance on the follow-up to the discussions of the Committee on the Application of Standards, taking into account paragraph 32 of the present document.***

Annex 6

INTERNATIONAL TRADE UNION CONFEDERATION (ITUC)

THE RIGHT TO STRIKE AND THE ILO:

THE LEGAL FOUNDATIONS

MARCH 2014

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ABSTRACT

In June 2012, the Employers' Group brought the Committee on Application of Standards (CAS) to a sudden, unexpected (and unprecedented) halt. Why? The Employers' Group, under new leadership in the CAS, decided to challenge the very existence of an international right to strike, a right that had been recognised to exist in principle by all ILO constituents (employers, workers and governments) for many decades. Equally as fundamental, the Employers' Group also challenged the competency of the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts) to interpret ILO conventions – attempting to open a door to future challenges to other ILO conventions. Rather than pursue the judicial options available to it under Article 37 of the ILO Constitution, the Employers' Group opted instead to hold hostage the ILO supervisory system, withholding the consensus necessary to allow it to function, until the Employers' Group's demands were met. Such demands included a "disclaimer" to be affixed to the front cover of the ILO Committee of Experts' Annual Report and General Survey that would state that the reports do not reflect the view of the tripartite constituents and therefore enjoy no legal authority. These demands have not changed since 2012.

This brief, written by an expert legal panel, is intended to examine and rebut the central legal arguments raised by the Employers' Group in support of their position. It is the authors' hope that the arguments will inform the debate on the existence of the right to strike in all relevant fora, including the ICJ, should that opportunity arise. The conclusion of the analysis is that there simply is no question but that ILO Convention 87 protects an international right to strike. Further, the ILO supervisory system, including the Committee of Experts, has relied upon well-established methods of treaty interpretation to arrive at this conclusion. Those methods could only lead to that conclusion. In line with its own jurisprudence, the ICJ should give substantial deference to the observations of the Committee of Experts. The right to strike is further buttressed by subsequent recognition of the right to strike in international and regional treaty instruments and by the decisions of regional and national courts; indeed, it must be concluded that the right to strike is now recognised under customary international law.

If the Employers' Group wishes to continue with its challenge on the right to strike, it has two options under the ILO Constitution – to seek a referral of the matter by the ILO Governing Body to the International Court of Justice for an Advisory Opinion (Article 37.1 of the ILO Constitution) or agree to the establishment of an internal, independent tribunal to provide for the expeditious determination of the "dispute or question" relating to the interpretation of Convention 87 (Article 37.2). Failure on the part of the Employers' Group to agree to resolve this matter before an independent judicial body will be viewed as an acceptance of the authors' arguments and conclusions as correct. It will also be viewed as illustrating the thesis of the Workers' Group, which is that the Employers' Group's strategy is to destabilise the ILO supervisory system and in so doing seek to force the adoption of debilitating changes to fundamental labour rights.

I. INTRODUCTION: THE EMPLOYERS' CHALLENGE TO THE RIGHT TO STRIKE

A. The 2012 International Labour Conference

At the commencement of the 2012 International Labour Conference, the spokespersons of the Employers' Group and the Workers' Group met to finalise a "short list" of 25 cases drawn from the Annual Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (Committee of Experts)[1] which would be discussed by the tripartite constituents the following week in the Conference Committee on the Application of Standards (CAS).[2] Although the spokespersons had been in dialogue since March, the Employer's Group spokesperson - without warning - announced at the International Labour Conference that the Employers' Group would refuse to agree to a negotiated final short list that included any case where the Committee of Experts' Annual Report contained observations regarding the right to strike. While there are frequently disagreements on specific cases between the Employers' Group and Workers' Group, this marked the first time that the Employers' Group flatly refused to discuss the application of an entire area of law, based on its own, unique beliefs as to legitimacy of the Committee of Experts' observations.

In this context, the Employers' Group also sought a "disclaimer" on the Committee of Experts' General Survey, which would state, "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents." The purpose of this disclaimer appeared to be two-fold – to diminish the persuasive authority of the Committee of Experts' observations outside the ILO and to attempt to establish a (novel) hierarchy of the political, tripartite body - the CAS - over the independent Committee of Experts.

In 2012, the General Survey focused on the eight "fundamental" ILO conventions and, among others things, confirmed the long-standing legal analysis of the ILO that Convention 87 includes a right to strike. The competing arguments of the Employers' Group and

[1] In 1926, the International Labour Conference adopted a resolution establishing the Committee of Experts on the Application of Conventions and Recommendations. The Committee is normally composed of 20 members who are eminent jurists. The members are appointed by the tripartite Governing Body for a term of three years. The Committee meets annually to examine reports submitted by governments, as well as employers and workers, on, among other matters, the measures taken to give effect to ratified conventions. The work of the Committee is to indicate the extent to which the law and practice of each member state are in conformity with ratified conventions, which are published in annual reports. In so doing, the Committee is guided by principles of independence, objectivity and impartiality.

[2] The Conference Committee on the Application of Standards, also established in 1926, is a standing tripartite body of the International Labour Conference. Each year, it examines the reports published by the ILO Committee of Experts, including the General Survey and the Annual Report. Subsequent to the technical examination by the Committee of Experts, the tripartite constituents through the CAS have an opportunity to examine the manner in which states comply with their obligations under the conventions. The Employers' Group and Workers' Group negotiate a list of 25 cases to which the designated governments are called upon to provide additional information to the CAS. Based on the information supplied to the CAS, the Employers' Group and Workers' Group negotiate and adopt conclusions on those cases.

Workers' Group were both reported and evaluated in the Survey.[3] The Employers' Group threatened to block any agreement over a list of cases unless the Workers' Group accepted the proposed disclaimer. These conditions made it impossible to proceed with the work of the CAS.

The Workers' Group endeavoured to find a solution, including proposing a "neutral" list of 25 cases taken in alphabetical order from the "long list" to which the Employers' Group and Workers' Group had already agreed. The Workers' Group also suggested early on that the dispute be put to the ILO Governing Body (GB), which the Employers' Group initially rejected emphatically. Instead, the Employers' Group insisted on the same set of demands and even walked out during the CAS while negotiations were still under way. In the end, the Employer's Group agreed to refer the matter to the GB, but only after several days and when any possibility to complete the work of the CAS had passed.[4] In practical terms, it meant that workers from around the world were deprived of an important opportunity, in some cases their only opportunity, to have their claims heard in an international forum and acted upon.

B. What Were the Employers' Group's Central Arguments?

The Employers' Group distributed a short statement at the International Labour Conference on 4 June explaining its actions.[5] The Employers' Group's text draws almost entirely upon the work of Alfred Wisskirchen, who had served as the Employers' Group spokesperson and Vice-Chairperson of the CAS from 1983 to 2004.[6] The Employers' Group's statement made the following central claims:

1. The mandate of the Experts is to comment on the "application" of conventions, not to "interpret" them. Only the ICJ can provide a definitive interpretation.[7]

2. The General Survey and the Annual Report of the Committee of Experts are not agreed or authoritative texts of the ILO tripartite constituents. Specifically, the Committee of Experts does not supervise labour standards but rather the ILO tripartite constituents. Thus, it is the tripartite constituents which ultimately decide

[3] Report of the Committee of Experts on the Application of Conventions and Recommendations, *General Survey on the Fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalisation, 2008*, Report III (Part 1B), International Labour Conference, 101st Session, 2012 ("*General Survey* 2012") available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_174846.pdf.

[4] See Provisional Record No. 19, ILC, 101st Session, Geneva, 2012, Part 1 Rev., p. 19/48-9.

[5] See Employers' Statement in the Committee on the Application of Standards of the International Labour Conference on 4 June 2012, available online at http://www.uscib.org/docs/2012_06_04_ioe_clarifications_statement.pdf.

[6] Wisskirchen's views have been expressed in several papers in German and English. See, e.g., Alfred Wisskirchen, *The standard-setting and monitoring activity of the ILO: Legal questions and practical experience*, 144 Int'l Lab. Rev. 253 (2005).

[7] See Provisional Record, 2012, supra fn. 4 at p. 19/13.

upon the meaning of the ILO conventions.[8]

3. Convention 87 is silent on the right to strike and therefore it is not an issue upon which the Committee of Experts should express an opinion. Given the absence of any reference to a right to strike in the actual text of ILO Convention 87, the internationally accepted rules of interpretation require Convention 87 to be interpreted without a right to strike.[9]

The Workers' Group, several governments[10] and the representative of the ILO Director-General[11] expressed sharp disagreement with the Employers' Group's views at the International Labour Conference. The Employers' Group subsequently asserted that the entire supervisory system was in fact "in crisis"[12] and called for a change to its functioning.[13]

C. Why Now?

For nearly 40 years after 1952, when the Committee on Freedom of Association began functioning, there was no challenge by the Employers' Group to ILO jurisprudence on the right to strike as developed by the ILO Committee on Freedom of Association (CFA) and the Committee of Experts.[14] Indeed, the CFA had routinely issued conclusions, by tripartite consensus, affirming the right to strike and regulating its exercise. The Committee of Experts' observations on the right to strike were also regularly approved by the tripartite constituents at the International Labour Conference. Until the end of the Cold War, the Employers' Group did not question the existence of a right to strike protected by the ILO. With the end of the Cold War, however, the alliance between the Employers' Group and Workers' Group against Eastern Bloc repression of trade union rights was no longer relevant. The Employers' Group's acceptance of a right to strike recognized and protected by the ILO started to wane when striking Polish shipbuilders had won.[15]

Employers' Group complaints surfaced in 1989 and 1992. In 1994, with the publication of a General Survey on Freedom of Association and Collective Bargaining, the Employers' Group elaborated a lengthy critique on the right to strike as it had been developed by the

[8] Id. at p 19/5.
[9] Id. at pp. 19/34-6.
[10] Id., p. 19/24 (right to strike was a fundamental right); pp. 19/42-3 (IMEC supporting mandate of experts and supervisory system).
[11] Id., pp. 19/44-5.
[12] See ILO, "Matters arising out of the work of the International Labour Conference (2013), Governing Body, 317th Session, GB.317/INS/4/1, para 19-20.
[13] See IOE News Release, "Employers call for a change to the Functioning of the ILO Regular Supervisory System" (IOE, 2 February 2013).
[14] See Tonia Novitz, *Connecting Freedom of Association and the Right to Strike: European Dialogue with the ILO and its Potential Impact*, 15 Canadian Lab. & Emp. L.J., 2009-2010, p. 476; Claire La Hovary, *Showdown at the ILO: A Historical Perspective on the Employers' Group's 2012 Challenge to the Right to Strike*, 42 *Indus. L. J. 338,* 335 (Dec 2013).
[15] For a description of how the end of the Cold War and the dominance of neo-liberalism have adversely impacted on trade union rights, see Susan Kang, *Human Rights and Labor Solidarity: Trade Unions in the Global Economy*, (U. of Penn. 2012), at 33-40.

supervisory system and in particular by the Committee of Experts.[16] However, it is important to note that the Employers' Group had clarified that "they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike."[17] Of course, neither the CFA nor the Committee of Experts had ever posited an unlimited right to strike and have in fact recognised numerous limitations on the right over the years. Three years later, in 1997, the Employers' Group again "acknowledged that the principle of industrial action, including the right to strike and lockouts, formed part of the principles of freedom of association as set out in Convention No. 87."[18] Not until 2012 did the Employers' Group argue that an international right to strike did not exist *at all*.

The Employers' Group's hard stance appears motivated in part by the fact that ILO jurisprudence, once largely self-contained within Geneva, was now taking on a life outside of the ILO. National and regional courts were now turning ever more frequently to the texts of the ILO supervisory system to understand the scope of freedom of association under their own instruments and laws. The drafters of business and human rights guidelines and principles were also incorporating the principles of the core ILO conventions, and taking into consideration the attendant body of jurisprudence. Human rights and labour rights NGOs increasingly cite decisions of ILO supervisory bodies to hold multinational companies accountable for practices that violate ILO freedom of association standards.[19] Further, free trade agreements and trade preference programs are increasingly making explicit reference to the ILO conventions, the 1998 Declaration and the ILO supervisory system. Together, this has had the effect (in particular with national and regional courts and trade agreements) of slowly converting the "soft" law of the ILO supervisory system to "hard" law.[20]

For example, and as explained in detail below, the European Court of Human Rights recognised the existence of a right to strike in the case of *Enerji Yapi-Yol Sen v Turkey,* and developed this in subsequent cases. The Court noted that the right to strike had been recognised by the supervisory bodies of the ILO as an essential corollary to the right of freedom of association protected by ILO Convention 87.[21] *Enerji Yapi-Yol Sen* built upon *Demir and Baykara v. Turkey*, which had referred to ILO Conventions 87 and 98, as well as the observations of the CFA and the Committee of Experts, to find that Turkey had violated Article 11 of the European Convention by its interference with the right of municipal civil servants to form a trade union and to enter into a collective bargaining agreement.[22] In *RMT v UK,*[23] the ECtHR extensively reviewed ILO Committee of Experts' and CFA findings under

[16] Record of Proceedings No. 25, ILC, 81st Session, Geneva, 1994, pp. 25/31-37.
[17] Id., p. 25/33, para. 121.
[18] Record of Proceedings No. 19, ILC, 85th Session, Geneva, 1997, p. 19/35.
[19] See, e.g., Human Rights Watch, *Discounting Rights: Wal-Mart's Violation of US Workers' Right to Freedom of Association* (2007), available at http://hrw.org/reports/2007/us0507/
[20] Record of Proceedings 2012, supra n. 4, pp. 19/13, 34.
[21] European Court of Human Rights, Third Section, *Enerji Yapi-Yol Sen v Turkey*, 21 April 2009, Application No. 68959/01 at para. 24.
[22] European Court of Human Rights, Grand Chamber, *Demir and Baykara v. Turkey*, 12 Nov. 2008, Application No. 34503/97.
[23] European court of Human Rights, Fourth Section, *National Union of Rail, Maritime and Transport Workers (RMT) v UK*, Application No. 31045/10, 8 April 2014.

ILO Convention 87,[24] concluding from them that secondary industrial action "is recognised and protected as part of trade union freedom under ILO Convention No. 87 and the European Social Charter"[25] so that it "would be inconsistent with [the method prescribed by Article 31(3)(c) of the Vienna Convention] for the Court to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that is much narrower than that which prevails in international law."[26]

In the Americas, the Inter-American Court of Human Rights, in *Case of Baena-Ricardo et al. v. Panama,*[27] relied on the observations of the Committee of Experts and the CFA in ruling that Panama had violated the right to freedom of association guaranteed by Article 16 of the American Convention on Human Rights when it issued a decree dismissing 270 striking workers.[28]

The OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights also refer directly to the ILO core labour standards, including the ILO's 1998 Declaration on Fundamental Principles and Rights at Work, which includes the principle of freedom of association.[29] Thus, the extent of a corporation's duty under the OECD Guidelines or the UN Guiding Principles, and the assessment as to whether that duty was breached, would presumably be ascertained through resort to the jurisprudence of the ILO.

ILO core labour standards have also been incorporated into numerous trade agreements, some of which may impose fines or trade sanctions where national laws consistent with those standards are not adopted and effectively enforced.[30] Trade preferences may also be withdrawn in the case of serious and systematic violations of these standards.

D. 2012-2014

Following the 2012 International Labour Conference, the ILO established a schedule of informal tripartite discussions in addition to formal discussions at the regular sessions of the ILO GB in an effort to find a way out of the impasse. While the Employers' Group did agree to discuss a list of cases in 2013, they did not back down on any of their demands and simply reiterated that the system was in crisis. The Employers' Group also backed away from any

[24] See *RMT* paras. 27-33, likewise the review of the European Committee on Social Rights case-law, at paras. 34-37.
[25] *RMT* para.76.
[26] *Ibid*.
[27] *Case of Baena-Ricardo et al. v. Panama,* Inter-American Court of Human Rights, *Merits, Reparations and Costs, Judgment of Feb. 2, 2001,* Series C No. 72.
[28] Id. at para. 162-63 and 214.
[29] See, e.g., OECD Guidelines, Commentary on Employment and Industrial Relations, pp. 43-46; UN Guiding Principles, Principle 12 and Commentary, stating that, "The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work."
[30] See, e.g., ILO, *Social Dimensions of Free Trade Agreements*, Geneva, 2013, available at http://www.ilo.org/wcmsp5/ groups/public/---dgreports/---dcomm/documents/publication/wcms_228965.pdf

resort to the judicial mechanisms under Article 37 of the ILO Constitution to examine the question of the right to strike. The Swiss Government facilitated bilateral meetings between the Employers' Group and Workers' Group to try and see if some consensus on the way forward could be reached between the social partners prior to resuming tripartite consultations. These meetings, held in May, June and September of 2013, also failed to resolve the issues.

At the 2013 International Labour Conference, the constituents were able to agree to a list of 25 cases to be discussed in the CAS. However, the Employers' Group insisted on including a statement in the conclusions of the cases related to freedom of association which read, "The Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87."[31] This of course did not stop the Employers' Group from subsequently raising and discussing the right to strike in the CAS. The Employers' Group also opened up new lines of attack, suggesting for example that the Committee of Experts had again exceeded its mandate in ascertaining a requirement to bargain collectively in good faith because the words "good faith" did not actually appear in the text of Convention 154 on the Promotion of Collective Bargaining.[32]

In March 2014, the ILO Governing Body discussed potential ways forward from the dispute arising out of the 2012 International Labour Conference. Among the measures requested, the Governing Body authorised the Director General to "prepare a document for its 322nd Session (November 2014) setting out the possible modalities, scope and costs of action under articles 37(1) and 37(2) of the ILO Constitution to address a dispute or question that may arise in relation to the interpretation of an ILO Convention."[33] In November, the Governing Body will review the report and will provide further direction to the ILO on which option, if any, the members wish to pursue.

E. The International Court of Justice (ICJ)

In October 2013, the General Council of the ITUC resolved to seek to refer to the ICJ the question as to whether the right to strike was protected by Convention 87. The Workers' Group chair had similarly challenged the Employers' Group over the course of 2012-13 to exercise the judicial options available to it including the ICJ.

In practice, the ILO may request an advisory opinion of the ICJ on the basis of its own constitution and the agreement between the UN and the ILO. Article 37.1 of the ILO Constitution provides:

> Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.

[31] See Provisional Record No. 16, ILC, 102nd Session, Geneva, 2013, Part 2 Rev., pp. 16/30, 45, 50, 57, 64, 71.
[32] See Provisional Record No. 16, ILC, 102nd Session, Geneva, 2013, Part 1 Rev., p. I/31.
[33] Decision available online at http://www.ilo.org/gb/decisions/GB320-decision/WCMS_239960/lang--en/index.htm.

Article 9 of the Agreement between the UN and the ILO provides at subsection 2:

> The General Assembly authorises the International Labour Organisation to request advisory opinions of the International Court of Justice on legal questions arising within the scope of its activities other than questions concerning the mutual relationships of the Organisation and the United Nations or other specialised agencies.[34]

It further specifies that a request may originate with "the Conference or by the Governing Body acting in pursuance of an authorisation by the Conference."[35]

The dispute over the interpretation of ILO Convention 87 as to the existence of the right to strike clearly meets the technical requirements for a reference to the ICJ – it concerns a question of interpretation of a convention, the ILO is authorised to request such an opinion, and it arises out of the scope of the ILO's activities. Thus, a referral can be made by the GB to the ICJ on the basis of a simple majority vote.[36] The GB would need to settle upon an exact question or questions and send them in writing to the ICJ for its advisory opinion.[37]

This brief considers the arguments surrounding ILO Convention 87 and the right to strike. It is hoped that these arguments will inform discussion of the right to strike in all relevant fora. It is proposed that this document might constitute the Workers' Group's submission to the ICJ if the question of the right to strike were to be referred to it by the ILO Governing Body.

II. THE ICJ AND THE ILO

In previous decisions, the ICJ has established a standard of deference to the interpretation of independent international bodies which have been given a mandate to supervise the

[34] Text of agreement available at http://www.ilo.org/public/english/bureau/leg/agreements/nu.htm.

[35] In 1949, the ILC authorised the Governing Body to request advisory opinions to the ICJ on behalf of the ILC. See Record of Proceeding, ILC, 32nd Session, Geneva, 1949, pp. 244, 391.

[36] There is some dispute as to whether this opinion would be legally binding. Advisory Opinions typically are just that – advisory, and thus do not have the force of law as would an opinion rendered under the contentious jurisdiction of the ICJ. See ICJ Statute Article 59 and 63 (explicitly providing that decisions in contentious cases are binding on the parties and any interveners). However, organisations seeking an advisory opinion may determine beforehand that such an opinion is nevertheless binding. The authors do not here attempt to explore this issue in depth. However, the fact that the ILO constitution refers to a "decision", and that there is no further forum to appeal would lead to the conclusion that the ILO intended to treat the ICJ's advisory opinion as binding. In any case, the effect would be to put an end to this dispute since the highest possible court would have rendered an opinion. See Ebere Osieke, Constitutional Law and Practice in the International Labour Organisation (Martinus Nijhoff Publishers 1985), p 203.

[37] Another ambiguity concerns the ability of the Workers' Group or Employers' Group to participate in the process once the question has been referred by the ILO to the ICJ. Under Article 66 of the ICJ Statute, only states and international organisations can participate in advisory proceedings. In the past, NGOs have presented Amicus Curiae briefs, though these are not considered as part of the official record of the case, though they are available to the justices for their review. Of course, the ILO as the organisation requesting opinion would present relevant information and could most likely send additionally the views of the three constituent bodies to the ICJ.

application of a treaty. Most recently, in the case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* Judgement of 30 November 2010, the ICJ articulated a clear statement of the degree of deference it affords such supervisory bodies. In referring to the interpretive case-law of the Human Rights Committee with regard to the ICCPR, the Court held:

> Although the Court is in no way obliged, in the exercise of its judicial functions, to model its own interpretation of the Covenant on that of the Committee, it believes that it should ascribe **great weight** to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty. The point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled…."[38](emphasis added)

The jurisprudence of the ILO supervisory system (described in detail below), and in particular that of the Committee of Experts, should be afforded the *great weight* described in *Diallo*. The Committee of Experts was set up by the Governing Body, in accordance with the resolution adopted by the International Labour Conference in 1926 (and as subsequently amended), for the purpose of examining government reports on the application of ILO Conventions (treaties) and other obligations relating to international labour standards set out in the ILO Constitution. Since then, the Committee has been called upon to examine:

1. The annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;
2. The information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
3. The information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

The Committee of Experts' task consists of pointing out the extent to which the law and practice in each State appear to be in conformity with the terms of ratified Conventions and the obligations which the State has undertaken by virtue of the ILO Constitution. Indeed:

> Its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States.[39]

[38] AHMADOU SADIO DIALLO (Republic of Guniea *v.* Democratic Republic of the Congo) Judgement of 30 Nov. 2010, p. 664, para. 66, available at http://www.icj-cij.org/docket/files/103/ 16244.pdf#view=FitH&pagemode=none&search=%22Ahmadou%22.

[39] Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), ILC, 73rd Session, 1987, para. 24.

As the Committee of Experts is set up to supervise the application of labour standards reflected in Conventions such as ILO Convention 87, it falls into the category of independent bodies monitoring the application of an international standard, the observations, recommendations and considerations of which should, according to the ICJ, be ascribed "great weight". As also discussed herein, these views went fundamentally unchallenged for decades by the ILO constituents. Since similar factors apply in relation to the creation, constitutional position and function (described below) of the CFA, its views too should be given "great weight".

III. FREEDOM OF ASSOCIATION AND THE RIGHT TO STRIKE

On examination, the Employers' Group's argument relies on a deeply-flawed understanding of the right to freedom of association. The Employers' Group takes a very narrow, conservative view, where freedom of association is a self-contained, individual right, wholly divorced from the context of industrial relations. For it, freedom of association confers no more than the right to gather together into organisations, be they book clubs or trade unions. However, the right to freedom of association has long been understood as a collective right, particularly in the context of industrial relations, and indeed is a bundle of rights exercised jointly and protected individually which enable those in the association to further the purposes for which it was formed. The right to associate in a trade union is commonly understood to include the right to strike (and to bargain collectively). Indeed, without the attendant derivative rights, the right to association in the industrial relations context would be wholly meaningless. This view, shared by the ILO and indeed the great majority of tribunals and scholars, is why the Committee of Experts is on solid footing in articulating a right to strike in the text of Convention 87.

A. Freedom of Association in Theory

Freedom of association has been espoused as a fundamental liberty which is the right of every human being,[40] but also as one which has particular significance and relevance to trade unions in the context of industrial relations. The *International Covenant on Civil and Political Rights* (ICCPR), Article 22 states that: "Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests."[41] The *International Covenant on Economic, Social and Cultural Rights* (ICESCR) links within Article 8 the "right of everyone to form trade unions" with "the right of trade unions to establish …federations", "the right of trade unions to function freely", and "the right to strike".[42] It is therefore not surprising that the ILO supervisory bodies, as part of

[40] See J.S. Mill, "On Liberty" in J.S. Mill, Utilitarianism (Glasgow, Fontana Place, 1962), p. 138; Universal Declaration of Human Rights, GA res. 217A (III), UN Doc A/810 at 71 (1948), Art. 20.

[41] International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976. For virtually identical wording, see the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, 1950, *entered into force* Sept. 3, 1953, Article 11.

[42] International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N.GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976. Again, there is an analogy with the European Social Charter, 529 U.N.T.S. 89, 1961, Articles 5 and 6.

an institution devoted to concern with the "conditions of labour"[43] alongside "sustained progress" and "social justice",[44] have taken a more substantive view of the rights and freedoms which follow from a bare guarantee of freedom of association.

The theory of freedom of association applied in the industrial relations context by the CFA, the Committee of Experts, the European Court of Human Rights[45] and even by the Court of Justice of the European Union[46] is specific to the context of the workplace and what Clyde Summers has described as "the special role trade unions play in our society".[47] Combination in a trade union may be a function of individual liberty, but this liberty has little meaning if workers are unable to pursue their own interests through such organisations. Worker solidarity allows workers to overcome the limitations inherent in entering individual contracts of employment, to achieve fair conditions of employment and to participate in making decisions which affect their own lives and society at large. In the absence of a right to strike, it remains difficult (if not impossible) for workers to achieve these goals given the unequal power in the employment relationship. From this premise stems the view that freedom of association implies not only the right of workers and employers to form freely organisations of their own choosing, but also the right to pursue collective activities for the defence of workers' occupational, social and economic interests.

It is self-evident that freedom of association is essential to the tripartite constitutional structure of the ILO, which entails representation of both employers' and workers' organisations. It is therefore no surprise that Article. 427 (in Part XIII) of the Treaty of Versailles 1919 stated explicitly that, amongst the "methods and principles" that all industrial communities should endeavour to apply was, "The right of association for all lawful purposes by the employed as well as by the employers." However, more than this, the adoption of the first Constitution of the ILO was a response to the realities of industrial relations of the time, namely that:

> conditions of labour exist involving such injustice, hardship, and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required.

Hence, one key way in which to improve them was explicitly said (in the Preamble to Part XIII) to be "recognition of the principle of freedom of association".

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[43] See ILO Constitution, 15 UNTS 40, preamble.

[44] See Declaration of Philadelphia 1944, Article I(b) and II (appended to the ILO Constitution).

[45] See *Demir & Baykara* and *Enerji Yapi-Yol Sen, supra n. 21-2*; see also Keith Ewing and John Hendy, *The Dramatic Implications of Demir and Baykara,* 39 *Indus. L. J.* 2 (2010).

[46] Case C–438/05, *International Transport Workers' Federation (ITF) and Finnish Seamen's Union (FSU) v Viking Line*, Judgment of 11 Dec. 2007 [2007] ECR I-10779, para 44; Case C–341/05, *Laval un Partneri v Svenska Byggnadsarbetareförbundet*, Judgment of 18 Dec. 2007 [2007] ECR I-11767 para 91(finding that,"[t]he right to take collective action, including the right to strike, must … be recognised as a fundamental right which forms an integral part of the general principles of Community law.").

[47] Clyde Summers, *Book Review: Sheldon Leader, Freedom of Association: A Study in Labor Law and Political Theory*, 16(2) *Comp. Labor L. & Pol'y. J.* 262, 268 (1995).

This was, of course, not only so that workers' organisations could participate in ILO standard-setting and other deliberative structures on an equal standing to that of employers but because, in the industrial setting, organisation in trade unions provided safety in numbers for those who sought to collectively negotiate terms and conditions of employment. Further, the proclamation of freedom of association alongside freedom of expression as a "fundamental principle" in the Declaration of Philadelphia can be seen as an assertion that trade unions are intrinsically linked to democratic processes. It also has to be read in tandem with the idea of social justice as well as the reference in Article III to "the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures", which blends the social, economic and political functions of trade unions.[48]

While some have sought to argue that freedom of association should be regarded as a mere individual liberty without reference to its context, here the industrial context,[49] this is not a view which has held sway in academic[50] or judicial opinion.[51]

B. The Right to Strike and Collective Bargaining

The unquestioned (and unquestionable) international right to collective bargaining gives further support to the existence of the right to strike as a derivative right of freedom of association. Whilst the right to strike is not to be confined to the advancement or defence of collective bargaining,[52] the right to collective bargaining is, on the workers' side, without practical effect in the absence of a right to strike. Without the latter right, a right to collective bargaining amounts to no more than a right to "collective begging."[53] As legal scholar Eric Tucker has noted, that notion has a very long history, which he traces back as

[48] For the development and explanation of these arguments, see J Bellace, *The ILO and the Right to Strike*, Int'l Labour Rev. Vol. 153, No. 1 (2014). See also La Hovary, *Showdown at the ILO, supra fn. 14.*

[49] Brian Langille, "Is There a Constitutional Right to Strike in Canada?" in (B Langille, ed) Special Symposium Issue (2010) 15(2) Canadian Labour and Emp. L. J. 129. See also FA Hayek, *Law, Legislation and Liberty* (London, Routledge, 1980) and FA Hayek, *1980s, Unemployment and the Unions*, 2d Ed. (London, Institute of Economic Affairs, 1984).

[50] See, e.g. Alan Bogg and Keith Ewing, *A (Muted) Voice at Work? Collective Bargaining in the Supreme Court of Canada*, 33 Comp. Lab L & Pol'y J. 379, 392-7 (2011-2012); see also Tonia Novitz, *Workers' Freedom of Association,* in James Gross and Lance Compa (eds), Human Rights in Labor and Employment Relations: International and Domestic Perspectives (Illinois, LERA, 2009), pp. 125-8.

[51] See, e.g. See, e.g. *Wilson, Palmer, and others v UK,* Application No 30668/96, (2002) 35 EHRR 20, where the European Court of Human Rights held that, contrary to the ruling of the House of Lords in *Associated Newspapers Ltd v Wilson, Palmer and others* [1995] 2 A.C. 454, the right to trade union membership meant more than the right merely to hold a membership card and involved the right for the union to strive to be heard on behalf of its members, including the right to strike in order to do so: see paras. 44, 46.

[52] As the jurisprudence of the European Convention on Human rights makes clear, see KD Ewing and J Hendy, *Days of Action, The Legality of Protest Strikes against Government Cuts,* 2011, Institute of Employment Rights, Liverpool at p. 19.

[53] German Federal Labour Court (Bundesarbeitsgericht) Judgment 10 June 1980 (Case 1 AZR 822/79): "Against the background of this conflict of interests collective bargaining without the right to strike in general would be nothing more than collective begging (Blanpain)." (Original German: Bei diesem Interessengegensatz wären Tarifverhandlungen ohne das Recht zum Streik im allgemeinen nicht mehr als kollektives Betteln (Blanpain)."

far as 1921, being popularised in the 1940s.[54] Given the palpable threats of dismissal and relocation which could be presented by an employer, the corresponding threat of temporary withdrawal of labour was all that most workers could offer in return. Certainly, as early as 1924, the ILO "Nicod" Report considered freedom of association in tandem with industrial action, self-evidently seeing the two as linked.[55] And, the stated view of the International Labour Office by 1927 was that there was an "intimate relationship between the right to combine for trade union purposes and the right to strike" with a strong case being made for international legislation relating to both.[56]

This interdependence has been universally recognised. In the UK for example, as long ago as 1942, the House of Lords in *Crofter Hand Woven Harris Tweed v Veitch* held that the "right of workmen to strike is an essential element in the principle of collective bargaining".[57] In *South Africa*, with its constitutional right to strike, the Constitutional Court has held that:

> Collective bargaining is based on the recognition of the fact that employers enjoy greater social and economic power than individual workers. Workers therefore need to act in concert to provide them collectively with sufficient power to bargaining effectively with employers. Workers exercise collective power primarily through the mechanism of strike action.[58]

And in another case, that:

> …it is through industrial action that workers are able to assert bargaining power in industrial relations. The right to strike is an important component of a successful collective bargaining system.[59]

In *Canada*, the Supreme Court has pointed out that:

> To take away an employee's ability to strike so seriously detracts from the benefits of the right to organize and bargain collectively as to make those rights virtually meaningless.[60]

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[54] E Tucker, *"Can Worker Voice Strike Back?"* in Alan Bogg and Tonia Novitz, Voices at Work: Continuity and Change in the Common Law World (Oxford, OUP, 2014, forthcoming) at n. 6.

[55] J Nicod, *Freedom of Association and Trade Unionism: An Introductory Survey,* 9 *I. L. Rev.* 467 (1924).

[56] *Freedom of Association: Report and Draft Questionnaire* (Geneva: ILO, 1927), ILC, 10th Session at 75, 138 and 143.

[57] [1942] AC 43, Lord Wright, p. 463.

[58] *In re Certification of the Constitution of South Africa* 1996 (4) SA 744, at para.66.

[59] *NUMWSA v Bader POP (pty) Ltd and Minister of Labour* 2003 (2) BCLR 182 (CC).

[60] *SEIU, Local 204 and Broadway Manor Nursing Home* (1983) 44 O.R. (2d) 392 (SC). See dissent of Dickson CJ (now restored to legitimacy by *Health Services and Support-Facilities Subsector Bargaining Association v British Columbia* 2007 SCC 27, [2007] 2 SCR 391) in *Reference re Public Service Employee Relations Act* [1987] 1 SCR 460 at paras.94-96.

IV. The ILO and the Right to Strike

By 1947, the American Federation of Labor (AFL) wrote to the Economic and Social Council (ECOSOC) of the United Nations and explicitly raised the question: "to what extent is the right of workers and their organizations to resort to strikes recognized and protected?"[61] However, the answer was assumed rather than explicitly stated in the two interlinking instruments subsequently adopted by the ILO, namely ILO Convention 87 1948 and ILO Convention 98. Rather, there was a consensus that the right to strike was encompassed in these provisions, a consensus borne out by subsequent interpretation of these guarantees by the tripartite CFA and subsequently the Committee of Experts (see below).

It is notable that there was no challenge made by the Employers' Group to ILO jurisprudence on the right to strike as developed by the Committee of Experts and CFA in relation to Convention 87 for nearly 40 years. Nor was there any apparent basis for such a challenge, given that CFA cases are decided by tripartite consensus, that is, CFA findings have always required the consent of the employer representatives. As there has been no disparity between CFA case law and the findings of the Committee of Experts, the principles espoused by the latter were also understood to meet with the approval of employers represented at the ILO.

However, the Employers' Group began to change its stance at the end of the Cold War, asserting that it did not believe that the text of Convention 87 could give rise to such a global, detailed, and precise entitlement to take industrial action as had been adopted by the Committee of Experts. Though this was identical to CFA jurisprudence, the Employers' Group did not challenge the CFA's support for the right to strike – perhaps unsurprisingly considering that one third of its membership were drawn from the Employers' Group. As they have now done, the Employers' Group raised this concern not in the CFA, but in the CAS, which comments on the findings of the Committee of Experts.[62] The Employers' Group stated, however, that far from challenging the right to strike, they merely wished to see the right submitted to "reasonable restrictions".

By 1993, Wisskirchen, as vice-Chairman of the CAS and employers' member for Germany, was asserting that "the right to strike developed by the Committee of Experts was virtually unlimited".[63] At the same time, employer representatives in the Governing Body requested that a proposal for a Convention on Dispute Settlement be placed on the agenda of the International Labour Conference. They wanted this instrument to elaborate upon mechanisms for the settlement of industrial disputes so as to set more extensive limits on industrial action.[64] The explanation would seem to be that the strength of the employer lobby was increasing at the end of the Cold War, in a climate in which free market capitalism was seen to have prevailed over forms of state control. However, the Employers' Group did

[61] Reported and discussed by Ruth Ben-Israel, *International Labour Standards: The Case of Freedom to Strike* (Deventer: Kluwer, 1988), 38-9.
[62] Provisional Record No 26, ILC, 76th Session, Geneva, 1989, Part I, p. 26/43.
[63] Provisional Record No. 28, ILC, 80th Session, Geneva, 1993, p. 28/11.
[64] *Minutes of the 262d Session of the Governing Body of the International Labour Organization*, GB.262/PV/Rev (Geneva: ILO, 1995), 1st Sitting, I/3.

not seek to deny that a right to strike could arise by virtue of Convention 87. This only emerged in 1994, although even then it was accepted that "they did not challenge the principle of the freedom to strike and lock-out".[65] This was said to emerge from the ILO Constitution but not the Convention.[66] A "generalized right to strike" was still recognised by 2008, though they maintained that Convention 87 did not provide a basis for regulating the right to strike.[67] The employers' tone and opposition grew more strident leading to their walkout of the CAS in 2012. At this stage, they offered the novel assertion that a right to strike could not be derived from any of the provisions of Convention 87 (whether or not it was protected by the Constitution), on the basis that it was neither expressly mentioned in its text, nor had it been the intention of the signatory parties to include it, nor could it be derived by legitimate means of interpretation, including the relevant rules of the Vienna Convention on the Law of Treaties (VCLT). [68]

A. The Committee of Experts and the CFA Find the Right to Strike Enshrined in Convention 87

From Article 3 of Convention 87, which makes provision (among other entitlements) for workers' organisations to "organise their administration and activities and formulate their programmes", both the CFA and the Committee of Experts have, since the 1950s, regarded Article 3 as encompassing protection of a right to strike, albeit a circumscribed and carefully defined entitlement, which seeks to balance the needs of employer, worker and citizen.

1. Committee of Experts

The Employers' Group maintains that the Committee of Experts has incorrectly concluded that the right to strike is derived from Convention 87. According to the Employers' Group's position paper submitted to the International Labour Conference in 2013:

> Employers have always asserted that article 3 of the 'Freedom of Association and Protection of the Right to Organise Convention', No. 87, does not contain, nor implicitly recognise, a right to strike. Strong support for this view can be found in the historical background of the Convention, in which it is evident from the Conference reports that "the proposed Convention relates only to the freedom of association and not to the right to strike". An extensive interpretation of Convention 87, which includes the right to strike, has however been developed over time by the ILO 'Committee of Experts on the Application of Conventions and Recommendations' (Committee of Experts).

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[65] Provisional Record No. 25, ILC, 81st Session, Geneva, 1994, Part 1, p. 31-32. See also p. 33, "The Employer members also felt it important to note that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike."

[66] Provisional Record No 19, Part II, ILC, 89th Session, Geneva, 2001, 19/46.

[67] Provisional Record No 19, ILC, 97th Session, Geneva, 2008, p. 19/38, 51.

[68] Statement of Christopher Syder, Employers' Spokesperson at the meeting with the Committee of Experts in Geneva on 1 December 2012 available at http://payamekarfarmayan.com/IMG/pdf/_2012-12-14_G-134_ANNEX_II_Highlights_of_1_December_Employer_Statement_to_the_ILO_CEACR.pdf.

This is a flawed analysis, as will be seen.

The Committee of Experts has explained its position on a number of occasions. By 1959, less than a decade after Convention 87 came into force, the Committee of Experts, in the first General Survey to review in detail freedom of association, provided analysis on the right to strike in the section corresponding to Article 3 of the convention. It found in particular that the "prohibition of strikes by workers other than public officials acting in the name of public powers… may sometimes constitute a considerable restriction of the potential activities of trade unions."[69] The Committee of Experts also found that prohibitions on the right to strike run counter to Articles 8 and 10 of Convention 87.[70]

In the 1983 *General Survey*, the Committee of Experts reiterated a conclusion that the CFA had already reached, namely that "the right to strike is one of the essential means available to workers and their organisations for the promotion of their social and economic interests".[71] This met with no opposition from employers at that time. Indeed, the tripartite CFA shortly afterwards stressed again the connection to be made between Convention 87 and the right to strike.[72]

In its 1994 General Survey on Freedom of Association, the Committee of Experts stated:

> 147. As early as 1959, the Committee expressed in its General Survey the view that the prohibition of strikes by workers other than public officials acting in the name of the public powers "... may sometimes constitute a considerable restriction of the potential activities of trade unions ... There is a possibility that this prohibition may run counter to Article 8, paragraph 2, of the Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)". This position was subsequently reiterated and reinforced: "a general prohibition of strikes constitutes a considerable restriction of the opportunities opened to trade unions for furthering and defending the interests of their members (Article 10 of Convention No. 87) and of the right of trade unions to organize their activities"; "the right to strike is one of the essential means available to workers and their organizations for the promotion and protection of their economic and social interests. These interests not only have to do with better working conditions and pursuing collective demands of an occupational nature, but also with seeking solutions to economic and social policy questions and to labour problems of any kind which are of direct concern to the workers". The Committee's reasoning is therefore based on the recognized right of workers' and employers' organizations to organize their activities and to formulate their programmes for the purposes of furthering and defending the interests of their members (Articles 3, 8 and 10 of Convention No. 87).

[69] Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC, 43rd Session, 1959, Part I, Report III, p. 114.
[70] Id., p. 115.
[71] *General Survey on the Freedom of Association and Collective Bargaining*, Report III (Part 4B), ILC, 69th Session, 1983, p. 62.
[72] See CFA, *Digest of Decisions* 3rd ed. (1985) paras. 361, 363.

> 148. The promotion and defence of workers' interests presupposes means of action by which the latter can bring pressure to bear in order to have their demands met. In a traditional economic relationship, one of the means of pressure available to workers is to suspend their services by temporarily withholding their labour, according to various methods, thus inflicting a cost on the employer in order to gain concessions… [early on the Committee was led] to the view that the right to strike is one of the essential means available to workers and their organizations to promote their economic and social interests.[73]

The Committee of Experts has repeated and expanded upon the same position several times, most recently in the 2012 *General Survey on the Fundamental Conventions Concerning Rights at Work in Light of the ILO Declaration on Social Justice for a Fair Globalizations, 2008*,[74] which was the proximate cause for the Employers' Group to withhold its cooperation in the selection and discussion of cases and to launch its present campaign. Though the Committee of Experts have repeated and developed the position stated in the 1994 General Survey above, they have not changed it.

The Committee of Experts' position is thus that the terms of Convention 87 are broadly stated and encompass the right to strike, as well as other means of promoting and protecting the economic and social interests of workers. The right to strike is also derived from the very concept of freedom of association. The Committee also recognises that the right to bargain collectively is dependent on the right to strike.

The Employers' Group argues that the preparatory materials for Convention 87 show conclusively that "the right to strike is not provided for in either Convention 87 or Convention 98, and was not intended to be" and that because the CAS has not reached consensus on the existence and extent of this right, it cannot be held to exist. As concerns the adoption of Convention 87, there was only occasional reference to the right to strike during the preparatory stages, and it appears clear that the Conference refrained from including a mention of this right in the instrument. The Office analysis of replies to the questionnaire for the adoption of Convention 87 included the following:

> It may be observed, in this latter connection, that the Governments were also consulted on the question whether it would be desirable to provide in the international regulations that the recognition of the right of association of public officials should in no way prejudge the question of the right of such officials to strike. Several Governments, while giving their approval to the formula, have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference.

[73] Report of the Committee of Experts on the Application of Conventions and Recommendations, General Survey on Freedom of Association and Collective Bargaining, Report III (Part 4B), International Labour Conference, 81st Session, 1994 (*General Survey* 1994), p.66, para.148.
[74] *General Survey 2012*, supra n. 3, pp. 46 et seq.

> In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association.[75]

This is, however, a much more limited decision than is implied by the Employers' Group and may be argued to show the opposite. The question put to the constituents in the questionnaire related only to whether the right of association of public officials would prejudge the question of the right of such officials to strike. There was a presumption of the existence of the right to strike inherent in this question, which was intended to address only the right of public officials to strike and not to address the right of all workers to strike.

As to the second presumption – that the lack of consensus in the CAS means that there is no right to strike implied by Convention 87 as the Committee of Experts has contended – this appears instead to be evidence of exactly the contrary conclusion. If the Committee of Experts has been stating since 1959 that Convention 87 can be fully applied only if the right to strike is an inherent part of the right to freedom of association, and if the CAS as a whole has been discussing general surveys and individual cases on the basis of the Experts' comments every year since then, then the conclusion must be that the CAS as a whole does not dispute the Committee of Experts' findings. If some members disagree, but their opinions are not followed, then it is only by stopping the work of the CAS (ironically, by staging what is analogous to a strike) that the Employers' Group is able to stop the CAS from continuing its acceptance of the Committee of Experts' position.

The relevance of the VCLT is discussed fully in Section VII. Clearly there is no provision in the text stating that the right to strike is not covered by Convention 87. Moreover, Bernard Gernigon, Former Chief of the Freedom of Association Department of the ILO, has noted that at no point in the proceedings prior to the adoption of Convention 87 was the right to strike ever expressly denied.[76] Were there any uncertainty, the "subsequent agreement between the parties" and the "subsequent practice" in the application of the treaty' (Article 31(3) of the Vienna Convention) that are dispositive. Again, the ILO Committee of Experts has addressed this point. In particular, it found:

> With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties).[77]

[75] Report VII, ILC, 31st Session, Geneva, 1948, p. 87. Provisional Record, ILC, 97th Session, Geneva, 2008, p. 19/38, 51.
[76] Gernigon, et al, "ILO Principles Concerning the Right to Strike", 137 Int'l Labour Rev. Vol. 4, p. 8, fn. 4 (1998).
[77] *General Survey 2012*, p. 48.

2. The Committee on Freedom of Association

In a number of cases the CFA has made a direct reference to Article 3 of Convention 87 as forming part of its own reasoning.[78] Indeed, according to a 1988 study by Ruth Ben-Israel,

> In approximately 500 cases dealt with by the CFA since 1951, the CFA relied upon [a] three-dimensional concept to infer from Article 3 of the convention that workers organizations shall have the right to organize their administration and activities and to formulate their programs without the interference of public authorities which might restrict this right or impede the lawful exercise thereof. The CFA recognized the right to strike as being included within these activities, and determined its limits.[79]

It is unsurprising, of course, that the CFA relied on Conventions 87 and 98 in considering the concept of freedom of association. Prior to 1953, the Office had been giving advice on what freedom of association meant. In 1953, the Director-General informed the Governing Body that the Office would no longer perform this function, as this was now entrusted to the CFA.[80] The current view of the CFA (arrived at by tripartite consensus from 1952 onwards and as set out in their *Digest of Decisions* in its fifth revised edition of 2006) is as follows:

> **135.** Protests are protected by the principles of freedom of association only when such activities are organized by trade union organizations or can be considered as legitimate trade union activities as covered by Article 3 of Convention No. 87.
>
> **523.** The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.
>
> **555.** With regard to the majority vote required by one law for the calling of a legal strike (two-thirds of the total number of members of the union or branch concerned), non-compliance with which might entail a penalty by the administrative authorities, including the dissolution of the union, the Committee recalled the conclusions of the Committee of Experts on the Application of Conventions and Recommendations that such legal provisions constitute an intervention by the public authorities in the activities of trade unions which is of such a nature as to restrict the rights of these organizations, contrary to Article 3 of the Convention.
>
> **669.** The Committee considered that some of the temporary measures taken by the authorities as a result of a strike in an essential service (prohibition of the

[78] See, ILO, Committee on Freedom of Association, Digest of Decisions (2006) paras. 135, 555 and 669. The CFA Digest available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_090632.pdf

[79] Ruth Ben Israel, supra n. 57, p. 66

[80] See Minutes of the Governing Body, 122nd Session, May-June 1953, p. 110.

trade union's activities, cessation of the check-off of trade union dues, etc.) were contrary to the guarantees provided for in Article 3 of Convention No. 87.

B. The ILO Constitution

The right to strike can be derived not only from Convention 87 but more directly from the provisions in the Constitution setting out the priority to be given to freedom of association (as the Employers' Group previously recognised). The Constitution has long been established as the source of the CFA mandate to address issues relating to "freedom of association", certainly following the constitutional challenge to the competence of the CFA made by the then South African government in *Case No. 102 (South Africa)*.[81] The South African government had not ratified Conventions 87 and 98 and therefore objected to a complaint being heard before the CFA. The Committee responded that, by virtue of the Constitution, all ILO Members were bound to abide by the principle of freedom of association. The CFA also relied upon Article 19(5) of the ILO Constitution which states that ILO Members can be required to report to the Director-General on the position of their law and practice in relation to unratified Conventions.[82] This was obviously a decision adopted by tripartite consensus between the government, employer and worker representatives and has since been reiterated repeatedly.[83] The CFA has made direct reference to the ILO's constitutional objectives when interpreting the constitutional provision for freedom of association.[84]

Examination of the ILO Constitution goes some way to explaining how the CFA came to draw this link between freedom of association and the right to strike. The primary aim of the ILO under the Constitution is "social justice", which is to take precedence over other economic goals.[85] It is apparent from the ILO Constitution that social justice involves the improvement of conditions of work and the ability of workers to participate in making the decisions which affect their working lives, either by means of collective bargaining or tripartite consultation. While the Constitution makes no explicit reference to the right to strike, it recognises the principle of freedom of association in the preamble. Further, the Organization is obligated under Part III of the Declaration of Philadelphia to further:

> (e) the effective recognition of the right of collective bargaining, the cooperation of management and labour in the continuous improvement of productive efficiency, and the collaboration of workers and employers in the preparation and application of social and economic measures;

Given that the right to strike is recognised by the CFA as having a constitutional foundation, it would be truly remarkable if the International Labour Conference had adopted a convention which they knew to be narrower than the corresponding rights afforded under the Constitution and would weaken those rights. There is no evidence that drafters intended

[81] *Case No. 102 (South Africa)*, 15th Report of the CFA (1955), para. 128.
[82] *Id.*, paras. 130-2.
[83] See, e.g., *Case No. 2524 (US)*, 349th Report (2008), para. 846.
[84] See *Digest of Decisions*, 5th ed. (Geneva: ILO, 2006), paras. 1, 2, 8, 11, 12.
[85] See Preamble to Part XIII of the Treaty of Versailles 1919 and Declaration of Philadelphia 1944, Art. II(c).

Convention 87 to be narrower than the corresponding provisions of the ILO Constitution. It is relevant to bear in mind that Article 19.8 of the ILO Constitution provides:

> In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

The idea that ratifying Convention 87 materially reduces the rights available under the Constitution is patently unsustainable.

1. CFA History

Following an agreement between the UN Economic and Social Council (ECOSOC) and the ILO, the ILO created the Fact Finding Conciliation Commission on Freedom of Association (FFCC) in 1950, with near unanimous support from the International Labour Conference, to receive complaints regarding violations of freedom of association. The CFA was created the following year to undertake the preliminary examination of allegations concerning violations of freedom of association, which would then be referred to the FFCC.[86] It was not long before these bodies found that the right to strike was clearly within their jurisdiction.

2. CFA Jurisprudence

The CFA, as early as their second meeting in 1952, held that the right to strike was an "*essential [element] of trade union rights*".[87] In Case 28 (UK-Jamaica), for example, the CFA held that:

> The right to strike and that of organising union meetings are essential elements of trade union rights, and measures taken by the authorities to ensure the observance of the law should not, therefore, result in preventing unions from organising meetings during labour disputes.[88]

That the CFA observed that the right to strike was an essential element of the right to freedom of association, thus giving it competency to review the case, generated no controversy at the time. The same report also examined several other cases where legislation related to the right to strike was noted.

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[86] The FFCC was a body of independent experts empowered to perform a quasi-judicial function, namely the examination of specific allegations concerning violations of trade union rights. However, as the FFCC could only act with the infrequently-given consent of the party complained against (absent ratification of the relevant conventions, which could then lead to referral to a commission of inquiry under Art 26), the CFA began to evolve as the pre-eminent body.

[87] *Second Report*, 1952, Case No.28 (Jamaica), para.68; endorsed in *23rd Report*, 1956, Case No.111 (USSR) paras.4, 227, and many other cases, more recently *327th Report,* 2002, Case No.1581 (Thailand), para.111.

[88] CFA Report No. 2 (1952), Case No. 28 (UK-Jamaica), para. 68.

The CFA in subsequent cases was explicit in asserting its competence to address complaints regarding the right to strike. In 1958, in Case No. 163 (Burma), the CFA declared "allegations relating to prohibitions to the right to strike are not outside its competence when the question of freedom of association is involved."[89] It further stated "the right of workers and workers' organisations to strike as a legitimate means of defence of their occupational interests is generally recognised."[90]

The FFCC, in a case filed against Chile following the 1973 coup d'état, also affirmed the right to strike and discussed how various measures taken and laws proposed by the regime of Augusto Pinochet violated that right. It concluded that, "the Government should recognise in law and in practice … the right to bargain collectively and to strike, so that trade unions may effectively further and defend the rights of the workers"[91] – echoing Article 10 of Convention 87. The FFCC also concluded that the right of freedom of association had "become a customary rule above the conventions" taking note that the "the function of the International Labour Organization in regard to trade union rights is to contribute to the effectiveness of the general principle of freedom of association as one of the primary safeguards of peace and social justice."[92]

In case after case in the subsequent decades, the CFA has found that the right to strike by workers and their organisations is not only a legitimate but an essential means for defending occupational interests. This jurisprudence is summarised in the various editions of the *Digest of Decisions*, and thoroughly discussed in ILO publications including "*ILO Principles Concerning the Right to Strike*"[93] and "*The Committee of Freedom of Association: Its impact over 50 years*."[94]

Below are citations in the latest edition of the CFA's *Digest of Decisions,* which summarises this Committee's findings on the right to strike:

> **521.** The Committee has always recognized the right to strike by workers and their organizations as a legitimate means of defending their economic and social interests.
>
> **522.** The right to strike is one of the essential means through which workers and their organizations may promote and defend their economic and social interests.
>
> **523.** The right to strike is an intrinsic corollary to the right to organize protected by Convention No. 87.

[89] CFA Report No. 27 (1958), Case No 163 (Burma), para. 51.
[90] Id.
[91] Report of the Fact-Finding and Conciliation Commission on Freedom of Association Concerning the Case of Chile, GB 196/4/9 (May 1975), p. 118, para. 524.
[92] Id. at p. 108, para. 466.
[93] Gernigon, et. al., *ILO Principles Concerning the Right to Strike*, Int'l Labour Rev., Vol. 137 (1998), No. 4.
[94] See Gravel et. al., *The Committee of Freedom of Association: Its Impact Over 50 Years*, (ILO Geneva) 2001.

> **524.** It does not appear that making the right to call a strike the sole preserve of trade union organizations is incompatible with the standards of Convention No. 87. Workers, and especially their leaders in undertakings, should however be protected against any discrimination which might be exercised because of a strike and they should be able to form trade unions without being exposed to anti-union discrimination.

Thus the basis on which the CFA has found that the right to strike exists is the general recognition of the rights to organise in order to promote and protect workers' economic and social interests – essentially the same recognition, in less detail, as is contained in Convention 87. The Employers' Group's participation in the work of the CFA, and its explicit endorsement over many years of the right to strike as a necessary corollary of the rights to organise and bargain, cannot easily be reconciled with their reasoning in relation to the Committee of Experts.

3. Commissions of Inquiry

From a constitutional point of view it is necessary to consider also ILO Commissions of Inquiry, which decide complaints under Articles 26 of the ILO Constitution. This is all the more important because the ILO itself lacks any more authoritative interpretative organ given that, as noted elsewhere in this brief, no tribunal pursuant to Article 37(2) of the ILO Constitution currently exists and no interpretative question on the right to strike has been put to the ICJ under Article 37(1).

It is therefore of great relevance to note that in the complaint against *Poland,* the Commission of Inquiry explicitly shared the views of the Committee of Experts in respect of the right to strike:

> Convention No. 87 provides no specific guarantee concerning strikes. The supervisory bodies of the ILO, however, have always taken the view - which is shared by the Commission - that the right to strike constitutes one of the essential means that should be available to trade union organisations for, in accordance with Article 10 of the Convention, furthering and defending the interests of their members. An absolute prohibition of strikes thus constitutes, in the view of the Commission, a serious restriction on the right of trade unions to organise their activities (Article 3 of the Convention) and, moreover, is in conflict with Article 8, paragraph 2, under which "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for (by the Convention).[95]

[95] *Report Of The Commission Of Inquiry* instituted under Article 26 of the Constitution of the International Labour Organization to examine the complaint on the observance by *Poland* of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (Vol. LXVII, 1984, Series B, Special Supplement), para. 517. See also *Report Of The Commission Of Inquiry* appointed under article 26 of the Constitution of the International Labour Organization to examine the complaints concerning the observance by *Greece* of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (Vol. LIV, 1971, No. 2, Special Supplement) "**261.** The Commission

In the case against *Zimbabwe*, a very recent Commission of Inquiry, the Commission made an important statement concerning the right to strike:

> The Commission wishes to confirm that the right to strike is an intrinsic corollary of the right to organize protected by Convention No. 87.[96]

C. The Right to Strike in Subsequent ILO Instruments

Subsequent ILO instruments, adopted by the tripartite constituents, contain supplementary provisions affirming the existence of a right to strike protected by the ILO. This is wholly inconsistent with the Employers' Group's contention to the contrary. For example, Article 7 of the Voluntary Conciliation and Arbitration Recommendation No. 92 of 1951 states that none of its provisions should be interpreted as limiting the right to strike.[97] Article 1 of the Abolition of Forced Labour Convention 105 of 1957 specifies that forced or compulsory labour is prohibited "as a punishment for having participated in strikes". In addition, various resolutions of the International Labour Conference have referred (with the support, of course, of the Employers' Group) to the right to strike.[98] These subsequent instruments and resolutions are directly relevant to how the Vienna Convention, explored below, applies to this situation.

In addition, the large majority of States that have ratified Convention 87 have done so since the CFA (in 1952) and the Committee of Experts (in 1959) recognised the right to strike contained within that convention. Indeed, of the 152 Member States that have ratified Convention 87, 138 did so after 1952 when the CFA first established its jurisprudence on the right to strike. Furthermore, 116 out of those 152 ratifications were made after the publication by the Committee of Experts of the first General Survey on Freedom of Association in 1959 mentioned above. Those States may thus be presumed to have accepted that the right to strike is inherent in Convention 87.

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observes that Convention No. 87 contains no specific guarantee of the right to strike. On the other hand, the Commission accepts that an absolute prohibition of strikes would constitute a serious limitation of the right of organisations to further and defend the interest of their members (Article 10 of the Convention) and could be contrary to Article 8, paragraph 2, of the Convention, under which " the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention ", including the right of unions to organise their activities in full freedom (Article 3).”]

[96] *Report Of The Commission Of Inquiry* appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of *Zimbabwe* of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) (Vol. XCIII, 2010, Series B, Special Supplement), para. 575.

[97] Available at http://www.ilo.org/global/standards/lang--en/index.htm

[98] Resolutions of the International Labour Conference referring to the right to strike include the Resolution concerning the Abolition of Anti-Trade Union Legislation 1957, and the Resolution Concerning Trade Union Rights and their Relation to Civil Liberties 1970. These are discussed in ILO General Survey (1994), p. 63.

V. ILO Supervisory Machinery and the Mandate to "Interpret" ILO Conventions

A. Brief Introduction to the Supervisory System[99]

Article 22 of the ILO Constitution provides for regular reporting from all Member States on every Convention each has ratified. These reports are due at intervals ranging between one and five years. With over 7,900 ratifications, this means the ILO receives over 2,000 reports each year. Under Article 23 of the Constitution, each government report is to be sent to the representative organisations of employers and workers, which may make their own comments on what the government says – or fails to say.

The reports are examined by the Committee of Experts which, as noted above, is a committee of 20 independent and prestigious legal experts. It meets in an annual session and may make two kinds of comments: *observations* (more serious questions, published in the Committee of Experts' annual report) and *direct requests* (usually questions of detail or less important queries, and published only on the ILO web-site after the following session of the ILO Conference). Several hundred comments are made each year. In addition, the Committee of Experts carries out an annual General Survey on one or a group of Conventions and Recommendations, in which it examines the global application of these instruments and explains in detail the instruments' requirements.

A second element of regular supervision is the Committee on the Application of Standards (CAS), a tripartite committee established at each session of the International Labour Conference. It examines the report of the Committee of Experts, though the report is not put before it for approval, and selects 25 of the Experts' observations to examine in detail, through discussions with the representatives of the governments concerned. It also discusses the General Survey. The CAS arrives at conclusions on each case, which are then referred back to the Committee of Experts for further examination.

There are also two complaints mechanisms provided for in the ILO Constitution. *Representations* (Article 24 of the Constitution) may be made by employers' or workers' organisations alleging that a government is failing to apply correctly a ratified Convention. These are examined in an ad hoc tripartite committee of the ILO Governing Body, which must approve their reports. *Complaints* (Article 26 of the Constitution) may be made by governments that have ratified the same Convention, delegates to the International Labour Conference, or the Governing Body itself. These are examined by a specially appointed three-member group of independent experts, and their reports are final - unless the government concerned appeals to the International Court of Justice (Article 37). Reports on both representations and complaints are referred back to the Committee of Experts for follow-up.

The final main element of ILO supervision is the CFA, composed of nine titular and nine deputy members of the Governing Body, three titular and three deputies from each of the government, worker and employer members, with an independent chair. This committee

[99] A full description of these various supervisory structures is set out in Annex 2.

was formed in 1951 by agreement with the UN Economic and Social Council. It can examine complaints of violations of freedom of association filed by employers' or workers' organisations, *regardless of whether the country concerned has ratified any relevant Convention*. Although it bases its work on the ILO Constitution, it frequently refers to the ILO's Conventions on freedom of association and collective bargaining. Its decisions are compiled in its *Digest of Decisions*.

***

One of the central contentions of the Employers' Group is that the supervisory system, and in particular the Committee of Experts, has no constitutional mandate to provide binding interpretations of ILO conventions, and that rather it is the tripartite constituents, in the form of the CAS and the International Labour Conference, that have the final say as to what conventions mean. While it is true that only the ICJ may issue binding interpretations of ILO Conventions, it is not the case that the CAS or the International Labour Conference are the ultimate arbiters of the meaning of ILO conventions. There is no constitutional support for this notion.

Further, the Committee of Experts' role, to assess the application of conventions and recommendations, is one which necessarily requires a degree of interpretation – a point that the Employers' Group has previously recognised. Many ILO conventions (and recommendations) set forth broad principles and require some amount of interpretation will be required in order to assess their application.[100]

The ILO operates a varied, multi-layered and mutually reinforcing supervisory system. It is by far the most complex and thorough system at the international level, with elements dating from the 1919 Constitution, with a reform of the system in 1926, and a further set of updates after World War II.

It is important to understand the place the ILO system occupies in the panoply of international supervisory systems. The ILO is the oldest and longest-functioning of the international systems, so that the way other international systems function is based in part on the ILO model (or at least these other systems were established with the ILO model taken into account).

B. Mandates of ILO Supervisory Bodies

The mandates of the two main bodies of the regular supervisory system were adopted, and have developed, in tandem, and it is difficult to consider them entirely separately. Until

[100] Whether the Committee of Experts' interpretation is binding or not is a secondary question as to whether their task involves interpretation at all. The answer to the primary question is obviously in the positive. As to the status of the Committee's interpretations of conventions and recommendations, it appears to the authors of this brief that, given the status of the Committee in the ILO Constitution, its distinguished composition, the global respect given to its conclusions, the elegance of its reasoning, and the concordance of its Observations with the findings of other bodies both within and without the ILO, its interpretations are at the least persuasive and must be regarded as binding unless and until the ICJ rules to the contrary.

1926 the plenary of the Conference reviewed governments' reports on ratified Conventions, but this quickly became too heavy a burden. The Committee of Experts and the CAS were created following a decision of the International Labour Conference in 1926. The resolution reads as follows:

> Proceedings of the International Labour Conference, 8th session, 1926, Appendix VII
>
> (1) Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, submitted by the Committee on Article 408.[101]
>
> The Eighth Session of the International Labour Conference,
>
> Considering that the reports rendered by the State Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,
>
> And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,
>
> Recommends that a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408,
>
> And requests the Governing Body of the International Labour Office to appoint, as an experiment and for a period of one, two or three years, a technical Committee of experts, consisting of six or eight members, for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex to his summary of the annual reports presented to the Conference under Article 408.

1. Committee of Experts

The Committee of Experts was to - and still does - examine the actual reports received from governments, while the CAS was to examine *summaries* of reports and the report of the Committee of Experts. Today the CAS works on the basis of the report of the Committee of Experts, but it also considers any supplementary information governments may put before it directly in response to comments by the Committee of Experts. Governments' reports are

[101] *See Proceedings,* pp. 238-244, 247-260 and Appendix V. Article 408 of the Treaty of Versailles provided for the reporting requirement on ratified Conventions, and corresponds to article 22 of the present ILO Constitution.

no longer seen by the CAS. [102] When a report submitted by a government directly to the CAS is detailed or contains technical questions, the CAS refers it to the Committee of Experts for examination.

In 1946, the ILO Constitution was revised, and among the revisions was the addition of responsibility for reporting on unratified as well as ratified Conventions (now article 19 of the Constitution). In consequence the Governing Body approved an expansion of the responsibilities of the CAS,[103] and decided also to expand the responsibilities of the Committee of Experts for the same reason. When this was considered at the December Session of the Governing Body in 1947, the explanation given to the Governing Body by the Assistant Director-General was:

> With regard to the terms of reference of the Committee of Experts, it was suggested in the Office note that, in order to take account of the amendments to Article 7 of the Standing Orders of the Conference and of the consequent broadening of the functions both of the Conference Committee on the Application of Conventions and of the Committee of Experts, the latter should, in future, be known as the "Committee of Experts on the Application of Conventions and Recommendations ". The functions of the Committee would include an examination of the annual reports made under Article 22 of the Constitution, the information concerning Conventions and Recommendations communicated in accordance with Article 19 of the Constitution, and the information and reports on the measures taken by States Members in accordance with Article 35 of the Constitution.[104] The Committee of Experts would make a report which, as at present, would be communicated to the Governing Body and the Conference.[105]

This decision was based on a note by the Office to the Governing Body, which was approved in the above-mentioned decision. That note read in relevant part:

> 36. It was in pursuance of a Resolution adopted by the Conference in 1926 that the Committee of Experts was set up by the Governing Body in the following year, as part of the mechanism of supervision of the application of Conventions, to carry out an examination of the annual reports submitted by Governments under Article 22 of the Constitution in preparation for the examination of these reports from a wider angle by the Conference, with the assistance of the three groups represented at the Conference. It has been recognised from the outset

[102] Governments' reports are not now put before the Conference Committee, though they were until 1924. From then until the 1970s the Office forwarded summaries of governments' reports to the Conference, but this practice was discontinued for reasons of economy, as well as the fact that the Conference never examined them. This constitutional requirement is now met by forwarding a list of the reports requested and received, and by making the reports available to the Conference Committee should they wish to consult them. In practice, this occurs rarely if ever.

[103] ILO Governing Body, Minutes, 102nd Session, June-July 1947, p. 49.

[104] Article 35 refers to reports on the application of Conventions and Recommendations in non-metropolitan territories.

[105] ILO Governing Body, Minutes, 103rd Session, Dec. 1947, p. 57.

> that the technical examination of the annual reports carried out by the Experts is an indispensable preliminary to the over-all survey of application conducted by the Conference through its Committee on the Application of Conventions. With the approval of the Governing Body, the report of the Committee of Experts is communicated to Governments and to the Conference.
>
> 37. It is accordingly suggested that, as from the coming into force of the amendments to the Constitution adopted by the Conference at its Montreal Session, 1946, the Committee of Experts on the Application of Conventions should be known as the "Committee of Experts on the Application of Conventions and Recommendations ", and that the Committee should be called upon to examine:
>
> (a) the annual reports under Article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;
>
> (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;
>
> (c) information and reports on the measures taken by Members in accordance with Article 35 of the Constitution.
>
> The Committee of Experts would make a report which the Director-General would submit in due course to the Governing Body and to the Conference.[106]

This remains today the mandate of the Committee of Experts. The Committee of Experts described its view of its responsibilities in its report to the 2013 Session of the Conference:[107]

> The task of the Committee of Experts is to indicate the extent to which each Member State's legislation and practice are in conformity with ratified Conventions and the extent to which Member States have fulfilled their obligations under the ILO Constitution in relation to standards.…

The Experts' comments on the application of conventions therefore require it from time to time to find that a government is or is not in compliance with the convention's requirements.

[106] Id., Appendix XII, pp. 167 *et seq*.

[107] Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), ILC, 102nd Session, 2013, p. 2.

2. Conference Committee on the Application of Standards

At the same time that it created the Committee of Experts in 1926, the ILO Governing Body created the *Conference Committee on the Application of Conventions and Recommendations,* a tripartite committee of the Conference. Its original mandate is described in the 1926 Conference resolution quoted above. Its mandate today, following the 1946 revision of the Constitution, is described as follows in Article 7 of the Standing Orders of the Conference:

> Committee on the Application of Conventions and Recommendations
>
> 1. The Conference shall as soon as possible appoint a Committee to consider:
>
> (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
>
> (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;
>
> (c) the measures taken by Members in accordance with Article 35 of the Constitution.
>
> 2. The Committee shall submit a report to the Conference.

As will be evident, this is very similar to the mandate of the Committee of Experts, though in fact the CAS does not examine governments' reports directly. It was described in the 1947 note quoted above as being responsible for the "over-all survey of application" and not with detailed supervision. The CAS bases its work on the Committee of Experts' report but, as evident from Article 7 above, the CAS does not occupy a superior role in relation to the Committee of Experts. The CAS normally calls about twenty-five governments to provide it with oral explanations on the basis of the Committee of Experts' observations (from among several hundred observations made each year), and a certain number of governments also submit additional written information. A high proportion of the cases selected concern the freedom of association Conventions.

Although neither committee is explicitly tasked with determining the extent of compliance with ratified Conventions, both of them have elected over time to do so. The CAS adopts conclusions on each of the cases it discusses, which involve judgments of compliance with the conventions concerned. It may class some of cases as "continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions". For instance, in 2010 its report contained the following paragraph:[108]

[108] Record of Proceedings No. 16, Part I, ILC, 99th Session, Geneva, 2010, p. I/62.

> **222.** The Committee recalled that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.

3. Relationship Between Mandates

The Employers' Group is maintaining that the Committee of Experts' judgments should be subordinated to those of the CAS. In the report of the 2012 Session of the Conference Committee, the Employers' group is reported as having stated:

> **12.** Moreover, while the Employer members recognized that the Committee of Experts was an independent body composed of legal experts, they recalled once again that the overall responsibility for the supervision of international labour standards lay with the International Labour Conference (ILC), through this Committee, which had to establish to this end an effective framework, including rules and methods. The Committee of Experts had a mandate to undertake preparatory tasks in this context – that were delegated to the Office – and to facilitate, not to replace, the tripartite supervision of this Committee. The supervision of international labour standards should be at the service of the ILO's tripartite constituents and reflect their needs, including the needs of workers and employers.

And, in a position paper at the 2013 Session of the Conference, the Employers' Group stated: "The Committee of Experts has the task of preparing the supervisory work of the Committee on the Application of Standards (CAS) of the International Labour Conference (ILC)."[109]

However, the mandate of neither committee indicates a hierarchy between them, and neither is called upon by its mandate to approve or disapprove the findings of the other. The essential task of the Committee of Experts is to assess the conformity of national law and practice with the Conventions each State has ratified, while the Conference Committee is "to consider … the measures taken by Members to give effect to the provisions of Conventions to which they are parties."[110] The Committee of Experts works on the basis of the governments' reports and analyses their legislation and practice for conformity, taking into account any information furnished either by the government or by employers' and workers' organisations, or which is revealed by the research of the Committee's secretariat, the International Labour Office – this is the analytical function, and it is for this reason that the members of the Committee of Experts are eminent jurists.

[109] 102nd Session of the International Labour Conference (ILC) 5 – 20 June 2013, Committee on the Application of Standards (CAS), 27 May 2013, Briefing Note for Governments.

[110] Article 7(1)(a) of the Standing Orders of the International Labour Conference, available at http://www.ilo.org/public/english/standards/relm/ilc/ilc-so.htm#Article 7.

The task of the CAS, which is composed of government delegates and representatives of employers and workers, is to add a public and political element of direct discussions with a small selection of governments in a tripartite setting to gather additional information and put additional pressure on them in a public setting to implement the Conventions they have ratified. Once the CAS has considered an individual case, it returns it to the Committee of Experts for further consideration, and cases may go back and forth between the two committees for many years. Each Committee bases its work in large part on the work of the other, in a circular and complementary way. This relation between two independent but complementary supervisory bodies is one that is found nowhere else in the UN system.

It cannot be maintained convincingly that the Committee of Experts' work is merely preparatory for the Conference Committee's discussions, and that the Conference thus has the last word. Only a tiny portion of the Committee of Experts' observations are discussed in the Conference, and none of its direct requests (which constitute by far the largest portion of its comments). Until the Employers' Group began criticising the views of the Committee of Experts on the right to strike, the CAS simply took all the Committee of Experts' observations as established, and added an element of public discussion to a very few of them.

Indeed, during the Cold War, when the right of the ILO to pass judgments on the application of Conventions on freedom of association, forced labour and other subjects by the Soviet Union and its allies was questioned, the Employers' Group supported the ILO's supervision through the Committee of Experts.

C. Interpretation of Conventions

As explained by legal scholar Claire La Hovary, "While it is clear to everybody that the Committee of Experts does not have the legal mandate to interpret conventions, it is also clear that the Committee of Experts needs to interpret provisions of the conventions in the process of its work of evaluating the implementation of conventions. Indeed, a body that is created to verify the application of conventions must interpret these conventions, for the same reason that 'here is no application of law without interpretation.'"[111] It is accepted by all concerned that no entity other than the International Court of Justice is empowered to issue a final, binding interpretation of Conventions under Article 37 of the ILO Constitution. However, all the ILO bodies involved in supervision necessarily interpret the meaning of its standards. It is important to attempt to divorce the ordinary meaning of the word from its juridical counterpart for the sake of discussion.

It is inevitable that all the supervisory bodies, and in particular the Committee of Experts, reach conclusions on the meaning of Conventions in carrying out their supervision, including whether the law and practice of a Member State falls within the ambit of the Convention.[112]

[111] See La Hovary, *Showdown at the ILO,* supra fn. 14, p. _, citing G. Scelle, Precis de Droit de Gens (vol 2, Paris: Sirey, 1932), p. 488.

[112] As to the interpretive role of the Committee of Experts, the commentary by legal scholar Nicolas Valticos is important to consider. «Ce rôle interprétatif ne se base sur aucune autorité expresse, mais découle logiquement de son mandat et de la nature de sa tâche. Il a d'ailleurs augmenté au cours des années, au fur et

This is also the case with the CAS, with Article 24 representation ad-hoc committees, and with commissions of inquiry. Their understandings of the scope and effect of ILO standards are usually based in the first instance on the Committee of Experts' findings either in accumulated individual examinations or in General Surveys, and each in practice accepts the findings of the other bodies as to the meaning of Conventions. The CFA and Fact-Finding and Conciliation Commissions, though their mandates do not cover the Conventions themselves, regularly refer to the jurisprudence developed in the supervision of the Conventions that correspond to the freedom of association obligations. All these understandings are developed with the reservation, usually explicitly stated, that the International Court of Justice retains final authority, even though it has never been found necessary to invoke it.

It is worth mentioning that the CAS as a whole has never attempted to develop a distinct statement of the scope and effect of Conventions. The identification of the content and extent of obligations have been compiled by the Committee of Experts, discussed and regularly endorsed by the Conference Committee and by the Committee on Freedom of Association in its *Digest of Decisions*.

This is far from the first time the issue of the right to interpret conventions in connection with the right to strike, and the relations between the Committee of Experts and the Conference Committee, have arisen. The issue arose with some frequency in the Governing Body early is the Organization's life. See, for instance, an extract from the Minutes of the Governing Body in 1930:

> *5. Interpretation of Conventions*.
>
> The Director said that he hoped there would not be, in connection with this question, a recrudescence of the discussions with which the Governing Body was familiar concerning the power of interpretation of the Governing Body and the Conference, and the functions of the Office in giving information concerning the interpretation of Conventions. It had, however, been thought useful, in connection with the question now under consideration, to recall the fact that, according to Article 423 of the Treaty of Peace, the Permanent Court of International Justice alone was qualified to give authoritative interpretations of Conventions. All other interpretations, even those given by the Conference, might give rise to dispute. It might therefore be well to remind States of the possibility of appealing to the Permanent Court of International Justice.

à mesure que, dans un souci de souplesse, l'Organisation adoptait des textes rédigés en termes délibérément généraux. La généralité croissante des termes utilisés dans les conventions internationales du travail a eu pour conséquence d'accroître le rôle interprétatif de la Commission d'experts qui est appelée, pour apprécier si une convention est effectivement respectée, à en apprécier plus exactement le sens et la portée. Alors que la nécessité et la marge d'interprétation sont minimes dans le cas de conventions techniques rédigées en termes précis, comme celles, par exemple, qui prévoient un âge minimum précis d'admission au travail ou une certaine durée de congé de maternité ou de congés payés, elles sont considérables dans le cas des conventions établissant des principes en termes généraux, qui sont aussi du reste généralement celles qui portent sur des questions fondamentales.» Droit International du Travail, Dalloz, 1983, p. 136, para. 176.

> It had been said that this was an expensive and cumbrous procedure, but even if the procedure were slow and costly, it was better to apply to the Court than to remain in a state of uncertainty.
>
> The note of the Office also pointed out that the procedure for revision of Conventions offered an opportunity of interpreting them.[113]

The question flared up most prominently in 1990 and 1991 when the Committee of Experts stated in its report:

> The Committee has already had occasion to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by Article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. The situation is identical as regards the conclusions or recommendations of commissions of inquiry which, by virtue of Article 37 of the Constitution, may be affirmed, varied or reversed by the International Court of Justice, and the parties can only duly contest the validity of such conclusions and recommendations by availing themselves of the provisions of Article 29, paragraph 2, of the Constitution. The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently, for the certainty of law required for the proper functioning of the International Labour Organisation.

The Employers' members of the Conference Committee reacted to this in 1990, in a discussion reported in the report of the Conference Committee that year:[114]

> **22.** The Employers' members […] feel that the opinion of the Committee of Experts that its evaluations are binding unless corrected by the International Court of Justice, could not be correct. One obvious reason was that, if this were the case, the present Committee would lose its fundamental purpose, and so would the Conference. A legal reason was that this was contradicted by the ILO Constitution and by the Standing Orders of the Conference concerning the submission of governments' reports and the terms of reference of the Conference Committee, which had an independent competence to examine reports.

[113] ILO Governing Body, Minutes, 50th Session, Oct. 1930, pp. 656, 657.
[114] Record of Proceedings No. 27, ILC, 77th Session, Geneva, 1990, p. 27/6.

The Office (the ILO secretariat) attempted to bring this discussion to a close in wrapping up the discussion in the Conference on this point:[115]

> The Conference Committee is not an appellate tribunal called upon to examine the opinion of the Committee of Experts, and its evaluations are not judgements. They arise instead from a spirit of dialogue with the ILO's constituents, based on the prior technical and legal advice given by the Committee of Experts, to achieve a better application of international labour standards.

The Committee of Experts, in its 1994 report explained:

> **26.** . . . The Conference Committee has never operated as a review or appeals body vis-à-vis the Committee of Experts. The two bodies have different functions: the Committee of Experts is responsible for technical supervision, whereas the Conference Committee, which is tripartite, provides an opportunity for direct dialogue between governments, employers and workers, and can even mobilize international public opinion.

The Employers' members then returned to this issue in 1996 in the Conference Committee:

> **10**. The Employers' members noted that, although the present Committee had to take into account new information every year, its task remained the same. In accordance with Article 7 of the Standing Orders of the International Labour Conference, it was responsible for examining whether Member States were discharging their obligations under the ILO Constitution, as well as the obligations they had assumed through the ratification of Conventions. The Committee had been carrying out this task for around 70 years. The Committee's role concerned legal issues, and it was for this reason that the comments contained in the report of the Committee of Experts were important. However, the Conference Committee needed to make its own evaluation and arrive at its own conclusions. Its task was not confined to repeating the work of the Committee of Experts.[116]

This position, that the CAS had to act independently of the Committee of Experts, was not taken up by other members. The employers added a new element to the discussion in 2002:[117]

> The point of conflict was not over whether the Committee of Experts had to interpret law, since the determination of whether or not a Member State complied with the obligations arising out of the provisions contained in ILO Conventions cannot be done without applying legal standards; it was whether

[115] Id., p. 27/9.
[116] Record of Proceedings No. 14, ILC, 83rd Session, Geneva, 1996, p 14/4.
[117] Record of Proceedings No. 28, ILC, 90th Session, Geneva, 2002, p. 28/12.

> these unavoidable interpretations were binding. In this respect, the Committee of Experts had rightly corrected in 1991 its opinion set out in 1990. Only the International Court of Justice had the authority to make binding interpretations of Conventions and Recommendations, which clearly derived from Article 37 of the ILO Constitution and the founding instruments, as well as the stringent consideration that the competence of the Committee of Experts cannot exceed that of the body which created it (the *ultra vires* doctrine). This would not hinder the fruitful collaboration between the Conference Committee and the Committee of Experts.

One obvious limitation of the Employers' Group's position is that the CAS as a whole has not endorsed it. The complementarity of the roles of the two committees appears generally to be accepted by other ILO constituents without a need to decide whether one committee has ascendancy over the other. And indeed, the opinion expressed by the Committee of Experts in 1990 is in fact the way in which the committees have interacted. The accumulation of the legally non-binding interpretations by all the ILO supervisory bodies has been so gradual, and so thorough, that it is difficult to imagine a challenge to the authority of the Committee of Experts to flesh out the words of Conventions and to adapt their understanding of the meaning of these standards to new situations, sometimes nearly a century after the Convention in question was adopted, unless a similar position was adopted by all the ILO supervisory bodies, and for all conventions.

Similar points can be made concerning the constitutional complaint procedures. There is the same circular relation among these bodies and the "regular" supervisory machinery. Representations committees and Commissions of Inquiry carry out functions that are more similar to the Committee of Experts than to the CAS, by examining individual situations in relation to a given Convention (or occasionally a set of Conventions). One major difference is that neither the Committee of Experts nor the Commissions of Inquiry submits their conclusions for approval by a higher body, in spite of the employers' assertions concerning the relationship between the Committee of Experts and the CAS. Both the Committee of Experts and Commissions of Inquiry - the bodies with independent, expert legal membership - arrive at their own conclusions, which are then noted and acted upon by other bodies without being subject to challenge except by the International Court of Justice. The other two committees, with tripartite, non-expert composition, adopt conclusions that must be approved, by the plenary of the Conference and by the Governing Body respectively.

D. Conclusion

The Employers' Group has challenged the right of the Committee of Experts to "interpret" conventions, specifically in relation to the question of the right to strike, a position adopted by no other part of the ILO structure. Their insistence on their own point of view without following the wider consensus threatens the operation of machinery that has functioned well since 1927. All the ILO's supervisory bodies perform an interpretive function, subject to any binding interpretation being issued by the ICJ. This includes both those bodies that supervise Conventions and those that supervise the implementation of the Constitution – which after all is also an international treaty. As is demonstrated in the next section, this is

the case also for the supervisory bodies of all international organisations. The most analytically authoritative interpretive function is confided to the two ILO supervisory bodies composed of independent jurists (the Committee of Experts and Commissions of Inquiry).
The extent to which the Conference has the last word on interpretation derives from its "legislative" power. Under the Constitution, the conference has the right to revise Conventions to express exact meanings which the supervisory bodies would have to follow, subject to ratification of the revised instruments.

VI. The Right to Strike Outside the ILO

The right to freedom of association and collective bargaining is well established in international instruments other than those adopted by the ILO. They are indicia of the international context in which ILO Conventions are located and are a reflection of the law and practice of States.

A. United Nations

Consistent, though not necessarily identical, approaches on human rights have historically been taken between the ILO and the United Nations. The Universal Declaration of Human Rights, which was adopted a few months after the adoption of Convention 87 and a few months before the adoption of Convention 98, contains a brief but robust statement on trade union rights in Article 23(4): "Everyone has the right to form and to join trade unions for the protection of his interests." This was given greater articulation in the two Human Rights Covenants adopted in 1966, with the remarkable inclusion in both Covenants of a clause providing for respect of ILO Convention 87 (see e.g., Article 8(3) of the ICESCR). And, before the adoption of the Covenants, the UN Economic and Social Council asked the ILO to adopt measures to deal with complaints of violations of trade union rights on behalf of both organisations.

1. International Covenant on Economic, Social and Cultural Rights

This Covenant provides as follows in Article 8:

> 1. The States Parties to the present Covenant undertake to ensure:
>
> (a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restriction may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;
> (b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of a particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the State.

3. Nothing in this article shall authorize States Parties to the International Labour Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

It is plainly apparent that this provision was closely based on ILO Convention 87, and the basic drafting was completed very shortly after the adoption of the ILO Convention. Paragraph 3, found in both Covenants, further attests the close relationship between the ILO and UN standards.

While it is broadly compatible with the ILO standards, there are some differences.[118] In the first place, the Covenant does not cover employers, as do the ILO standards.[119] Second, it explicitly protects the right to strike, though with the caveat that it should be "exercised in conformity with the laws of a particular country." (Art. 8(1)(d)) This supplements the concern in Art. 8(1)(c) that States parties shall ensure "The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others." These calls for respect for the national legal order are not accompanied by the countervailing provision found in Art. 8(2) of ILO Convention 87 that "The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

The UN instruments set the conditions for the exercise of a certain class of human rights, but do not explore the uses to which these rights might be put, except that the ESCR Covenant provides that the right of everyone to organise is "for the promotion and protection of his economic and social interests". In spite of minor differences, the ICESCR and ILO standards obviously cover the same ground, and are intended to be compatible.

[118] Keith Ewing, *Myth and Reality of the Right to Strike as a "Fundamental Labour Right",* 29(2) *IJCLLIR* 145, 146 (2013).

[119] The reasons for this omission were essentially that the USSR and its allies did not want the forces of capital to be covered. See the detailed analysis of this history in H. Dunning: *The origins of Convention No. 87 on Freedom of Association and the right to Organise*, *Int'l Labour Rev.* Vol. 137, No. 2, (Geneva, ILO, 1998), p. 160.

As concerns supervision of the ICESCR, this is carried out by the Committee on Economic, Social and Cultural Rights (CESR) which reviews the compliance of ratifying States on a cyclical basis.[120] From time to time the CESCR publishes "General Comments" which are authoritative interpretations of the text of the ICESCR. There is no specific General Comment on Article 8; however, *General Comment No. 3* (1990) lists Article 8 amongst others which "would seem to be capable of immediate application by judicial and other organs in many national systems" and *General Comment No.9* (1998) requires that the ICESCR provisions should be enforceable in the domestic legal system of ratifying States. Thus, immediate implementation of Article 8 is required where this is legally possible. The Concluding Observations of the CESCR (the UN equivalent of the ILO Committee of Experts), in its review of States' compliance show how the CESCR on individual cases to deduce how the Committee understands the meaning of this Article.

From the Concluding Observations it may be determined that this Committee applies the same methods which the Employers' Group criticises when used by the ILO Committee of Experts. It is evident that the CESCR has developed its jurisprudence on the meaning of Article 8 of the Covenant beyond the words alone on the page. In doing so, it has taken care to retain compatibility with the jurisprudence of the ILO. The right to strike itself need not be inferred, since it is textually in the Covenant, but the CESCR has carried out the same process as the ILO supervisory bodies in using the bare words of the Covenant as a platform for laying down what is required to implement the right fully.

Extracts from recent (2011) "Concluding Observations" of the CESCR show that that Committee's comments closely resemble the observations of the ILO Committee of Experts, though less detailed:

> **Estonia**:
>
> **17.** The Committee notes with concern that the legislation in force in the State party prohibits civil servants from participating in strikes, including those who do not perform essential services. (Art. 8) The Committee calls on the State party to ensure that the provisions on civil servants' right to strike in the Public Service Act comply with Article 8 of the Covenant by restricting the prohibition of strike to those discharging essential services.[121]
>
> **Germany:**
>
> **20.** The Committee reiterates its concern . . . that the prohibition by the State party of strikes by public servants other than those who provide essential services constitutes a restriction of the activities of trade unions that is beyond the purview of the restrictions allowed under Article 8 (2) of the Covenant (Art. 8). The Committee once again urges the State party to take measures to ensure

[120] Since the Committee's first meeting in 1987; before the Committee was established, supervision was carried out directly by a Working Group of ECOSOC.
[121] UN Doc. E/C.12/EST/CO/2, 16 Dec. 2011.

> that public officials who do not provide essential services are entitled to their right to strike in accordance with Article 8 of the Covenant and ILO Convention No. 87 concerning Freedom of Association and Protection of the Right to Organise (1948). [122]

Previous concluding observations have criticised Jamaica for reading Article 8(1)(d) as giving the freedom but not the right to strike and concern has been expressed about various restrictions on the right to strike in Morocco, Senegal, the Dominican Republic, and Panama.[123] The UN Committee regularly goes beyond merely noting that there is or is not a national law on the subject, as a strict reading of the Covenant would suggest, often indicating what the content of that law should be. In considering a proposal to give some legal protection (where previously there was none) against dismissal for official strikers in the UK, the Committee held:[124]

> 11. The Committee considers that failure to incorporate the right to strike into domestic law constitutes a breach of Article 8 of the Covenant. The Committee considers that the common law approach recognising only the freedom to strike, and the concept that strike action constitutes a fundamental breach of contract justifying dismissal, is not consistent with protection of the right to strike. The Committee does not find satisfactory the proposal to enable employees who go on strike to have a remedy before a tribunal for unfair dismissal. Employees participating in a lawful strike should not ipso facto be regarded as having committed a breach of an employment contract...
>
> 23. The Committee recommends that the right to strike be established in legislation, and that strike action does not entail any more the loss of employment, and it expresses the view that the current notion of freedom to strike, which simply recognises the illegality of being submitted to an involuntary servitude, is insufficient to satisfy the requirements of Article 8 of the Covenant…

By way of further example, no mention of essential services is included in the Covenant – this is an interpolation by the Committee, drawing on the principles developed by the ILO Committee of Experts. Indeed, this understanding of the possibility for excluding essential services from the right to strike, in spite of the lack of language to this effect in the Covenant, was developed already by ECOSOC itself before the Committee was created. See the following extract from the proceedings of the ECOSOC Working Group at its third session in 1989:[125]

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[122] UN Doc. E/C.12/DEU/CO/5, 12 July 2011.

[123] J Morsink, Inherent Human rights; Philosophical Roots of the Universal Declaration (U. of Penn., 2009), p. 241.

[124] Concluding observations of the Committee on Economic, Social and Cultural Rights (on the Third Periodic Report of the UK), 4th December 1997, E/C 12/1/Add.19, at paras. 11 and 23. This was reiterated in 2002: E/C 12/1/Add/79 (2002).

[125] Report on the Third Session, (6-24 February 1989), UN Doc E/1989/22 and E/C.12/1989/5. In the same report, see also the exchange concerning Canada in paragraph 109 of the same report. At this point the

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289. Members of the Committee wished to know to which extent the right to strike was afforded to trade unions in the public and private sectors.

290. Referring to the provision according to which strikes in essential public services could be prohibited, members wished to know who decided whether a service was essential, and what procedures were used in that respect. ….

Thus the UN bodies have, like the ILO, taken the position that the words of the treaty in isolation are insufficient to allow the fullest application of the rights contained in it, and that additional requirements must be inferred in order to ensure full implementation. It may be noted at the same time from the comment concerning Germany, above, that the UN Committee accepts that the right to strike is inherent in ILO Convention 87.

2. International Covenant on Civil and Political Rights

Article 22 of the Covenant on Civil and Political Rights covers part of the same ground as the ICESCR, but is less extensive. In particular, it does not spell out the right to strike:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

The Human Rights Committee that supervises the implementation of this Covenant applies the same basic methodology as the Committee on Economic, Social and Cultural Rights. However, the HRC examines the protection of the right to freedom of association mostly in relation to non-governmental organisations and political parties, and for the most part does

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Working Group had not yet evolved the later practice of drawing conclusions from the information submitted, as was the case later; but the assumptions it had reached concerning the contents of the rights are evident from the questions posed.

not explore the workers' rights aspect of the right to freedom of association, apparently preferring to leave this to the ICESCR. There are nevertheless exceptions. Originally the HRC did not consider that the ICCPR protected the right to strike.[126] However, since 1999, it has done so, and monitors States protection of this right.[127]

For example, in its concluding observations on the report of Estonia in 2010, the Committee included the following:

> 15. While noting that the present draft Public Service Act presented to Parliament includes a provision restricting the number of public servants not authorized to strike, the Committee is concerned that public servants who do not exercise public authority do not fully enjoy the right to strike (art. 22).
>
> The State party should ensure in its legislation that only the most limited number of public servants is denied the right to strike.[128]

The HRC has developed its own understanding that, even in the absence of a stated right to strike in this Covenant, the right nevertheless exists as an inherent part of the right to freedom of association, and that it is the Committee's obligation to examination not only the existence of that right but also the conditions under which it is exercised.

B. European Instruments

1. The European Convention on Human Rights

The right to strike is not expressly protected by the European Convention on Human Rights (ECHR).[129] However, ECHR, art 11 provides that:

> 11(1) Everyone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.
>
> 11(2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

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[126] See, e.g. *JB v Canada,* 1986

[127] Concluding Comments on Chile, 1966; see P Maclem, *The Right to Bargain Collectively in International Law: Workers' Right, Human Right, International Right?* in P Alston (ed), *Labour Rights as Human Rights (Oxford*, 2005).

[128] Human Rights Committee, Ninety-ninth session, Geneva, 12–30 July 2010, UN Doc, CCPR/C/EST/CO/3.

[129] See K D Ewing and J Hendy QC, *The Dramatic Implications of Demir and Baycara,* 39 ILJ 2 (2010).

In a series of cases decided in the 1970s, the European Court of Human Rights took the view that this provision did not require Member States of the Council of Europe to protect any particular form of trade union action.[130] In these cases, the Court expressed and repeated the mantra that Article 11 simply imposed a duty on States to have in place mechanisms to enable trade unions to represent their members, but did not guarantee any particular means by which this was to be done.

Thus the failure of a State to provide a specific mechanism for unions to be heard in order to protect their members' interests would not breach Art 11(1) if other means were permitted by which the union could be heard. Part of the justification for this was the existence of the European Social Charter of 1961 (ESC), in relation to which States are free to select which paragraphs of which Articles they are prepared to accept. Thus it is open to a State to refuse to accept (by way of example) the obligations relating to the right to organise, the right to bargain or the right to strike (arts 5 and 6). According to the tortuous reasoning of the Court, if Art. 11 of the Convention was to be read to include these rights, it would mean that in 1961 the Council of Europe would have taken a step backwards by creating a Charter in which such rights were optional.[131]

However, the position of the ECtHR has evolved over the years. In *UNISON v United Kingdom*,[132] the court was beginning to soften its position on the right to strike. It is true that in that case it was held the restrictions on the right to strike did not constitute a violation of ECHR, art 11. But it was no longer suggested that the right to strike as such was unprotected by ECHR, art 11(1), though the restrictions in this case were found to have been justified under ECHR, art 11(2).

In *Wilson, Palmer and others v UK*[133] the issue was discrimination against trade union members who refused to surrender trade union representation. Amongst other things, the ECtHR held:

> … the essence of a voluntary system of collective bargaining is that it must be possible for a trade union which is not recognised by an employer to take steps including, if necessary, organising industrial action, with a view to persuading the employer to enter into collective bargaining with it on those issues which the union believes are important for its members' interests (paragraph 46).

This evolution was brought to a climax in *Demir and Baycara v Turkey*,[134] a case about the annulment of a collective agreement in Turkey. In holding unanimously that there had been a breach of art 11, the Grand Chamber expressly repudiated the jurisprudence of the 1970s, emphasising that "the Convention is a living instrument which must be interpreted in the light of present-day conditions, and in accordance with developments in international law, so as to

[130] *National Union of Belgian Police v Belgium* [1979] 1 EHRR 578; *Swedish Engine Drivers v Sweden* (1979) 1 EHRR 617; *Schmidt and Dahlstrom v Sweden* (1979) 1 EHRR 632.
[131] See *Belgian Police*, para 38; *Swedish Engine Drivers,* para 39; and *Schmidt,* para 34.
[132] [2002] IRLR 497.
[133] Application No 30668/96, (2002) 35 EHRR 20.
[134] [2008] ECHR 1345.

reflect the increasingly high standard being required in the area of the protection of human rights".[135] In holding that the right to bargain collectively was now an *essential element* of the right to freedom of association, the Court took into account a wide range of international treaties (including ILO Convention 98, the European Social Charter, and the EU Charter of Fundamental Rights), as well as the constitutional and labour law and practice of the Member States of the Council of Europe.[136]

Taking these different factors into account, the ECtHR concluded that

> The absence of the legislation necessary to give effect to the provisions of the International Labour Conventions already ratified by Turkey, and the Court of Cassation judgment of 6 December 1995 based on that absence, with the resulting *de facto* annulment *ex tunc* of the collective agreement in question, constituted interference with the applicants' trade-union freedom as protected by Article 11 of the Convention.[137]

As a result, the question for the respondent government was whether the restrictions could be justified under ECHR, Article 11(2), a claim that was dismissed by the Court.
In response to this latter question the Court said:

> There is no evidence in the case file to show that the applicants' union represented "public servants engaged in the administration of the State", that is to say, according to the interpretation of the ILO Committee of Experts, officials whose activities are specific to the administration of the State and who qualify for the exception provided for in Article 6 of ILO Convention No. 98.[138]

This passage is significant because it reveals that ILO Conventions are important in informing not only the content of ECHR, Article 11, but also the circumstances in which restrictions may be imposed**.** *Demir and Baykara* is important not just for its reliance on ILO Conventions (and the European social Charter) but also for its deployment of the jurisprudence of the Committee of Experts and the CFA (as well as the European Committee on Social Rights). The arguments that led the ECtHR to conclude that the right to collective bargaining is protected by ECHR, Article 11 apply with equal force to right to collective action – namely Article 11 as a living instrument, the importance of other international treaties, and the rising standards of protection which the Convention must reflect. It is thus not surprising that since *Demir and Baycara*, the ECtHR has more fully recognised and developed the right to strike.

Enerji Yapi-Yol Sen v Turkey[139] concerned a circular from the Prime Minister's Public-Service Staff Directorate prohibiting public sector employees from taking part in a national one-day strike organised by the Federation of Public Sector Trade Unions "to secure the right to a collective bargaining agreement". The first question was whether such conduct of the State

[135] Id., para. 146.
[136] Id, para. 147 – 154.
[137] Id., para. 157.
[138] Id., para. 166.
[139] Application No 68959/01, Judgment dated 21 April 2009.

violated the Convention rights of the union, the Court taking the view that:

> The terms of the Convention require that the law should allow trade unions, in any manner not contrary to Article 11, to act in defence of their members' interests **[**reference made to *Schmidt and Dahlström*; *Belgian police*; *Swedish engine drivers*]. Strike action, which enables a trade union to make its voice heard, constitutes an important aspect in the protection of trade union members' interests (*Schmidt and Dahlström***,** cited above, § 36**)**. The Court also observed that the right to strike is recognised by the International Labour Organisation's (ILO) supervisory bodies as an indissociable corollary of the right of trade union association that is protected by ILO Convention C87 on trade union freedom and the protection of trade union rights (for the Court's consideration of elements of international law other than the Convention, see *Demir and Baykara*, cited above). It recalled that the European Social Charter also recognised the right to strike as a means of ensuring the effective exercise of the right to collective bargaining. As such, the Court rejected the Government's preliminary objection [that the trade union was not a victim].[140]

The reference to *Demir and Baykara* as support for reliance on the ILO and the European Social Charter to establish strike action as a corollary to the essential right to collective bargaining protected by Article 11 strongly suggests that the Court was accepting that the right to strike is equally "essential." The passage cited above also makes clear that the Court accepted the ILO position that the right to strike is "an indissociable corollary of the right of trade union association". Again, there was no discernible disharmony between the international treaties, of which Convention 87 was one, and the law and practice of the member States as to the existence of the right to strike. It was not necessary therefore for the ECtHR to consider whether the other means by which the union might be heard on behalf of its members were sufficient: breach of the right to strike alone was a breach of Article 11(1).

UNISON and *Enerji Yapi-Yol Sen v Turkey* were distinguished by the fact that the victims were trade unions. *Wilson and Palmer* though only peripherally touching on the right to strike, is notable as a case where the victims were both individuals and unions The ECtHR has also upheld strike cases involving individual victims penalized in various ways because of their engagement in collective action.

The 2009 judgment of the ECtHR in *Danilenkov v Russia* concerned 32 dockers,[141] members of a small union at Kaliningrad docks, which had taken industrial action. Following the strike the employer discriminated against the members so that they were assigned less work, received reduced income, and were subject to discriminatory selection for redundancy. Domestic criminal legal proceedings succeeded but failed to compensate the losses suffered, so an application was made to ECtHR, relying principally on Article 14 rather than Article 11 of the Convention.[142] Again the Court relied heavily on the ESC (including the jurisprudence of the

[140] Id, para. 24 (unofficial translation).
[141] Application No. 67336/01, 30 July 2009.
[142] Article 14 provides that 'The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other

European Committee of Social Rights) and ILO Conventions 87 and 98 (including the *Digest of Decisions of the ILO Freedom of Association Committee* and a decision involving the Dockers' Union of Russia and the Russian Federation), in upholding the complaint. In so doing the Court said that:

> the totality of the measures implemented to safeguard the guarantees of Article 11 should include protection against discrimination on the ground of trade union membership which, according to the Freedom of Association Committee, constitutes one of the most serious violations of freedom of association capable to jeopardize the very existence of a trade union (see paragraph 107 above).[143]

The Court continued by saying that it was:

> crucially important that individuals affected by discriminatory treatment should be provided with an opportunity to challenge it and to have the right to take legal action to obtain damages and other relief. Therefore, the States are required under Articles 11 and 14 of the Convention to set up a judicial system that would ensure real and effective protection against the anti-union discrimination'.[144]

The right to strike, also protected in *Saime Özcan v Turkey*[145]and *Urcan v Turkey*[146]*,* involved secondary school teachers in the public sector who took part in a national strike day aimed at improving terms and conditions of employment and were prosecuted for having abandoned their places of work and sentenced to imprisonment, commuted to a substantial fine. In the latter case, the conviction was subsequently set aside. Both were barred from teaching for significant periods. Not surprisingly, the ECtHR held that the imposition of the penalties was a breach of Article 11(1), unjustifiable under Article 11(2).

More significant is the trilogy of *Karacay v. Turkey*[147], *Kaya and Seyhan v Turkey*[148] and *Çerikçi v Turkey*[149]*,* in which public servants each participated in days of strike action called by their union. Each was subjected to a disciplinary inquiry (a process governed, in the public service, by law) and subsequently disciplined for leaving their workplaces without authority. Each was given a written warning "to be more attentive to the accomplishment of his/her functions and in his/her behaviour".[150] The Court held that this constituted a breach of their right of

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opinion, national or social origin, association with a national minority, property, birth or other status'.

[143] *Danilenkov*, at para. 123.

[144] *Id.*, para 124.

[145] Application 22943/04, 15 Sept. 2009, judgment in French only.

[146] Application 23018/04 etc., 17 July 2008, definitive judgment 17 October 2008.

[147] Application 6615/03, 27 March 2007, definitive version of the judgment on 27 June 2007.

[148] Application 30946/04, 15 Sept. 2009.

[149] Application 33322/07, 13 Oct. 2010.

[150] *Kaya and Seyhan*, supra, para. 12. It appears that subsequently an amnesty was granted in respect of certain disciplinary sanctions on public servants but not, it seems, in relation to warnings. The applicants were thus 'victims', para. 22.

freedom of association under Article 11(1),[151] emphasising once again that a restriction on the right to strike will infringe Article 11(1).

This in itself is a remarkable conclusion with wide implications, given the subject matter of the strikes, which do not appear to have been directly related to collective bargaining. [152] So far as the Court was concerned, such a restriction could only be warranted by reference to Art 11(2). The Turkish government submitted that, for failing to do their jobs and absenting themselves from work without informing their employer and without justification, a warning was necessary in response to a pressing social need and was proportionate.[153] The ECtHR rejected this holding that:

> Or, la sanction incriminée, si minime qu'elle ait été, est de nature à dissuader les membres de syndicats de participer légitimement à des journées de grève ou à des actions pour défendre les intérêts de leurs affiliés.[154]

There was no pressing social need for a disciplinary sanction and thus the warning was not necessary in a democratic society.[155]

In *Dilek et al v Turkey*[156] public employees staffing roadside toll booths struck for 3 hours during a working day to join a demonstration organised by their union to protest against their conditions of work. The government sued them and was awarded damages and interest representing the loss of revenue for the hours during which traffic passed through without paying the tolls. The ECtHR held that there was an infringement of Article 11.[157] In relation to Article 11(2), the Court found that though the penalty was prescribed by law[158] and pursued a legitimate goal,[159] the imposition of civil liability on the applicants was not necessary in a democratic society.[160]

In *Trofimchuk v Ukraine*[161] the applicant was dismissed from employment as a boiler engine operator in a municipal heating supply plant on the grounds that she had failed to comply with certain of her safety duties and that she took 2 hours unauthorised absence in order to join a

[151] *Id.*, para. 24.
[152] In *Karaçay v Turkey* the object of a national day of strike action was to defend the purchasing power of public servants; in *Çerikçi v Turkey* the activity was participation in a May Day rally; in *Kaya and Seyhan v Turkey* the national day of strike action was to protest against a proposed law on the organisation of the public service then before Parliament. For a discussion of the right to strike for the protection of the interests of workers beyond merely furtherance of collective bargaining see KD Ewing and J Hendy, *Days of Action, the legality of protest strikes against government cuts*, 2011, Institute of Employment Rights, Liverpool.
[153] *Kaya and Seyhan*, supra, para 27.
[154] Id., para. 30.
[155] *Id.*, para. 31.
[156] On 17 July 2007 the judgment was under the name of *Satlimiş v Turkey* and the final version was dated 30 January 2008. This was rectified on 28 April 2008 when the name was corrected to *Dilek v Turkey*, Application Nos 74611/02, 26876/02, and 27628/02.
[157] *Dilek*, para. 74.
[158] Id., para. 69.
[159] Id., para. 70.
[160] Id., para. 73.
[161] Application 4241/03, 28 Jan. 2011.

peaceful picket over wages unpaid by her previous municipal employer from whom the plant had been taken over by her current municipal employer. The absence caused some disruption in that a colleague on an earlier shift had to work 2 extra hours to cover her absence. The ECtHR held that dismissal partly on the ground of unauthorised absence whilst participating in the Article 11 protected activity of peaceful picketing was a restriction of her right of peaceful assembly and must be justified by reference to Article 11(2).[162] On the facts of the case there was such justification.[163]

The foregoing cases plainly demonstrate that the right to strike is protected by the ECHR, Article 11(1).[164] It is significant that in reaching this position, the Court has been fully aware of its obligations under the Vienna Convention:

> In accordance with the Vienna Convention, the Court is required to ascertain the ordinary meaning to be given to the words in their context and in the light of the object and purpose of the provision from which they are drawn (see *Golder*, cited above, § 29; *Johnston and Others*, cited above, § 51; and Article 31 § 1 of the Vienna Convention). Recourse may also be had to supplementary means of interpretation, either to confirm a meaning determined in accordance with the above steps, or to establish the meaning where it would otherwise be ambiguous, obscure, or manifestly absurd or unreasonable (see Article 32 of the Vienna Convention).[165]

Most recently, in *RMT v UK*[166] the right to strike, indeed the right to solidarity action (i.e. industrial action against an employer which is not a direct party to the dispute), was held to be protected by Article 11(1) of the Convention.[167] The judgment, like that in *Demir and*

[162] *Trofimchuk,* para. 39.

[163] Ukrainian law prescribed a right to strike with immunity against disciplinary action for exercising it. The applicant had not followed the apparently straightforward procedure required as a condition for exercise of this right. The ECtHR held that the dismissal was prescribed by law and pursued the legitimate aim of protecting the rights of others (the employer). The ECtHR did not refer to necessity in a democratic society but held that, since the applicant had not followed the specified procedure to make her action lawful and protected and had not given notice to her supervisor of her intended absence and its duration so as to prevent "serious disruption to workplace processes", she had failed to take "all necessary steps to ensure that she exercised her freedom of peaceful assembly in accordance with the due respect to the rights and interests of her employer" (para 46). In those circumstances the dismissal was held not to be disproportionate (para 4). The basis of the decision may be thought to lie in the ease with which Ms Trofimchuk could, under Ukrainian law, have regularised and protected her strike action from all disciplinary consequences and her failure to do so (without suggesting that she had been prevented from so doing). Furthermore, "the applicant did not challenge the conformity of the procedure made available in domestic law to the requirements of Article 11". The procedure appears on the face of it to be straightforward and informal (see para 29) and would not seem sufficiently restrictive or oppressive to represent lack of conformity to Article 11 had Ms Tromfimchuk elected to make that challenge – perhaps the reason why she did not.

[164] For a review, see F Dorssemont, *The Right to take Collective Action under Article 11 ECHR* in F Dorssemont, K Lörcher, and I Schömann, *The European Convention on Human Rights and the Employment Relation*, 2013, Hart Publishing.

[165] *Trofimchuk*, supra, para. 65.

[166] Application No. 31045/10, 8 April 2014.

[167] The RMT union wished to call out on strike its members employed by a main contractor in railay maintenance and renewal in support of a strike by a small number of members employed by a small hived-off

Baykara, contains an extensive review of the ILO Committee of Experts' and CFA materials relevant to the right to strike.[168] This enabled the ECtHR to conclude that "secondary action is recognised and protected as part of trade union freedom under ILO Convention No. 87 and the European Social Charter."[169] The Court brushed aside criticism of the status of the ILO Committee of experts holding that it had no need "to reconsider this body's rôle [170]as a point of reference and guidance for the interpretation of certain provisions of the [European] Convention". The Court therefore concluded, applying Article 31(3)(c) of the Vienna Convention (discussed below), that:

> 76. …. It would be inconsistent with this method for the Court to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that is much narrower than that which prevails in international law. In addition, such an understanding of trade union freedom finds further support in the practice of many European States that have long accepted secondary strikes as a lawful form of trade union action.
>
> 1. It may well be that, by its nature, secondary industrial action constitutes an accessory rather than a core aspect of trade union freedom, a point to which the Court will revert in the next stage of its analysis. Nonetheless, the taking of secondary industrial action by a trade union, including strike action, against one employer in order to further a dispute in which the union's members are engaged with another employer must be regarded as part of trade union activity covered by Article 11.
>
> 2. The Court therefore concludes that the applicant's wish to organise secondary action in support of the [primary employer's] employees must be seen as a wish to exercise, free of a restriction imposed by national law, its right to freedom of association within the meaning of Article 11 § 1 of the Convention. It follows that the statutory ban on secondary action as it operated in the example relied on by the applicant constitutes an interference with the applicant's rights under this provision.

As to the right to strike in general, the ECtHR reviewed some of its case law on the right to strike (all included amongst those considered in the text above) and held:

> More generally, what the above-mentioned cases illustrate is that strike action is clearly protected by Article 11. The Court therefore does not discern any need in the present case to determine whether the taking of industrial action should

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smaller contractor in order to increase the industrial pressure on the latter to resist cuts in terms and conditions. UK law precluded such secondary industrial action. The RMT application to the ECtHR challenged that prohibition.

[168] See paras. 27-33, likewise the review of the European Committee on Social Rights case-law, at paras. 34-37.

[169] *RMT* para.76.

[170] Paras. 96-97 at 97. The ECtHR equally brushed aside criticism of the European Committee on Social Rights, see paras. 94-95.

> now be accorded the status of an essential element of the Article 11 guarantee.[171]

In the *RMT* case the ban on secondary action was, on the facts of the case, held to be justified under Article 11(2).[172]

2. The European Social Charter

As complementary instrument to the European Convention on Human Rights, the European Social Charter (ESC – CETS No. 35) was adopted in 1961 and revised in 1996 as "Revised European Social Charter" (RESC - CETS No. 163).[173] Both instruments contain an explicit guarantee of the right to collective action, including to strike, in the same wording:

> **Article 6 –The right to bargain collectively**
>
> With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: …
> and recognise:

[171] *RMT* at para.84.

[172] *Id.* at paras. 79-105. The Court emphasised that the margin of appreciation was wide in the context of industrial and economic policies of the state. However, it noted factors counting in favour of the RMT. One was the practice across European States, illustrating that the UK was one of a small group of European countries which adopted an outright ban on secondary strikes, at the far end of the spectrum. Another was the repeated criticisms of the UK's prohibition of sympathy action by the ILO Committee of Experts and by the decisions of the European Committee on Social Rights on the Social Charter. The Court also referred to how a ban on secondary action could in some contexts, such as an out-sourced workforce, severely hamper trade unions' efforts to protect their members. But having decided that the interference with freedom of association in the small contractor was not especially far-reaching, and in light of the breadth of the margin of appreciation in this area, the Court decided that the cogent arguments adduced by the RMT on trade union solidarity and efficacy were not sufficient to persuade it that the ban was disproportionate. The case leaves open the possibility that in other circumstances restrictions (including the ban on secondary action) will not be justifiable under Article 11(2). It is likely that some commentators will conclude that the judgment represents +++nothing short of an appeasement by the ECtHR of the UK government's threats to withdraw from European Convention and its repeated attacks on the ECtHR so evident in the UK stance at the 2013 Committee of Ministers' meeting in Brighton which lead to the Brighton Declaration and the subsequent inclusion of the references to 'margin of appreciation' and 'subsidiarity' in the Preamble to the Convention. Certainly, parts of the judgment could be seen in that way and there is no doubt that the judges of the ECtHR have been eager to reassure the UK government, British judges and elements of the English media that little or no threat is posed to the autonomy of the British legal system by the ECtHR or the Convention. The official visit by the President and Vice-Presidents of the ECtHR to the British judges in March 2014 (with the President giving a lecture at University College, London on 'the Margin of Appreciation') and the recent article by the former President (N Bratza, "Living Instrument or Dead Letter – the Future of the European Convention on Human rights", (2014) EHRLR 116) might be thought to be illustrative of the Court's concern to reassure. The cynical commentator might say that the judgment is a timely demonstration of that reassurance. Whether the trade union movement in the UK or in Europe will view the Court's treatment of the right to strike in the case as reassuring is doubtful.

[173] Out of the 47 Council of Europe Member States only four have ratified neither the ESC nor the RESC (Liechtenstein, Monaco, San Marino and Switzerland).

> 4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, subject to obligations that might arise out of collective agreements previously entered into.

This right has become one of the most important elements in the collective rights protection from the human rights perspective. It is, however, not without limits, with the ESC, Art 31(1), RESC, Appendix G(1) providing that:

> The rights and principles set forth in Part I when effectively realised, and their effective exercise as provided for in Part II, shall not be subject to any restrictions or limitations not specified in those parts, except such as are prescribed by law and are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health, or morals.

Before considering the substance of Art 6(4), it should be recognised that the ESC was the first treaty explicitly to "recognise" the "right to strike".[174] Moreover, in the context of the Charter this right is important because of the use of the formulation whereby States undertake to 'recognise' the right to strike in contrast to more diluted formulations in relation to other Charter rights. Indeed this formulation of the right was thought to be especially significant by the Hoge Raad, by which Art 6(4) has been incorporated into domestic law to form the basis of the right to strike in the Netherlands. The Hoge Raad took this step in view of the wording of the Charter and the undertaking of the Dutch government to "recognise" the right to strike in Art 6(4), in contrast to more equivocal wording used in relation to other rights.[175]

a) Principles Relating to the Right to Strike

Being entrusted to supervise the implementation of the Charter's provisions, the European Committee of Social Rights (ECSR) publishes its "Conclusions" in respect of its cyclical reporting system, and its "Decisions" in the complaints procedure – based on an Additional Protocol Providing for a System of Collective Complaints (CCPP - CETS No. 158) – to which 15 Council of Europe Member States have agreed to be bound. This Committee has developed an extensive case-law on the right to strike.[176] In its most recent decision on the right to strike based on a complaint filed by Swedish trade unions,[177] the ECSR made several general statements by referring to the Charter itself:

> From a general point of view, the Committee considers that the exercise of the right to bargain collectively and the right to collective action, guaranteed by

[174] See ESC, *Conclusions I*, p. 34; but at that time already an established case-law in the ILO concerning the right to strike and ILO Convention No 87 as well as the Declaration of Philadelphia existed.
[175] *NV Dutch Railways v. Transport Unions FNV, FSV and CNV* (1986) 6 *International Labour Law Reports* 3.
[176] The most important elements of its case-law are summarised in a 'Digest' (Council of Europe, *Digest of The Case Law of The European Committee of Social Rights*, 1 September 2008). Collective complaints are reported on the Council of Europe's website.
[177] *Complaint No 85/2012, LO and TCO v Sweden*, ECSR Decision 3 July 2013.

> Article 6§§2 and 4 of the Charter, represents an essential basis for the fulfilment of other fundamental rights guaranteed by the Charter…[178]

More importantly, it also referred to international standards such as ILO Convention 87:

> In addition, the Committee notes that the right to **collective** bargaining and **action** receives constitutional recognition at national level in the vast majority of the Council of Europe's member States, as well as in a significant number of binding legal instruments at the United Nations and EU level. In this respect, reference is made *inter alia* to Article 8 of the International Covenant on Economic, Social and Cultural Rights (see paragraph 37 above), the relevant provisions of the **ILO conventions Nos. 87**, 98 and 154 (see paragraph 38 above)[179] as well as the EU Charter of Fundamental Rights, Directive 2006/123/EC on services in the internal market (cf. Article 1§7) and the Directive 2008/104/EC on temporary agency work -recital 19 (see paragraphs 36 above). [Emphasis added][180]

Finally, the ESC has emphasised in strong terms "the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers", noting in the Swedish case that:

> In this context, within the system of values, principles and fundamental rights embodied in the Charter, the right to collective bargaining and collective action is essential in ensuring the autonomy of trade unions and protecting the employment conditions of workers: if the substance of this right is to be respected, trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and its scope should not be limited by legislation to the attainment of minimum conditions.[181]

b) Scope of the Right to Strike

As will be considered below, the right to strike protected by the Charter is not unlimited. However, the Charter protects action of a wide and varied kind, and so far as (i) *the parties* are concerned, the right to strike ought not to be confined to representative or most representative trade unions. So far as (ii) *the subject matter* is concerned, in the Swedish case referred to above the Committee considered that:

> national legislation which prevents *a priori* the exercise of the right to collective action, or permits the exercise of this right only in so far as it is necessary to obtain given minimum working standards would not be in conformity with Article 6§4 of the Charter, as it would infringe the fundamental right of workers and trade unions to engage in collective action for the protection of economic

[178] Id., para. 109.
[179] ILO Convention 87 was ratified by Sweden on 25 Nov. 1949.
[180] *Complaint No 85/2012, LO and TCO v Sweden*, supra, para. 110.
[181] Id., para. 120.

and social interests of the workers.[182]

And so far as (iii) *participants* are concerned, any employee concerned, irrespective of whether he is a member of the trade union having called the strike or not, has the right to participate in the strike.[183] The Committee has also said that as to (iv) *methods adopted* in the course of a dispute, "Article 6§4 encompasses other types of action taken by employees or trade unions, including *blockades* or *picketing".*[184]

As noted above, the treaty allows for restrictions to be imposed on the right to strike. Thus, the Committee has pointed out that the protection in Art 6(4) applies only to "conflicts of interest".[185] According to the Committee, "it follows that it cannot be invoked in cases of conflicts of right, i.e., in particular in cases of disputes concerning the existence, validity or interpretation of a collective agreement, or its violation, e.g., through action taken during its currency with a view to the revision of its contents".[186] Otherwise, however, the Committee has narrowly construed the scope of restrictions permitted by Article 31 (ESC) and Appendix G (RESC),[187] emphasising that:

> The Committee considers that in accordance to the Appendix to the Charter relating to Article 6§4 "[E]ach Party may, insofar as it is concerned, regulate the exercise of the right to strike by law, provided that any further restriction that this might place on the right can be justified under the terms of Article G". This means that even though the right of trade unions to collective action is not an absolute one. Nevertheless, a restriction to this right can be considered in conformity with Article 6§4 of the Charter only if, as set forth by Article G, the restriction: a) is prescribed by law; b) pursues a legitimate purpose - i.e., the protection of rights and freedoms of others, of public interest, national security, public health or morals – and, c) is necessary in a democratic society for the pursuance of these purposes, i.e., the restriction has to be proportionate to the legitimate aim pursued.[188]

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[182] Ibid. It is not permissible to restrict strikes not aimed at concluding a collective agreement: ESC, *Conclusions IV*, *Germany*: 'It does not, however, seem possible to accept that there should be no other type of collective bargaining in labour relations other than that aimed at concluding a collective agreement. There are many circumstances which, apart from any collective agreement, call for "collective bargaining", such as when dismissal s have been announced or are contemplated by a firm and a group of employees seeks to prevent them or to serve the re-engagement of those dismissed. Any bargaining between one or more employers and a body of employees (whether 'de jure' or 'de facto') aimed at solving a problem of common interest, whatever its nature may be, should be regarded as 'collective bargaining within the meaning of Article 6' (p. 50).

[183] See Council of Europe, *Digest of The Case Law of The European Committee of Social Rights*, above, p 169 ('Group entitled to call a collective action').

[184] *Complaint No. 85/2012, LO and TCO v Sweden*, above, para 117. See also *Complaint No 59/200, ETUC/CGSLB/CSC/FGTB v Belgium,* ECSR Decision 13 Sept. 2011, para 29.

[185] T. JASPERS, "The Right to Collective Action in European Law" in F. DORSSEMONT, T. JASPERS en A. VAN HOEK (eds.), *Cross-Border Collective Actions in Europe: A Legal Challenge*, Antwerpen-Oxford, Intersentia, 2007, 56.

[186] *Complaint No 85/2012, LO and TCO v Sweden*, above, para 117.

[187] *Complaint No 32/2005, ETUC/CITUB/Podkrepa v Bulgaria*, ECSR Decision 16 Oct. 2006.

[188] *Complaint No 85/2012, LO and TCO v Sweden*, above, para 118.

Consistently with the foregoing, it is clear, from the *Digest* and the Collective Complaints relating to the right to strike, that the ECSR has thus developed a rich case-law on the explicitly recognised right to strike in Article 6(4) ESC/RESC referring inter alia to ILO Convention 87. It has stressed that:

- the fundamental right of workers and trade unions to engage in collective action for the protection of economic and social interests of the workers,
- trade unions must be allowed to strive for the improvement of existing living and working conditions of workers, and the scope of the right should not be limited by legislation to the attainment of minimum conditions,
- a general ban on the right to strike, even in essential sectors is not permissible since it cannot be regarded as being necessary in a democratic society,
- the right to strike encompasses not only the right to withhold work but also other relevant means, inter alia, the right to picket,
- prohibiting strikes not aimed at concluding a collective agreement is not in conformity with the right to strike.

c) The Right to Strike and EU Law

The Committee has most recently considered the right to strike in the complaint from Sweden referred to above. In that case the Committee adopted a very robust view of the ESC, Article 6(4)/RESC, Article 6(4), and held that restrictions on those rights could not be justified in order to give effect to EU Treaty provisions that guarantee the freedom of any business based in an EU State to provide its services in another EU State. On the contrary, the Committee considered that:

> legal rules relating to the exercise of economic freedoms established by State Parties either directly through national law or indirectly through EU law should be interpreted in such a way as to not impose disproportionate restrictions upon the exercise of labour rights as set forth by, further to the Charter, national laws, EU law, and other international binding standards. In particular, national and EU rules regulating the enjoyment of such freedoms should be interpreted and applied in a manner that recognises the fundamental importance of the right of trade unions and their members to strive both for the protection and the improvement of the living and working conditions of workers, and also to seek equal treatment of workers regardless of nationality or any other ground.[189]

According to the Committee, the economic freedoms of business protected by the Treaty on the Functioning of the European Union "cannot be treated, from the point of view of the system of values, principles and fundamental rights embodied in the Charter, as having a greater *a priori* value than core labour rights, including the right to make use of collective action to demand further and better protection of the economic and social rights and interests of workers".[190]

[189] Id., para. 121.
[190] Id., para. 122.

3. The European Union

The right to strike has been recognised in EU law in two ways: first by the EU Charter of Fundamental Rights (EU Charter), and more recently by the ECJ/CJEU.

a) The EU Charter of Fundamental Rights

The Charter was agreed by the Treaty of Nice in 2000, and has since been given, by the Treaty of Lisbon in 2007, equal legal value to the EU Treaties themselves.[191] Article 12(1) provides that:

> Everyone has the right to freedom of peaceful assembly and to freedom of association at all levels, in particular in political, trade union and civic matters, which implies the right of everyone to form and to join trade unions for the protection of his or her interests.

Article 28 provides that:

> Workers and employers, or their respective organisations, have, in accordance with Community law and national laws and practices, the right to negotiate and conclude collective agreements at the appropriate levels and; in cases of conflicts of interest, to take collective action to defend their interests, including strike action.

Article 52(3) provides that:

> Insofar as this Charter contains rights which correspond to rights guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms, the meaning and scope of those rights shall be the same as those laid down by the said Convention. This provision shall not prevent Union law providing more extensive protection.

The *Explanations relating to the [EU] Charter of Fundamental Rights*[192] (prepared originally by the Presidium of the Committee which drafted the EU Charter) and which describes itself as "a valuable tool of interpretation intended to clarify the provisions of the [EU] Charter", states that Article 12(1) of the EU Charter corresponds to Article 11 ECHR and that Article 28 of the EU Charter is based on Article 6 of the European Social Charter and notes that "the right of collective action was recognised by the ECtHR as one of the elements of trade union rights laid down by Article 11 of the ECHR."
Thus, the primary source of the right to strike in EU law is twofold, both Article 12 and Article 28 of the EU Charter since both invoke Article 11 of the ECHR and must, by Article 52(3) of the EU Charter be construed consistently with Article 11 of the ECHR, which as the *Explanations* observe includes the right to strike. To the extent that Article 28 of the EU Charter refers to

[191] Treaty of European Union, Article 6(2).
[192] 2007/C 303/02

the right to strike in accordance with "Community" (i.e. EU) law, the relevant EU law for this purpose must include the right to strike to the extent permitted under Article 11 of the ECHR, for the reasons stated. The latter in turn is informed in part by ILO standards, leading the way to ILO standards percolating through the ECHR to become part of EU law.

b) The ECJ/CJEU

The right to strike has also been recognised in two important decisions of the Court of Justice of the European Union (CJEU, formerly the European Court of Justice). The first of these cases is the *Viking* case,[193] in which the court said that

> 43 In that regard, it must be recalled that the right to take collective action, including the right to strike, is recognised both by various international instruments which the Member States have signed or cooperated in, such as the European Social Charter, signed at Turin on 18 October 1961 – to which, moreover, express reference is made in Article 136 EC – and Convention No 87 concerning Freedom of Association and Protection of the Right to Organise, adopted on 9 July 1948 by the International Labour Organisation – and by instruments developed by those Member States at Community level or in the context of the European Union, such as the Community Charter of the Fundamental Social Rights of Workers adopted at the meeting of the European Council held in Strasbourg on 9 December 1989, which is also referred to in Article 136 EC, and the Charter of Fundamental Rights of the European Union proclaimed in Nice on 7 December 2000 (OJ 2000 C 364, p. 1).
>
> 44 Although the right to take collective action, including the right to strike, must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions. As is reaffirmed by Article 28 of the Charter of Fundamental Rights of the European Union, those rights are to be protected in accordance with Community law and national law and practices.

Although it recognised the right to strike, the Court also introduced a number of contested restrictions deriving from the four business freedoms protected by the EU Treaties[194] before it could lawfully be exercised in accordance with EU law.[195] Thus collective action such as that at issue in the *Viking* case, which sought to induce an undertaking whose registered office is in a given Member State to enter into a collective work agreement with a trade union established in that State and to apply the terms set out in that agreement to the employees of a subsidiary of that undertaking established in another Member State, constitutes a restriction [on freedom of establishment] within the meaning of the relevant Article of the EU Treaty. That restriction may, in principle, be justified by an overriding

[193] *Case C-438/05, ITF and FSU v Viking Line ABP* [2008] IRLR 143.
[194] Freedom of movement of capital, freedom of movement of labour, freedom of an EU business to provide services in another EU State, and freedom to establish a business in another EU State.
[195] Viking, supra, para. 90.

reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

These restrictions giving precedence to business freedoms over fundamental human rights are contested in the sense that they are not consistent with ILO principles,[196] they breach the provisions of the European Social Charter,[197] and they are difficult to reconcile with the recent strike cases by the ECtHR.

Despite the controversy surrounding the *Viking* judgment, it is nevertheless important to acknowledge that the Court, at the European level, recognised the existence of the right to strike. In the *Laval* judgment, published a week later,[198] the Court held:

> the right to take collective action must therefore be recognised as a fundamental right which forms an integral part of the general principles of Community law the observance of which the Court ensures, the exercise of that right may none the less be subject to certain restrictions.[199]

Thus, the Court again reaffirmed the existence of the right to strike, but again held that the

[196] "The Committee observes with ***serious concern*** the practical limitations on the effective exercise of the right to strike of the BALPA workers in this case. The Committee takes the view that the omnipresent threat of an action for damages that could bankrupt the union, possible now in the light of the *Viking* and *Laval* judgements, creates a situation where the rights under the Convention cannot be exercised. While taking due note of the Government's statement that it is premature at this stage to presume what the impact would have been had the court been able to render its judgement in this case given that BALPA withdrew its application, the Committee considers, to the contrary, that there was indeed a real threat to the union's existence and that the request for the injunction and the delays that would necessarily ensue throughout the legal process would likely render the action irrelevant and meaningless." ILO Committee of Experts, *Observations 2010 (United Kingdom)* (BALPA case), p200; "The Committee wishes once again to recall the serious concern it raised as to the circumstances surrounding the BALPA proposed industrial action, for which the courts granted an injunction on the basis of the Viking and Laval case law and where the company indicated that, should the work stoppage take place, it would claim damages estimated at £100 million per day. The Committee recalls in this regard that it has been raising the need to ensure fuller protection of the right of workers to exercise legitimate industrial action in practice and considers that adequate safeguards and immunities from civil liability are necessary to ensure respect for this fundamental right, which is an intrinsic corollary of the right to organize. While taking due note of the Government's observations in relation to its obligations under EU law, the Committee considers that protection of industrial action in the country within the context of the unknown impact of the ECJ judgments referred to by the Government (which gave rise to significant legal uncertainty in the BALPA case), could indeed be bolstered by ensuring effective limitations on actions for damages so that unions are not faced with threats of bankruptcy for carrying out legitimate industrial action. The Committee further considers that a full review of the issues at hand with the social partners to determine possible action to address the concerns raised would assist in demonstrating the importance attached to ensuring respect for this fundamental right. *The Committee therefore once again requests the Government to review the TULRA, in full consultation with the workers' and employers' organizations concerned, with a view to ensuring that the protection of the right of workers to exercise legitimate industrial action in practice is fully effective, and to indicate any further measures taken in this regard*." ILO Committee of Experts, *Observations 2011 (United Kingdom)* (BALPA case), p187.

[197] See *Complaint No. 85/2012, LO and TCO v Sweden.*

[198] *C -341/05, Laval Un Partneri Ltd v Svenska Byggnadsarbetareförbundet* [2008] IRLR 160.

[199] Id., para. 91.

restriction (on the business freedom) caused by the industrial action may, in principle, be justified by an overriding reason of public interest, such as the protection of workers, provided that it is established that the restriction is suitable for ensuring the attainment of the legitimate objective pursued and does not go beyond what is necessary to achieve that objective.

This judgment is also highly controversial for the same reasons. In this case, the Court held that the industrial action in that case was not protected. It took the view that there was no protection for action that was designed to compel a foreign service provider to comply with terms and conditions of employment more beneficial to the workers than those required by the Posted Workers' Directive of 1996.[200] For the purpose of this brief, the controversial restrictions on the right to strike permitted by the CJEU's deference to business freedoms over human rights are immaterial to the argument. The crucial point is that *Viking* and *Laval* recognise the fundamental right to strike.

C. The Inter-American System

The basic instruments of the Inter-American Human Rights System protect the right to freedom of association, including the right to collective bargaining and the right of workers to strike.

1. The Charter of the Organization of American States provides:

Article 45

2.(c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defense and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, all in accordance with applicable laws;

(g) Recognition of the importance of the contribution of organizations such as labor unions, cooperatives, and cultural, professional, business, neighborhood, and community associations to the life of the society and to the development process;

2. The *American Declaration of the Rights and Duties of Man*[201] provides:

Article 22

[200] Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services. It is also important to note that it is not only industrial action to force standards higher than those required by the PWD that is prohibited by EU law. See *C-346/06 Rüffert v Land Niedersachsen* [2008] ECR I-1989, *C-319/06 Commission v Luxembourg* [2008] ECR I-4323.

[201] O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992).

Every person has the right to associate with others to promote, exercise and protect his legitimate interests of a political, economic, religious, social, cultural, professional, labor union or other nature.

3. The *American Convention on Human Rights*[202] provides:

Article 16: Freedom of Association

1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.
2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others.
3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

4. The *Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol Of San Salvador"*[203] provides:

Article 8: Trade Union Rights

1. The States Parties shall ensure:

a. The right of workers to organize trade unions and to join the union of their choice for the purpose of protecting and promoting their interests. As an extension of that right, the States Parties shall permit trade unions to establish national federations or confederations, or to affiliate with those that already exist, as well as to form international trade union organizations and to affiliate with that of their choice. The States Parties shall also permit trade unions, federations and confederations to function freely;
b. The right to strike.

2. The exercise of the rights set forth above may be subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law.

[202] O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123 entered into force July 18, 1978, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).
[203] O.A.S. Treaty Series No. 69 (1988), *entered into force* November 16, 1999, OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992).

3. No one may be compelled to belong to a trade union.

The Inter-American Court of Human Rights has considered trade union rights and its clearest articulation to date on the right to freedom of association and the right to strike is found in *Ricardo Baena et. al. v. Panama*. There, the Court held:

> [i]n labor union matters, freedom of association consists basically of the ability to constitute labor union organizations, and to set into motion their internal structure, activities and action program, without any intervention by the public authorities that could limit or impair the exercise of the respective right.[204]

The Court further explained that:

> freedom of association is of the utmost importance for the defense of the legitimate interests of the workers, and falls under the *corpus juris* of human rights.[205]

In *Baena*, the Court concluded that Panama violated the right to freedom of association enshrined in Article 16 of the American Convention to the detriment of 270 workers who were dismissed for participating in a peaceful demonstration as a means to obtain reforms to the national labour legislation. In that case, the State Enterprise Workers Union submitted a petition on a number of labour-related issues to the government. Following the rejection of that petition, unions called for a march on December 4, 1990, and a 24-hour work stoppage the following day. The march took place peacefully; however, the demonstration coincided with the takeover of the central police station by a colonel together with a group of military troops. The work stoppage planned for December 5 was eventually suspended to prevent it being associated with the colonel's actions.

Although the Government had not decreed a state of emergency or the suspension of guarantees, the Minster of the Interior forwarded a draft bill to the Legislative Assembly on 6 December proposing the dismissal of all public servants who had participated in the 5 December work stoppage on the grounds that it was intended to subvert the democratic constitutional order. Before this law was enacted, the state dismissed hundreds of workers by written notice. Under the then prevailing law, the employer had to notify the worker in advance and in writing about the date and cause for the dismissal and with the right to appeal such a decision. Labour leaders could not be dismissed without authorization from the labour courts. On 14 December, 1990, the Legislative Assembly passed Law 25. Article 6 of Law 25 provided that the law would be retroactive effective to December 4, 1990. On 23 January, 1991, the Cabinet Council established that the work stoppages in the public sector were attempts against democracy and the constitutional order, and that "any public servant who, as of 4 December, 1990, had

[204] *Case of Baena-Ricardo,* supra fn. 22, p. 98.
[205] Ibid.

> promoted, convoked, organized or participated in, or who would in the future promote, convoke, organize, or participate in work stoppages without complying with the established procedures and restrictions established in the Law, or in abrupt collective interruptions of the work in the public sector, would be subject to dismissal for cause.

The Inter-American Court concluded that:

> the entirety of the evidence in the instant case shows that, in dismissing the State workers, labor union leaders who were working on a number of claims were dismissed. In addition, the members of workers organizations were dismissed for acts that were not causes for dismissal according to the legislation in force at the time of the events. This proves that the intention in making Law 25 retroactive in compliance with orders from the Executive Branch, was to provide a basis for the massive dismissal of public sector trade union leaders and workers, such actions doubtlessly limiting the possibilities for action of the trade union organisations in the cited sector. [206]

The Court's conclusions were bolstered by the decision of the ILO Committee on Freedom of Association, which had found that the mass dismissal of trade union leaders and workers in the public sector on account of the strike of 5 December 1990 was a measure which could seriously compromise the ability of public sector trade union organisations to take action in the institutions in which they operate and was a serious violation of ILO Convention 98.[207]

Subsequent cases, both concerning the assassination of union leaders, have further clarified that the right to freedom of association includes not merely the recognition of trade unions but the ability to exercise that freedom. For example, in *Pedro Huilca Tecse v. Peru*,[208] the General Secretary of the CGTP was murdered on December 18, 1992. The Court determined that the killing was motivated by the fact he was a trade union leader who opposed and criticized the policies of the Government. The Court explained that Article 16 conferred not only the individual right and freedom "to associate freely with other persons, without the interference of the public authorities limiting or obstructing the exercise of the respective right," but also the collective right "to seek the common achievement of a licit goal, without pressure or interference that could alter or change their purpose."[209] The Court further explained that,

> labor-related freedom of association is not exhausted by the theoretical recognition of the right to form trade unions, but also corresponds, inseparably, to the right to use any appropriate means to exercise this freedom. When the Convention proclaims that freedom of association includes the right to freely associate "for [… any] other purposes," it is emphasizing that the freedom to associate and to pursue certain collective goals are indivisible, so that a

[206] Ibid.
[207] ILO CFA, Report No. 281, Case No. 1569 (1992), para. 143.
[208] Inter-American Court of Human Rights, Case of Huilca-Tecse v. Peru, Judgment of March 3, 2005 (Merits, Reparations and Costs).
[209] Id., p. 23.

limitation of the possibilities of association represents directly, and to the same extent, a limitation of the right of the collectivity to achieve its proposed purposes. Hence the importance of adapting to the Convention the legal regime applicable to trade unions and the State's actions, or those that occur with its tolerance, that could render this right inoperative in the practice.[210]

D. African Charter on Human and Peoples' Rights

Though far less developed, the African Charter on Human and Peoples Rights also protects freedom of association. Relevant Provisions include:

Article 10 – Freedom of Association

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in Article 29, no one may be compelled to join an association.[211]

Unlike other international instruments with similar provisions,[212] Article 10 does not explicitly recognize the right to form trade unions as a corollary of the right to free association.[213] However, when this provision is read in conjunction with other international instruments that member states may have adopted, including ILO Convention 87, the right to freedom of association guaranteed by Article 10 must necessarily include the right to form a trade union.[214] Further, a trade union is, by definition, an association and therefore the right to form a trade union is necessarily guaranteed by a State's obligation to uphold the rights enshrined in Article 10.[215] In any case, the somewhat vague language of the Charter does not release States from the stricter obligations of other international treaties to respect the formation of trade unions.[216]

Article 15 – Conditions of Work

"Every individual shall have the right to work under equitable and satisfactory conditions, and shall receive equal pay for equal work."[217]

Notwithstanding the express language of this provision[218], Article 15 appears to have been intended as a vehicle for trade union rights as well. Under Article 62 of the Charter, States

[210] *Ibid.*
[211] Text available at http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf
[212] *See, e.g.,* Second Optional Protocol to the International Covenant on Civil and Political Rights, *supra* note 7, Art. 22(1).
[213] Fatsah Ouguergouz, *The African Charter on Human and Peoples' Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa* (2003) at 170.
[214] Id.
[215] *Id.*
[216] *Id.*
[217] African *Charter*, *supra* n. 211, Art. 15.
[218] Ouguergouz, *supra* n 213, at 183.

must submit periodic reports to the African Commission on Human and Peoples' Rights detailing how the state implements and safeguards the fundamental rights guaranteed by the Charter.[219] The African Commission published an initial General Guidelines document setting out what states should contain in their periodic reports, and in this document the Commission has located the rights of trade unions squarely within the purview of Article 15.[220] Under Section II, General Guidelines "Regarding the Form and Contents of Reports on Economic and Social Rights," paragraph 10 stated that nations submitting a periodic report to the Commission must make note of the "[p]rinicpal laws, administrative regulations, collective agreements and court decisions designed to promote, safeguard or regulate trade union rights in their various aspects as defined in this Article."[221]

On the right to form and join trade unions, the Guidelines required States to note "the legal or other provisions governing the right to join and form the trade union of one's choice."[222] If the State adopted formal provisions on the right to form and join trade unions, the report should also include "a description of how the right is ensured in practice; any restrictions which are placed upon the exercise of this right, with precise details of the legal provisions prescribing such restrictions."[223] Importantly, the Guidelines mentioned the right to strike, and required states to report "legal or other provisions governing or affecting the exercise of the right to strike," and, "if no formal provisions exist, description of the position in practice in regard to this right."[224]

These Guidelines were subsequently (and unfortunately) replaced with more cursory requirements in 1998 at its 23rd ordinary session.[225] This does not obviate the fact that the Commission has interpreted its Charter to include a right to strike derived from Article 15, if not also Article 10.

VII. CONVENTION 87, THE RIGHT TO STRIKE AND THE VIENNA CONVENTION ON THE LAW OF TREATIES

The ILO Committee of Experts states that the right to strike is contained in Articles 3, 8 and 10 of Convention 87. On examination of the text of convention, this proposition is undoubtedly correct. The Employers' Group asserts that there is no right to strike to be found in Convention 87 because such a right is not expressed explicitly in those terms. This is, however, not a legally tenable position.

Convention 87 is an international treaty. There are international legal rules for the proper interpretation of such treaties, namely the Vienna Convention on the Law of Treaties (VCLT).

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[219] *Charter*, *supra* n 211, Art. 62. For a discussion of the importance of these period reports, see the below section on the African Commission.
[220] DOC ACHPR/RPT (II), Annex IV, reprinted in *Documents of the African Commission on Human & Peoples' Rights* 49 (Rachel Murray & Malcolm Evans eds. 2001).
[221] *Id.* at 55.
[222] *Ibid.*
[223] *Ibid.*
[224] *Id.*at 56.
[225] *Ibid.*

The VCLT has been elaborated within the framework of the United Nations as a set of rules defining the legal framework for international treaties.[226] The VCLT contains, inter alia, rules on the interpretation of international treaties (in Section 3, "Interpretation of Treaties" consisting of Articles 31- 33). These and other relevant provisions of the VCLT are set out in Annex III to this brief but it is convenient to reiterate Articles 31 and 32 here:

Article 31: General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:

(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;

(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:

(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;

(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;

(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32: Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or

[226] Gardiner, Treaty Interpretation, (Oxford 2008), p. 5

(b) leads to a result which is manifestly absurd or unreasonable.

Importantly, the objective criteria (Article 31 VCLT) are given priority over the history oriented "travaux préparatoires" (Article 32 VCLT). The Employers' Group argue that the ILO supervisory system, and the Committee of Experts in particular, have failed to obey the relevant rules of the VCLT on treaty interpretation in observing a right to strike in Convention 87 and thereafter regulating its exercise.[227] Like other arguments advanced by the Employers' Group, this too cannot be sustained. Both the Committee of Experts and the CFA have recognized the existence of a right to strike in a manner which, on analysis, is entirely consistent with the rules of interpretation.

A. The Applicability of the VCLT and its Rules of Interpretation

There is a preliminary question as to whether the VCLT, or at least its rules of interpretation, applies to the ILO. This question raises issues of retroactivity (*ratione temporis* - Article 4 VCLT)[228], material scope (*ratione materiae* - Article 5 VCLT)[229] and the personal scope (*ratione personae* – Articles 81 ff VCLT). As the rules of interpretation are now considered customary international law, they do apply to the ILO, though the ILO internal rules remain relevant. The Committee of Experts has specifically referred to the VCLT in formulating its observations and its practice demonstrates an adherence to the rules of interpretation.

1. Retroactivity

Article 4 VCLT provides for the general rule of non-retroactivity. According to this rule, the VCLT would not apply. Indeed, Convention 87 was adopted in 1948; the VCLT was signed on 23 May 1969 and entered into force on 27 January 1980. However, Article 4 provides an exemption so that the rules enshrined in the VCLT apply to a treaty "under international law independently of the Convention". Thus, if the interpretation rules contained in Articles 31 – 33 VCLT are to be considered as "international law" (as indeed they are, as explained below), then the principle of non-retroactivity of the VCLT would not apply. In any event, as noted below, the requirement to give the ordinary meaning to the terms of an international

[227] "While in 1990, the Employers criticized a statement in the Committee's report that they viewed as saying in substance that competence to interpret Conventions absent an ICJ submission rests solely with the Committee (paragraph 22), following extended discussion involving workers and governments as well, the Employers emphasized their view of the Vienna Convention as 'the appropriate – in fact the only – yardstick to be used in interpreting ILO Conventions. It was this yardstick that they invited the Committee to use in their interpretation of international labour standards'" (paragraph 30, emphasis added)." Committee of Experts Report 2013, Part I, para. 34 (b).

[228] "Non-retroactivity of the present Convention:
Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States."

[229] "Treaties constituting international organizations and treaties adopted within an international organization:
The present Convention applies to any treaty which is the constituent instrument of any international organization and to any treaty within an international organization without prejudice to any relevant rules of the organization."

treaty has been continuously observed for more than a century before the VCLT entered into force.

2. Material Scope

Article 5 VCLT defines the relationship between the VCLT and international treaties elaborated in the framework of international organisations. This provision provides a reservation[230] (indeed priority) in respect of the "relevant rules of the organization". The term "rules" is to be understood in a broad sense.[231] The ILO is an international organisation[232] and Convention 87 is a treaty adopted[233] within the ILO. Therefore the reservation applies. It follows that, as a principle, the rules of the ILO take precedence over the rules contained in the VCLT.

3. Personal Scope

The Vienna Convention is itself legally binding neither on the ILO in general nor on any of its supervisory bodies in particular. As international organisations/institutions, they are not (and cannot be) contracting parties to the VCLT. Indeed, Articles 81 et. seq. of the VCLT provide for the ratification and accession by States (only).

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[230] Concerning the history of this Article: "The draft articles, as provisionally adopted at the fourteenth, fifteenth and sixteenth sessions, contained a number of specific reservations with regard to the application of the established rules of international organizations. In addition, in what was then part II of the draft articles and which dealt with invalidity and termination of treaties, the Commission had inserted an article (article 48 of that draft) making a broad reservation in the same sense with regard to all articles on termination of treaties. On beginning its re-examination of the draft articles at its seventeenth session, the Commission concluded that the article in question should be transferred to its present place in the introduction and should be reformulated as a *general reservation* covering the draft articles as a whole. It considered that this would enable it to simplify the drafting of the articles containing specific reservations. It also considered that such a general reservation was desirable in case the possible impact of rules of international organizations in any particular context of the law of treaties should have been inadvertently overlooked." (Wetzel/Rauschning, Art. 5 Commentary (1) p. 91).

[231] "At the first session of the Conference his delegation had proposed (A/CONF.39/C.1/.39) the addition of the words 'and established practices' after the word 'rules' in order to make it clear that the term "rules" was not to be understood in too restrictive a sense. His delegation had not pressed that amendment to the vote, because, as the Chairman of the Drafting Committee has pointed out at the 28th meeting of the Committee of the Whole, the Drafting Committee had taken the view that the term 'rules' applied both to written and to unwritten customary rules." (Sir Francis Vallat, United Kingdom, United Nation (Hrsg.), United Nations Conference on the Law of Treaties, Second Session Vienna, 9 April - 22 May 1969, Official Records, New York 1970, p. 4.

[232] See the definition in Article 2 letter i): "'international organization' means an intergovernmental organization" (see also the reference in Article 9(2) VCLT: "The adoption of the text of a treaty at an international conference takes place by the vote of two-thirds of the States present and voting, unless by the same majority they shall decide to apply a different rule.").

[233] "Certain Governments, in their comments upon what was then part III of the draft articles (application, effects, modification and interpretation), expressed the view that care must be taken to avoid allowing the rules of international organizations to restrict the freedom of negotiating States unless the conclusion was part of the work of the organization, and not merely when the treaty was drawn up within it because of the convenience of using conference facilities. Noting these comments, the Commission revised the formulation of the reservation at its present session so as to make it cover only 'constituent instruments' and treaties which are '***adopted*** within an international organization'. ..." (Wetzel/Rauschning, Art. 5 Commentary (3)).

4. VCLT Rules of Interpretation as Customary International Law[234]

The rules of interpretation have played an important role during the process of elaboration of the VCLT. The ICJ in the *Kasikili/Sedudu Island Case* (1999) held that Article 31 of the VCLT on treaty interpretations reflected customary international law and that therefore applied despite the facts that (i) neither Botswana nor Namibia were parties to the VCLT and that (ii) the treaty in question entered into force in 1890:

> As regards the interpretation of that Treaty, the Court notes that neither Botswana nor Namibia are parties to the Vienna Convention on the Law of Treaties of 23 May 1969, but that both of them consider that Article 31 of the Vienna Convention is applicable inasmuch as it reflects customary international law. The Court itself has already had occasion in the past to hold that customary international law found expression in Article 31 of the Vienna Convention (see *Territorial Dispute (Libyan Arab Jamahiriya/Chad), Judgment, I. C. J. Reports 1994,* p. 21, para. 41; *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objections, Judgment, I. C. J. Reports 1996 (II),* p. 8 12, para. 23). Article 4 of the Convention, which provides that it "applies only to treaties which are concluded by States after the entry into force of the . . . Convention with regard to such States", does not, therefore, prevent the Court from interpreting the 1890 Treaty in accordance with the rules reflected in Article 31 of the Convention.[235]

The ICJ clearly considers that the "rules reflected in Article 31 of the Convention" constitute customary international law and applies them irrespective of any limitation against retroactivity under Article 4 VCLT. This general proposition is confirmed by other international (regional) courts which have considered that the interpretation rules, in particular Article 31 VCLT have to be considered as "international law". Indeed, in an Advisory Opinion the Inter-American Court of Human Rights (IACHR) stated:

> 48. The manner in which the request for the advisory opinion has been framed reveals the need to ascertain the meaning and scope of Article 4 of the Convention, especially paragraphs 2 and 4, and to determine whether these provisions might be interrelated. To this end, the Court will apply the rules of interpretation set out in the **Vienna Convention**, which may be deemed to state

[234] Customary international law refers to international legal obligations binding on all states which arise from 1) established state practice and 2) opinio juris – meaning that states view the custom as obligatory, not as a mere courtesy or moral obligation. See Military and Paramilitary Activities in and Against Nicaragua (Nicaragua V. USA) ICJ Reports 1986 pp. 87-8, paras 183-187. See also Continental Shelf (Libyan Arab Jarnahiriyu v. Malta), I. C.J. Reports 1985, pp. 29-30, para. 27.

[235] Judgment 13 December 1999 *Kasikili/Sedudu Island (Botswana/Namibia)*, I.C.J. Reports 1999, p. 1045, para. 18.

> the relevant **international law principles** applicable to this subject."[236] (Emphasis added)

At the European level, the European Court of Human Rights (ECtHR) extensively refers to the VCLT's rules of interpretation. In an important number of judgments it refers to the principles of these provisions,[237] albeit employing formulations which make it clear that these principles are not intended to be a direct and totally binding instrument, in particular as regards matters of interpretation. By formulating certain qualifications such as "guided mainly by the rules"[238] or "in the light of the rules"[239] of interpretation provided for in Articles 31–33 VCLT or qualifying them as a "backbone for the interpretation",[240] the Court obviously seeks to ensure that some degree of flexibility is retained. It would appear that the ECtHR has in mind use of Article 5 VCLT (without referring to it directly). This is, no doubt, to preserve the primacy of the ECHR as the "relevant rules of the organisation."

5. ILO Practice

As for the ILO's "internal rules", there is in practice a tendency for the Committee of Experts to refer expressly to Article 31 VCLT.

> [T]he Committee constantly bore in mind all different methods of interpreting treaty law, especially the Vienna Convention."[241]

> With regard to the views put forward that the preparatory work would not support the inclusion of the right to strike, the Committee would first observe that the absence of a concrete provision is not dispositive, as the terms of the Convention must be interpreted in the light of its object and purpose. While the

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[236] 8.9.1983 - OC-3/83 - para. 48; in the following para 49 it quoted the relevant rules as follows: "These rules specify that treaties must be interpreted 'in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.'" [Vienna Convention, Art. 31(1).] Supplementary means of interpretation, especially the preparatory work of the treaty, may be used to confirm the meaning resulting from the application of the foregoing provisions, or when it leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable. (Id., Art. 32.)" It goes on in para. 50: "This method of interpretation respects the principle of the primacy of the text, that is, the application of objective criteria of interpretation. In the case of human rights treaties, moreover, objective criteria of interpretation that look to the texts themselves are more appropriate than subjective criteria that seek to ascertain only the intent of the Parties. This is so because human rights treaties, as the Court has already noted, " are not multilateral treaties of the traditional type concluded to accomplish the reciprocal exchange of rights for the mutual benefit of the contracting States; 'rather' their object and purpose is the protection of the basic rights of individual human beings, irrespective of their nationality, both against the State of their nationality and all other contracting States." (*The Effect of Reservations*, supra 42, para. 29.)"

[237] See ECtHR (Grand Chamber) judgment (18 February 2009), App No 55707/00, *Andrejeva v Latvia*, para. 18; see also paras. 19–20; ECtHR (Third Section) judgment (15 September 2009), App No 798/05, *Mirojubovs and others v Latvia*, para. 62; ECtHR (First Section) judgment (7 January 2010), App No 25965/04, *Rantsev v Cyprus and Russia*, para. 273–4.

[238] ECtHR (Grand Chamber [GC]) (12 November 2008), App No 34503/97, *Demir and Baykara v Turkey* [2008] ECHR 1345, para. 65.

[239] ECtHR (Grand Chamber) judgment (23 March 2010), App No 15869/02, *Cudak v Lithuania*, para. 56.

[240] ECtHR (Grand Chamber) judgment (18 February 2009), App No 55707/00, *Andrejeva v Latvia*, para. 19.

[241] Committee of Experts Report 2013, Part I, para. 27; emphasis added

> Committee considers that the preparatory work is an important supplementary interpretative source when reviewing the application of a particular Convention in a given country, it may yield to the other interpretative factors, in particular, in this specific case, to the subsequent practice over a period of 52 years (see Articles 31 and 32 of the Vienna Convention on the Law of Treaties).[242]
>
> **I**n responding to the request to clarify the methods followed when expressing its views on the meaning of the provisions of Conventions, the Committee reiterates that it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention, giving equal consideration to the two authentic languages of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting."[243]

Further, in its General observation - Indigenous and Tribal Peoples Convention, 1989 (No. 169) the Committee of Experts used nearly the same wording.[244] The analysis of the applicability of the VCLT's interpretation rules has shown that they are "international law independently of the Convention" in the sense of Article 4 VCLT and are to be applied, in general, without any restriction *ratione temporis*. Equally, it is therefore irrelevant that the ILO is not (and cannot) be a party to the VCLT (*ratione personae*). However, there remains a

[242] General Survey 2012, at para. 118.

[243] Committee of Experts Report 2011, Part I, para. 12 (emphasis added).

[244] See also General observation - Indigenous and Tribal Peoples Convention, 1989 (No. 169), *ibdm*. p. 783 ("The Committee of Experts has, on a number of occasions, stated that, although its mandate does not require it to give definitive interpretation of ILO Conventions, in order to carry out its function of determining whether the requirements of Conventions are being respected, it has to consider and express its views on the legal scope and meaning of the provisions of Conventions, where appropriate. In doing so, the Committee has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention on the Law of Treaties, giving equal consideration to the two authoritative texts of ILO Conventions, namely the English and French versions (Article 33 of the Vienna Convention). In addition and in accordance with Articles 5 and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role the tripartite constituents play in standard setting."). Endnote 1: "1 - See ILC, 63rd Session, 1977, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 32; ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 21; ILC, 77th Session, 1990, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, para. 7; ILC, 78th Session, 1991, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras. 11 and 12."

question as to the extent which the interpretation rules enshrined in Articles 31 – 33 VCLT have to be altered or nuanced by the ILO 'internal rules' (Article 5 VCLT – *ratione materiae*).

In 2007, the Committee of Experts made note of the different methods of interpreting conventions. In interpreting Convention 29 as to questions of modern day slavery, it stated,

> [I]n interpreting conventions, the terms and purposes had to be taken into consideration, as they were living instruments which had not to be solely interpreted in the context of prevailing conditions which existed at the time of their adoption. Indeed, a review of the committee of experts' methodology confirms a more flexible approach to interpretation, including the actual terms in their own context and in light of the purpose of the convention, as well as preparatory work, the views of the Office and the other supervisory mechanisms.[245]

The Committee of Experts referred to these issues again in 2011, responding to the request to clarify the methods followed when expressing its views on the meaning of the provisions of Conventions. It reiterated that:

> it constantly and consistently bears in mind all the different methods of interpreting treaties recognized under international public law, and in particular under the Vienna Convention on the Law of Treaties, 1969. In particular, the Committee of Experts has always paid due regard to the textual meaning of the words in light of the Convention's purpose and object as provided for by Article 31 of the Vienna Convention. In addition and in accordance with Articles 5[246] and 32 of the Vienna Convention, the Committee takes into account the Organization's practice of examining the preparatory work leading to the adoption of the Convention. This is especially important for ILO Conventions in view of the tripartite nature of the Organization and the role that the tripartite constituents play in standard setting.[247]

The most important ILO supervisory body referring to the VCLT is the Committee of Experts. For many years it has confirmed that its interpretation of Convention 87 as including of the right to strike was in conformity with (and indeed required by) the VCLT's rules of interpretation. The Committee of Experts appears to be the only supervisory body in the ILO which has considered the VLCT in any detail. However, Commissions of Inquiry have endorsed Committee of Experts findings and expressly recognised the right to strike.

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[245] Provisional Record No. 22, ILC, 96th Session, Geneva, 2007, Part I, p. 22/40, para. 133.

[246] Article 5 of the VCLT, included at the insistence of the ILO, provides that the rules of the convention shall apply to the constituent instruments of international organisations and any treated adopted within an international organisation without prejudice to any relevant rules of the organization. Indeed, then-ILO Director General Mr Jenks, who attended the UN Conference on the Law of Treaties, stated that "ILO practice on the interpretation had involved greater recourse to preparatory work than was envisaged" in the draft convention. The ILO supervisory bodies have indeed developed interpretive practices under which the preparatory work, as well as the comments of other supervisory bodies, has a role.

[247] CEACR Report, 100 Session, ILC 2011, (Part I A, Report III), para. 12.

B. Application the VCLT to Convention 87

1. Article 31 VCLT - General Rule of Interpretation

a) "ordinary meaning" (Article 31(1) VCLT)

The principles are to be understood as the "starting point"[248] for interpretation purposes. There are two main functions: The first is the discovery of the ordinary meaning of the term. The second is the identification of a "functional" meaning, in the sense of a meaning appropriate to the subject matter.[249] Thus the primary element in the rules of interpretation of Article 31 of the VCLT is that "the ordinary meaning [is] to be given to the terms of the treaty in their context and in the light of its object and purpose".

Recognition of the requirement to interpret international treaties in accordance with the "plain and obvious meaning" of words is longstanding and dates from well before the VCLT and was recorded as long ago as 1855.[250] "The plain meaning of the words" was observed to be the primary guide for the interpretation of treaties in 1895.[251] Judicial practice giving primacy to the ordinary meaning of words in international treaties was noted in 1936.[252]

The principle was illustrated in the *Acquisition of Polish Nationality* case where the Permanent Court of International Justice stated that it was:

> bound to apply this clause as it stands, without considering whether other provisions might with advantage have been added to or substituted for it… To impose an additional condition not provided for in the Treaty [under consideration] would be equivalent not to interpreting the Treaty but to reconstructing it.[253]

However, the literal rule is subject to exceptions. Thus in the *Polish Postal Services in Danzig* case the Court stated (at paragraph 113) that:

> It is a cardinal principle of interpretation that words must be interpreted in the sense which they would normally have in their context, unless such interpretation would lead to something unreasonable or absurd.[254]

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[248] Gardiner, supra n. 226 at p. 162.
[249] Id., p. 166. (The third function mentioned relates to the authoritative language versions dealt with in Article 33 VCLT and will therefore not be discussed here.)
[250] See Sir Robt. Phillimore, *Commentaries on International Law*, 1855, Vol II at p. 73.
[251] W E Hall, *A Treatise on International Law*, 1895, at p. 350.
[252] M Jokl, *De l'Interpretation des traits normatifs d'aprés de la doctrine et la jurisprudence internationals*, 1936, p. 24.
[253] Advisory Opinion of 15 Sept. 1923, PCIJ Series B, 6 at 20.
[254] Advisory Opinion of 16 May 1925 PCIJ Series B, No 11, 39.

This was the basis for the forceful dissent of judges Anzilotti and Huber in the *Wimbledon* case.[255] There, the minority were only prepared to reject the literal meaning preferred by the majority on the basis that words cannot be presumed "to express an idea which leads to contradictory or impossible consequences". Even those sceptical of the literal rule concede that so long as no other common intention can be found, then the words must be given their literal meaning.[256]

With this venerable guidance in mind the text of Convention 87 must be considered in the light of the VCLT.

Article 2 of ILO Convention provides that:

> Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

And Article 3 provides that:

> 1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
>
> 2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

The only limitations on the rights described in Article 3 are found in Articles 8 and 9. Article 8 provides that in exercising those rights, those concerned "shall respect the law of the land" though the latter "shall not be such as to impair, nor shall it be so applied as to impair" those rights. Article 9 allows derogation by national law in the cases of the armed forces and the police.

Article 10 is an interpretation clause and significantly provides that:

> In this Convention the term organisation means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

The words of Article 3 provide the right to draw up constitutions and rules, organise activities and formulate programmes. As written, the words of Article 3 confer on trade unions (and employers' associations) the right to draw up their **rules and constitutions** on

[255] 1923 PCIJ Series A No 1, 36.

[256] Julius Stone, *Fictional Elements in Treaty Interpretation – A study in the International Judicial Process,* 1 *Sydney Law Rev.* 344, 355-6 (1953-5).

any subject matter whatever. The first five meanings of the noun "rule" given by the Oxford English Dictionary (further meanings are irrelevant to the current discussion) are[257]:

(i) a principle, regulation, or maxim governing individual conduct;
(ii) the code of discipline or body of regulations observed by a religious order or congregation;
(iii) a principle regulating practice or procedure;
(iv) an order made by a judge or court (hence irrelevant here);
(v) a regulation framed or adopted by a corporate body, public or private, for governing its conduct and that of its members.

In relation to the word "constitution", only the third, sixth and seventh meanings in the OED have any relevance:

(iii) a decree, ordinance, law, regulation: usually, one made by a superior authority, civil or ecclesiastical;
(vi) the mode in which a state is constituted or organised…;
(vII) the system or body of fundamental principles according to which a nation, state, or body politic is constituted or governed.

Legal dictionaries shed no further light. In relation to "rules", both Duhaime's Legal Dictionary and Stroud's Judicial Dictionary identify only a variety of sets of rules of law or procedure. As to "constitution" Duhaime's 100 references are almost without exception references to the constitutions of nations, and states and provinces within them save for a reference to *United States v. White*[258] in which Justice Murphy in the US Supreme Court held of the typical labour union:

> It normally operates under its own constitution, rules and bylaws, which, in controversies between member and union, are often enforced by the courts. The union engages in a multitude of business and other official concerted activities, none of which can be said to be the private undertakings of the members.

[257] The authors of this brief have considered the meanings of the relevant words in some of the non-English translations of Article 3(1) of Convention 87 but to the best of their understanding there are no relevant distinctions between the languages so far as the relevant meaning of the relevant words is concerned. The phraseology of Article 3(1) in some of the principal European languages is: Les organisations de travailleurs et d'employeurs ont le droit d'élaborer leurs statuts et règlements administratifs, d'élire librement leurs représentants, d'organiser leur gestion et leur activité, et de formuler leur programme d'action; Las organizaciones de trabajadores y de empleadores tienen el derecho de redactar sus estatutos y reglamentos administrativos, el de elegir libremente sus representantes, el de organizar su administración y sus actividades y el de formular su programa de acción; Die Organisationen der Arbeitnehmer und der Arbeitgeber haben das Recht, sich Satzungen und Geschäftsordnungen zu geben, ihre Vertreter frei zu wählen, ihre Geschäftsführung und Tätigkeit zu regeln und ihr Programm aufzustellen; As organizações de trabalhadores e de entidades patronais têm o direito de elaborar os seus estatutos e regulamentos administrativos, de eleger livremente os seus representantes, organizar a sua gestão e a sua actividade e formular o seu programa de acção; Организации работников и работодателей имеют право вырабатывать свои уставы и административные регламенты, свободно выбирать своих представителей, организовывать свой аппарат и свою деятельность и формулировать свою программу действий.

[258] *U.S. v. White,* 322 U.S. 694 (1944).

There is nothing inherent therefore in the ordinary meaning of "constitution" or "rules" which would preclude making whatever provision in such instruments as those drafting it and the members thereof desire.

Of course, Article 3 is not dealing with constitutions or rules at large but those of voluntary organisations of civil society. Any lawyer familiar with trade unions and employers' associations (and, indeed, any longstanding member of such bodies) would agree that the rules and constitutions of trade unions and employers' associations (indeed, practically every kind of organisation) invariably set out (amongst many other fundamentals) the structure of those organisations, their objects and their powers. Some of these may, of course, be implicit.

It cannot therefore be seriously argued that Article 3, in referring to constitutions and rules, does other than give trade unions and employers' associations the right to prescribe in their governing documents at least the structure by which they will operate and make and implement decisions, their purposes and, if not all, then some of the ways in which they have agreed to seek to achieve their purposes.

It is striking that the words of Article 3 impose no limitations on the above by requiring the inclusion of certain rules or constitutional provisions or by specifying that certain rules or constitutional provisions are impermissible. On a literal reading therefore trade unions (and employers' associations) may draw up their constitutions and rules so as to make any provision they wish – without limitation.[259] The words are therefore not merely capable but do mean that both organisations may provide, for example, that one of their objects is to bargain collectively. By the same token the words also mean that unions have the right to draw up constitutions which provide that their purposes or some of them may be achieved by organising and supporting industrial action and the right to have rules which prescribe the conditions under which industrial action will be organised or supported. Indeed, the words mean that a trade union may have, not merely as a means to an end, but as an objective in itself the organisation and support of industrial action.

The contrary submission would be that since the right under Article 3 to draw up rules and a constitution does not specify that they may include provision for the organisation or support of industrial action, there is no right to have such rules. However, if that curious construction was correct then neither trade unions nor employers' associations could have a rule or constitutional provision about anything at all since no particular rules are specified by Article 3. Thus an employers' association, for example, could not have any particular object or, specifically, the purpose of collective bargaining. It could not even have rules for the admission of members. No rules would be permitted for raising funds by subscriptions from members, and none for lobbying governments. Such a construction by which a general right is interpreted as having no effect in the absence of specification of particular rights is

[259] Of course, it is not suggested that trade unions could adopt any rules whatsoever, particularly rules that would limit workers' rights, such as racially discriminatory membership rules.

not merely untenable but absurd. A literal construction of the words simply cannot sustain an interpretation which negates any content being given to an express right.

The right to organise their administration and **activities** is the second feature of Article 3 to require consideration. Leaving aside administration, "activities" is a word of wide compass. The first meaning of "activity", according to the OED, is 'the state of being active; the exertion of energy, action'. The fourth (and only other relevant) meaning given is "anything active; an active force or operation". The nature of the actions encompassed in "activity" is notably not specified in the dictionary meaning. The case of *White* above gives a natural and wide scope to the notion of trade union activities. It is significant, though, that in UK law, for example, protection is given against discrimination by an employer against an employee for participating in the "activities of an independent trade union".[260] Such activities have been held (without controversy) to include both planning and participation in industrial action[261].

The literal meaning of activities thus leaves open to trade unions and employers' associations a free and unlimited election as to which activities they choose to organise. However, it is probably implicit from the juxtaposition of the right to draw up constitutions and rules, that the right to organise administration and activities is confined to those permitted by the rules and constitution. This would be normal and accord with law in most, if not every, jurisdiction. It follows that trade unions have the right to organise, amongst other of their activities, the activities of industrial action and collective bargaining.

The contrary proposition advanced by the Employers' Group is that since the right to organise industrial action is not specified as one of the activities a trade union has the right to organise, there is no right to organise industrial action. But again, as pointed out above, if such a rule of construction was tenable and applied, since Article 3 does not specify *any* particular activities, it must follow that the right conferred on trade unions and employers' associations to organise their activities contained no right to organise any specific activity. This conclusion is, of course, risible and would empty Article 3 of any meaning or effect.

The right of trade unions and employers' associations to formulate their **programmes** needs consideration next. The OED offers the following relevant meanings of "programme":

(i) a public notice;
(ii) a descriptive notice, issued beforehand, of any formal series of proceedings… a prospectus, syllabus,… a definite plan or scheme of any intended proceedings; an outline or abstract of something to be done (whether in writing or not).

[260] Sections 146 and 152 Trade Union and Labour Relations (Consolidation) Act 1992.
[261] *Winnett v Seamarks Bros Ltd* [1978] IRLR 387, [1978] ICR 1240, EAT; *Britool Ltd v Roberts* [1993] IRLR 481, EAT (though the legislative constraint that the activity must take place 'at an appropriate time' means that no successful claim has thus far been recorded in relation to participation in a strike). This analysis is fortified by s.170(1) of the 1992 Act which entitles a union member, in certain circumstances, to be permitted time off work to engage in "trade union activity" but in that context it is specifically enacted that there is no right to claim time off for "activities which themselves consist of industrial action" (s.170(2)). The inescapable inference is that, but for that proviso, union "activity" in that context would naturally include industrial action. It must follow that the expression, "the activities of an independent trade union", in the absence of a similar exclusionary proviso must include participation in a strike.

The literal meaning of the words thus confers an unqualified right on the part of unions and employers' associations to include whatever they wish in their plans for the future. This must include the right, for example to plan for collective bargaining and, for trade unions, the right to plan for industrial action. There is no basis within the words used for excluding from the right of a trade union to formulate within its programme, a plan which includes the organisation of or support for industrial action.

Once again the contrary proposition is that because Article 3 does not specify the right to plan industrial action, no such right is to be found in the right to formulate a union's programme. Once again, however, the words are incapable of bearing such a meaning which would, if correct, have the consequence that the right to formulate a plan about any particular matter or to make a plan to do any particular thing was necessarily excluded from the protection of Article 3, since the Article does not authorise a plan to do any particular thing. This would mean that the right of employers' associations and unions to formulate their programmes was devoid of substance since every particular plan would fall foul of the proposed canon of construction.

b) "context"(Article 31(1) VCLT)

Article 31(1) of the VCLT provides that the words of a term of a treaty must be construed in its "context and in the light of its object and purpose". The context of a treaty term had been used for interpretation purposes well before the VCLT (the latter merely codified customary international law). Indeed, the Permanent Court of International Justice in an early Advisory Opinion had used context for interpretation purposes and already stressed that the context is not merely the article or section of the treaty in which the term occurs, but the treaty as a whole:

> In considering the question before the Court upon the language of the Treaty, it is obvious that the Treaty must be read as a whole, and that its meaning is not to be determined merely upon particular phrases which, if detached from the context, may be interpreted in more than one sense.[262]

The PCIJ also stated, inter alia, that Part XIII of the Treaty of Versailles - the Constitution of the ILO - expressly declared that the design of the Contracting Parties was to establish a permanent labour organisation, and that fact strongly militated against the argument that agriculture, which was the most ancient and the greatest industry in the world, employing more than half of the world's wage earners, was to be considered as left outside the scope of the ILO, merely because it was not expressly mentioned by name[263]. The Court concluded that it was unable to find in Part XIII of the Treaty, read as a whole, any ambiguity, and it had no doubt that agricultural labour was included therein[264].

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[262] *Competence of the ILO to Regulate Agricultural Labour*, P.C.I.J. (1922), Series B, Nos. 2 and 3, p. 23 (http://www.icj-cij.org/pcij/serie_B/B_02/ Competence_OIT_Agriculture_Avis_consultatif.pdf)

[263] See PCIJ Advisory Opinion pp. 23, 25

[264] See Ultra Vires Acts in International Organizations – The experience of the International Labour Organization. Eber Odieke, 1977, p. 265. http://bybil.oxfordjournals.org/content/48/1/259.short

The context in which the relevant words are found (and the object and purpose of the provisions in question) can be considered at a number of levels.

First, it is necessary to bear in mind that Article 3 of Convention 87 is the creation of the ILO, the Constitution of which provided and provides in its Preamble for "recognition of the principle of freedom of association". Given the other concrete measures included in the Preamble it is not conceivable that the endorsement of the freedom of association did not recognise that trade union membership (as an aspect of freedom of association) involved trade union action towards attaining those concrete objectives, including the use of strike action.[265]

Freedom of association was reiterated in the Declaration of Philadelphia of 1944, by which time many countries in the developed world had encouraged collective bargaining as an important means of overcoming the Great Depression of the 1930s.[266] Whilst mechanisms to avoid strike action and to resolve disputes were common, it was recognised on all sides that strikes were inherent in collective bargaining. This was clearly also part of the context of Convention 87.

Freedom of association is part of the title of Convention 87 of 1948, the "*Freedom of Association and Protection of the Right to Organise Convention*". Freedom of association is reiterated in its Preamble. Indeed the Preamble reinterprets the ILO Constitution by stating that:

> The Preamble to the Constitution of the International Labour Organisation declares 'recognition of the principle of freedom of association' to be a means of improving conditions of labour…

It would appear to be self-evident that freedom of association was intended to comprehend actions by which such conditions could be improved; equally obviously this was by way of collective bargaining and, where necessary, strike action. This too is part of the context of Convention 87.[267]

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[265] The primary purpose of trade union membership (as the membership of many other associations) is to influence the "outside world" and in the case of trade unions - most particularly the employers.

[266] The re-emergence of Joint Industrial Councils in Britain was a reflection of this. The Ministry of Labour's Annual Report for 1934 (p 74) affirmed that, "It has been the policy of the Department to take every opportunity of stimulating the establishment of joint voluntary machinery or of strengthening that already in existence." During the World War II, the collective bargaining system was heavily relied upon to enhance Britain's war effort with the introduction of Order 1305, a compulsory measure which provided the legal machinery to extend collective agreements to non-parties. In the USA the National Labor Relations Act of 1935 also promoted collective bargaining. In France the 1936 Matignon Accords provided for both the rights to strike and to bargain collectively.

[267] The first signatory to Convention 87 was the British Foreign Secretary, Ernest Bevin, on behalf of the UK. The idea that he, former General Secretary of the giant Transport and General Workers Union, signed Convention 87 under the impression that it did not confer the right to strike on his former members is hard to accept. Equally significantly, the Australian Government by reason of its legislative system of collective awards which thereby limited access to industrial action considered that, for that reason, it could not initially ratify ILO Convention 87 or 98; only doing so in 1973.

Article 10 of Convention 87 also forms part of the context for Article 3. It specifies the objective of workers' organisations: to further and defend the interests of workers. Trade union constitutions, rules, activities, and programmes must therefore be capable of furthering and defending workers' interests.

The context also requires reference to Article 3(2) of Convention 87 which prohibits "any interference which would restrict this right or impede the lawful exercise thereof". In a more general way (concerning all the rights contained in the Convention) Article 8(2) confirms this approach by stating that the "law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention". The breadth of the right conferred is thus emphasised by the drafters' insistence on prohibiting restriction or impairment of it.

With these aspects in mind, the question to be asked is whether the literal meaning of Article 3 which contains within it the right to strike, as identified above, when set in context, must be expanded, contracted or otherwise adapted. The answer must be a resounding "no". There is nothing which suggests that the literal meaning of those rights must be expanded, contracted or otherwise adapted by the reiteration of the concept of freedom of association as it would have been understood in 1919, 1944, 1948 or, indeed, any time subsequently, nor in the notion that the trade unions to which are given the rights in Article 3 have as their purpose that of furthering and defending workers' interests. Indeed the context only fortifies the literal meaning adduced above.

The other side of the coin is that there is certainly nothing in the context which could conceivably support the proposition for which the Employers' Group contend namely that Article 3 is to be read as meaning that:

(i) though trade unions have the right to draw up their constitutions and rules, that right specifically excludes the right to draw up constitutional provisions permitting the organising or supporting of strikes;
(ii) though trade unions have the right to organise their activities, that right specifically excludes the right to organise or support strike action;
(iii) though trade unions have the right to formulate their programmes, that right specifically excludes the right to formulate a programme of strike action.

Those exclusions could have been written into Convention 87 but they were not. It must be presumed that such exclusions were not intended. Accordingly recourse to the words of Convention 87 leads inevitably to the conclusion that it guarantees the right to strike.

c) "any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" (Article 31(3)(a) VCLT)

This Article of the VCLT makes it necessary to take into account, together with the context of Convention 87, any subsequent agreement between the parties as to the interpretation

or application of Convention 87. The parties to the ILO have, as noted above, on many occasions and over many years, agreed in the CFA (and elsewhere in the ILO), that Convention 87 includes the right to strike. For 60 years the CFA has applied this mutual agreement in determining the cases before it. The significance of this to the application of the VCLT cannot be underestimated.

d) "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation" (Article 31(3)(b) VCLT)

This Article makes it necessary to take into account any subsequent practice which establishes the agreement of the parties regarding the interpretation of Convention 87. It is important to note that the predecessor of the ICJ, the PCIJ, looked to the ILO as a guide to construction long before the advent of the VCLT. In its opinion on the *Competence of the ILO to Regulate Agricultural Labour* stated:

> If there were any ambiguity, the Court might for the purpose of arriving as the true meaning, consider the action which has been taken under the Treaty.[268]

As for the substance of the subsequent practice, the PCIJ referred to the practice of the ILO Member States (in confirmation of the meaning which it had deduced from the text and which it considered to be unambiguous):

> The Treaty was signed in June, 1919, and it was not until October, 1921, that any of the Contracting Parties raised the question whether agricultural labour fell within the competence of the International Labour Organization. During the intervening period the subject of agriculture had repeatedly been discussed and had been dealt with in one form and another. All this might suffice to turn the scale in favour of the inclusion of agriculture, if there were any ambiguity.[269]

If case-law of the supervisory bodies had already existed at that time, there can be little doubt that the Court would have referred to it in its consideration of subsequent practice.

This is now even more apparent. In both the academic field[270] and in judicial practice,[271] it is recognised that this ILO case law is indeed to be taken into consideration in cases to which it

[268] P.C.I.J. (1922), Series B, No. 2, p. 39.
[269] Id., pp. 40-1.
[270] See, e.g, N Ando, "The Development of the Human Rights Committee's Activities under the ICCPR and its Optional Protocol through My Twenty-Year Experience as a Committee Member" in G Venturini and S Bariatti (eds), Liber Fausto, Pocar (Milan, Giuffrè Editore, 2009), p 15 (No 6.2) referring to the case of the application of the term "territory" in respect of the US's report on Guantanamo (outside US "territory"); to a certain extent also R Gardiner, Treaty Interpretation (Oxford, University Press, 2008) 246.
[271] See, e.g., Constitutional Court of South Africa, judgment 13 December 2002, CCT 14/02, National Union of Metalworkers of South Africa: "[32] Although none of the ILO Conventions specifically referred to mentions the right to strike, both committees engaged with their supervision have asserted that the right to strike is essential to collective bargaining … [33] These principles culled from the jurisprudence of the two ILO committees are directly relevant to the interpretation both of the relevant provisions of the Act and of the

is relevant. Any systematic approach to the international context would be incomplete if the practice of the competent bodies tasked with applying the relevant international standards were left aside. Insofar as these bodies have their own case law demonstrating consistency and continuity in interpretation, reference to that case law reflects state-of-the-art practice by national and regional courts across the globe.

At regional level, the example of the ECtHR demonstrates this approach of taking into account the relevant case-law of the supervisory bodies (albeit related more to Article 31(3)(c)),by interpreting the comparable Article 11 ECHR. In the *Demir and Baykara* judgment, the ECtHR in interpreting this provision in relation to the right to bargain collectively referred to much relevant case law of the competent organs such as the ILO Committee of Experts and CFA as well as the European Committee of Social Rights (ECSR).[272] And the ECtHR in its judgment *Enerji Yapi-Yol Sen* recognised the right to strike as included in Article 11 ECHR by explicitly referring to the relevant ILO case-law:

> La Cour note également que le **droit de grève est reconnu par les organes de contrôle de l'Organisation internationale du travail (OIT)** comme le corollaire indissociable du droit d'association syndicale protégé par la Convention C87 de l'OIT sur la liberté syndicale et la protection du droit syndical (pour la prise en compte par la Cour des éléments de droit international autres que la Convention, voir *Demir et Baykara*, précité).[273] (Emphasis added)

From a constitutional point of view, it is important to reiterate that Commissions of Inquiry, which decide complaints under Articles 26 of the ILO Constitution, have confirmed this view. This is described in Section IV above. This is all the more important as the ILO lacks any more authoritative interpretative organ. Indeed, as noted elsewhere in this brief, no tribunal pursuant to Article 37(2) of the ILO constitution currently exists and no interpretative question on the right to strike has been put to the ICJ under Article 37(1) of the ILO Constitution.

Again, the subsequent practice for decades within the ILO, particularly in the CFA, as explored in Section IV above overwhelmingly confirms the agreement of the parties to the existence of the right to strike in Convention No. 87.

e) "any relevant rules of international law applicable in the relations between the parties" (Article 31(3)(c) VCLT)

Constitution"; or Supreme Court of Canada, judgment, Health Services and Support—Facilities Subsector Bargaining Association v British Columbia, 2007 SCC 27, [2007] 2 SCR 391: "76 … Convention No. 87 has been the subject of numerous interpretations by the ILO's Committee on Freedom of Association, Committee of Experts and Commissions of Inquiry. These interpretations have been described as the 'cornerstone of the international law on trade union freedom and collective bargaining'"; "79. In summary, international conventions to which Canada is a party recognize the right of the members of unions to engage in collective bargaining, as part of the protection for freedom of association".

[272] ECtHR (Grand Chamber) Judgment 12 November 2008 – No. 34503/97 – *Demir and Baykara v Turkey*: CEACR in paras. 38, 43, 101, 147, 166; CFA in paras. 39, 102, ECSR in paras. 50, 149.

[273] ECtHR (Third Section) Judgment 21 April 2009 – No. 68959/01 - *Enerji Yapi-Yol Sen v Turkey*, para. 24.

This Article requires account to be taken of other relevant rules of international law. This element of interpretation is not limited to the time of the adoption of the instrument concerned. The submission is made below in Section VIII that the right to strike is recognised under "customary international law".

The ECtHR has applied this element of interpretation in a wider sense. In its *Demir and Baykara* judgment, it referred in a general way to Article 31(3)(c) of the VCLT[274] and applied it in the following words:

> "The Court observes that these considerations find support in the majority of the relevant international instruments…"[275]

This is followed by explicit references to many relevant international instruments (concerning the right to organise) such as the UN Covenants (Article 8 ICESCR, Article 22 ICCPR), ILO Convention 87 (Article 2), and the European Social Charter (Article 5). In referring also to the instruments mentioned in the *Demir and Baykara* judgment, the ECtHR recognised the right to strike in its judgment *Enerji Yapi-Yol Sen*.[276]

As has been noted above, in *RMT v UK*[277] the ECtHR applied Article 31(3)(c) of the Vienna Convention after an extensive review of the ILO Committee of Experts' and CFA materials relevant to the right to strike[278] had led it to conclude that secondary industrial action "is recognised and protected as part of trade union freedom under ILO Convention No. 87 and the European Social Charter"[279] so that it "would be inconsistent with this method [i.e. that prescribed by Article 31(3)(c) of the Vienna Convention] for the Court to adopt in relation to Article 11 an interpretation of the scope of freedom of association of trade unions that is much narrower than that which prevails in international law."[280]

f) "A special meaning shall be given to a term if it is established that the parties so intended" (Article 31(4) VCLT)

It is a matter of fact that the parties to Convention 87 did not intend at the time of drafting that the right to strike was to be excluded from the bundle of rights conferred by that

[274] ECtHR (Grand Chamber) Judgment 12 November 2008 – No. 34503/97 – *Demir and Baykara*, "In addition, the Court has never considered the provisions of the Convention as the sole framework of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see *Saadi*, cited above, § 62; *Al-Adsani*, cited above, § 55; and *Bosphorus Hava Yolları Turizm ve Ticaret Anonim Şirketi v. Ireland* [GC], no. 45036/98, § 150, ECHR 2005-VI; see also Article 31 § 3 (c) of the Vienna Convention)."

[275] Id., para. 98.

[276] ECtHR (Third Section) Judgment 21 April 2009 – No. 68959/01 - *Enerji Yapi-Yol Sen v Turkey*, para. 16 referring to the description of international law in *Demir and Baykara* (paras. 31, 34-52); see the further reference to *Demir and Baykara* in para. 31.

[277] Application No. 31045/10, 8 April 2014.

[278] See *RMT* paras. 27-33, likewise the review of the European Committee on Social Rights case-law, at paras. 34-37.

[279] *RMT* para.76.

[280] *Ibid*.

Convention. It is, of course, simply beyond argument that the Workers' Group had no intention of excluding the right from Convention 87. But the same absence of intention appears also true of the other parties since, had their intention been to do so, it would have been simple to draft words to limit the broad rights conferred by the convention so as to specifically exclude the right to strike. There was apparently no attempt to do so by *any* party.

The main argument advanced by the Employers' Group is the rejection, during the drafting process of what became Convention 87, of two amendments asking for the inclusion of the right to strike in the Convention.[281] However, this is not sufficient to "establish that the parties… intended" (i.e. *all* the parties intended) to exclude the right to strike. Given that the plain meaning of Convention 87 comprehended the right to strike, a specific inclusion of it was unnecessary and impractical.[282] The reality is that there is no sufficient evidence to *establish* an intention on the part of the parties to exclude the right to strike from the broad and ordinary words which, as submitted above, plainly includes that right amongst others.

g) Further Interpretation Principles

Obviously, rules or principles of interpretation not mentioned in Articles 31 – 33 VCLT may also be taken into account in the interpretative process. In the *Georgia v Russian Federation (CERD)* case, the Court referred to PCIJ jurisprudence (i.e. before the VCLT) in order to introduce an interpretation element not (directly) mentioned in the VCLT's interpretation rules:

> In the *Free Zones of Upper Savoy and the District of Gex* case, the Permanent Court of International Justice had occasion to apply the well-established principle in treaty interpretation that words ought to be given appropriate effect.[283]

Taking into account the element of effectiveness, an interpretation of the word "activities" in Article 3(1) Convention 87 as excluding the right to strike would not give it the appropriate effect. This additional principle even strengthens the result of the interpretation process on the basis of Article 31 of the VCLT. The Employers' Group do not and cannot point to any other rule of construction which would defeat the long standing rules now

[281] In any event, the argument of the Employers' Group comes close to proposing that the supplementary means of interpretation (Article 32 VCLT) would displace the primary means (Article 31 VCLT).
[282] Indeed, had it been included specifically it would have had to have been enveloped with clumsy protective words to prevent Article 3 being confined only to the right to strike or to rights construed *eiusdem generis* with the right to strike. So phraseology such as "…including, for the avoidance of doubt and without prejudice to the generality of the foregoing, the right to strike or organise, support or take other forms of industrial action" would have been required. No doubt even such language would have given rise to subsequent questions as to whether the unexpressed right to collective bargaining (on the part of employers' associations and trade unions), political lobbying, organsing marches and demonstrations and other activities were included.
[283] ICJ Judgment 1 April 2011 - *Georgia v Russian Federation (CERD)*, para. 133.

contained in Article 31 of the VCLT which could conceivably lead to the conclusion that Article 3(1) of ILO Convention 87 is to be interpreted as excluding the right to strike.[284]

2. Article 32 VCLT - Supplementary Means of Interpretation

From the outset, the main principle of the structure of the interpretation rules is that Article 32 of the VCLT, allowing recourse to the preparatory works of a treaty, only applies if at least one of the conditions of (a) or (b) are fulfilled. These are that the meaning derived from the instrument under Article 31 of the VCLT (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. If the primary meaning is neither, then the justification for the use of the supplementary means of interpretation under Article 32 of the VCLT is simply unjustifiable.

a) Does the meaning of Article 3 of Convention 87 as containing the right to strike leave that meaning ambiguous or obscure or does it lead to a result which is manifestly absurd or unreasonable?

Having established, by application of the canons of construction of Article 31 of the VCLT, that the meaning of Article 3 of ILO Convention 87 is that trade unions have the right to draft rules and make constitutional provision for the organisation of or support for industrial action, the right to organise activities including the organisation of or support for industrial action and the right to formulate programmes which include plans to organise or support the taking of industrial action, the question is whether that meaning is ambiguous or obscure or leads to results which are manifestly unreasonable or absurd.

As to ambiguity or obscurity, the existence of a right to strike deriving from Convention 87 is neither. It is stark and clear. Only permissible restrictions upon it require any further elaboration but that task cannot render the existence of the right itself ambiguous or unclear.
As to manifest absurdity or unreasonableness, the practice of the ILO, its Conference, its Governing Body, its CFA, its Committee of Experts, its Commissions of Inquiry and its CAS all show, as demonstrated elsewhere in this brief, that the grant to trade unions of the right to strike is the antithesis of absurdity – the right to strike is manifestly reasonable. That this is so is demonstrated by multiple other international instruments protecting the right to strike.

Furthermore, the notion that trade unions collectively bargain and that collective bargaining involves (on occasion) industrial action is a commonplace proposition to which anyone

[284] E.g., the "living instrument" concept of interpretation is also a common means of interpretation, particularly in the interpretation of human rights instruments, e.g., in *Demir and Baykara v. Turkey*: "the 'living' nature of the Convention, which must be interpreted in the light of present-day conditions, [takes] account of evolving norms of national and international law in its interpretation of Convention provisions" (App. No. 34503/97, ECtHR) and *Case of the Mapiripán Massacre v. Colombia*: the interpretation of human rights treaties "must go hand in hand with evolving times and current living conditions" (Inter-American Court of Human Rights, Sept. 15, 2005, para 106). Given the near-universality of the right to strike in international law, if Convention 87 did not include the right to strike in 1949, it must do so now.

familiar with industrial relations the world over would accede. As the Committee of Experts have noted:[285]

> Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted.

So, whilst there may be arguments as to the extent and scope of the freedom which trade unions have to engage in industrial action, it cannot be argued (save perhaps by the most repressive dictatorships) that granting trade unions the rights to do such things is unreasonable or absurd. The fact that so many countries in the world have a legal right to strike is all but conclusive on the point.[286] Therefore, the conditions necessary before resort may be made under Article 32 of the VCLT to supplementary means of interpretation such as the *travaux préparatoires* of Convention 87 to determine the meaning of Article 3(1) of that Convention, are non-existent.

b) Would the application of Article 32 VCLT change the situation even were it to be applied?

Even assuming that Article 32 VCLT would apply, it should be recalled as Janice Bellace has pointed out that the British draft which led to the adoption of the ILO's founding instrument in 1919 (in which the concept of "freedom of association" was embedded) was understood by the draftsperson as necessarily protecting the activities of collective bargaining and industrial action in the light of the momentous industrial, legal and political events which led to the Trade Disputes Act of 1906 in Britain which specifically protected trade union freedom to organise and support strike action.[287] She could have added that the British draftspersons would also have had well in mind that since 1871 the British legislature had defined trade unions by reference to their purpose of collective bargaining[288] and the British government and employers had by 1919 adopted the conclusions of the "Whitley" *Committee on Relations between Employers and Employed* of 1917[289] recommending that "the government should propose, without delay, to the various associations of employers and employed, the formation of Joint Standing Industrial Councils in each industry"[290] consisting of representatives of employers' associations on the one side and trade unions on

[285] *General Survey* 2012, at p. 50, para. 123.
[286] See Section VIII of this document on customary international law, as well as Annex IV.
[287] J Bellace, *The ILO and the Right to Strike,* supra n. 48.
[288] S.23 Trade Union Act 1871 defined a trade union as "such combination, whether temporary or permanent, for regulating the relations between workmen and masters, or …" The requirement that to be a trade union the organisation must have as one of its principle purposes "the regulation of relations between workers … and employers or employers' associations" is still found in s.1 Trade Union and Labour Relations (Consolidation) Act 1992.
[289] Originally set up by the Ministry of Reconstruction as part of the planning for reconstruction after the First World War, its task was to 'make and consider suggestions for securing a permanent improvement in the relations between employers and workmen', *Whitley Committee*, Final Report (1 July 1918), Cmd 9153 (1918), para 1.
[290] *Whitley Committee*, Interim Report on Joint Standing Industrial Councils (8 March 1917), Cmd 8606 (1917), para 6. These were subsequently known as 'Joint Industrial Councils' ("JICs").

the other for the purpose of industry-wide collective bargaining in order to avoid the widespread and damaging strikes that had marked the previous 50 years.[291] The objective, adopted by government, was to "constitute a scheme designed to cover all the chief industries of the country and to equip each of them with a representative joint body capable of dealing with matters affecting the welfare of the industry in which employers and employed are concerned".[292] An analogous provision was made in Germany in 1919.[293] In this way, it was hoped that reliance of industrial action would be diminished. In Britain, strike action had always been regarded as inherent in collective bargaining as the Combination Acts of 1799 and 1800 (and their repeal in 1824) showed.[294]

The preceding analysis has shown that the practice of the ILO supervisory bodies recognising the right to strike as being included in Article 3(1) of ILO Convention 87 is not only in conformity with the interpretation rules contained in Articles 31 – 33 VCLT but is required by application of those principles. The "circumstances of the conclusion" of the founding instrument of the ILO in 1919 do not support an argument that the right to strike was excluded from it. Neither, as is explained earlier, would the travaux préparatoires support the thesis. So even were Article 32 of the VCLT to be engaged (which it is not), it would lead to no different conclusion to that reached under Article 31.

3. Inadmissible "Creative interpretation"?

[291] Where such Joint Committees did not already exist, the second report recommended 'an adaptation and expansion of the system of trade boards' working under an amended Trade Boards Act 1909 to conduct bi-partite collective bargaining with the presence of government appointees to facilitate negotiations, *Whitley Committee*, Final Report.

[292] *Whitley Committee*, Final Report.

[293] Article 159 of the German *Weimar Constitution* of 1919 protected the right to form unions and to improve conditions at work declaring "all agreements and measures limiting this right are illegal", while Article 165 provided that: "Workers and employees are called upon to participate, on an equal footing and in cooperation with the employers, in the regulation of wages and working conditions as well as in the economic development of productive forces. The organizations formed by both sides and their mutual agreements are recognized. Workers and employees are granted, in order to represent their social and economic interests, legal representations in Enterprise Workers' Councils as well as in District Workers' Councils, organized for the various economic areas, and in a Reich Workers' Council…"

[294] In *Hilton v Eckersley* (1855) 6 E&B 47, for example, the court (Alderson B at 76) refused to countenance giving "legal effect to combinations of workmen for the purpose of raising wages, and make their strikes capable of being enforced at law. We think that the Legislature have been contented to make such strikes not punishable: [but] certainly they never contemplated them as being the subject of enforcement by a suit at law, on the part of the body of delegates." In *Hornby v Close* (1867) 19 Cox CC 393 the court held that a trade union was not a friendly society, Mellor J pointing out that "Some of the substantial objects of the society are those of a trades' union, and for the maintenance of its members when on strike, and these objects cannot be separated from the other objects, if any, of the society. Nor can I doubt that many members joined the society on the very footing that there were such rules and for the very sake of the illegal objects." The infamous case of *Taff Vale Railway v ASRS* [1901] AC 426 turned on trade union liability for a strike in support of a collective bargaining objective. There Farwell J pointed out that "The acts complained of are the acts of the association. They are acts done by their agents in the course of the management and direction of a strike; the undertaking such management and direction is one of the main objects of the defendant society, and is perfectly lawful; but the society, in undertaking such management and direction, undertook also the responsibility for the manner in which the strike is carried out."

A further criticism by the Employers' Group which may be conveniently dealt with here is that the Committee of Experts (and presumably, the CFA) has created a right to strike by "interpreting" Convention 87. In one sense this is correct - the ascertainment of the meaning of words is a process of interpretation. But the Employers' Group imply something more in their criticism – namely that the use of interpretation as a creative tool has gone beyond the literal meaning of the words. But, as seen above, the suggestion that the ILO bodies have been creative in their interpretation of Convention 87 as containing the right to strike is simply factually wrong. The right to strike is found, as shown above, in the very words of Convention 87; no process of creative interpretation is required to find it.

It is true, however, that the ILO Committees have used a process of creative interpretation in relation to one feature of the right to strike in Convention 87. The ILO bodies have created *limitations* on the right to strike. It will be observed that Convention 87 contains no limiting words or context at all.[295] There is no parallel to the wording of Article 11(2) of the European Convention on Human Rights which permits restrictions on freedom of association:

> No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the State.

Many other international human rights provisions have analogous wording. The ILO Committees therefore have, by construing Convention 87, constructed limitations on what would otherwise be an unfettered right to strike. The Committee of Experts (and the CFA) has accepted a wide variety of limitations on the right to strike. For example, as the CFA has ruled as follows:

> The Committee has considered that the occupation of plantations by workers and by other persons, particularly when acts of violence are committed, is contrary to Article 8 of Convention No. 87. It therefore requested the Government, in future, to enforce the evacuation orders pronounced by the judicial authorities whenever criminal acts are committed on plantations or at places of work in connection with industrial disputes. [296]

In so interpreting Convention 87, these two supervisory bodies have not *created a right to strike*; on the contrary, they have done the very opposite. They have *created permissible restrictions* on what would otherwise be an unfettered right to strike created, not by them, but by the very words of Convention 87.

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[295] Save perhaps for Article 8, the requirement of conformity to national law balanced by the requirement that national laws must not impair Convention 87 rights, and Article 9 which permits restrictions in relation to armed forces and police.

[296] CFA Digest of Decisions (5th ed. 2006) para. 546.

VIII. The Right to Strike Is Recognized under Customary International Law[297]

The trajectory of international discourse on the right to strike strongly suggests the existence of a customary international law norm.[298] State practice reflected in most countries' constitutions, laws, and decisions of national courts confirm the right to strike. The limits may vary from country to country, but underlying them is an international consensus that the right exists, and that limits must be reasonable. Further, States respect this right out of a sense of legal obligation, not merely a moral one.

The right to strike is recognised in extensive and diverse sources, including those set forth in Section VI above. To this could be added international economic agreements. In adopting the North American Free Trade Agreement (NAFTA), the United States, Canada, and Mexico included among their agreed Labor Principles "The right to strike – The protection of the right of workers to strike in order to defend their collective interests."[299]

Further, in the 2012 General Survey, the ILO found that:

> Although the exercise of the right to strike is in most countries fairly commonly subject to certain conditions or restrictions, the principle of this right as a means of action of workers' organizations is almost universally accepted. In a very large number of countries, the right to strike is now explicitly recognized, including at the constitutional level.[300]

The ILO cited 89 countries from all regions of the world (Asia, Africa, Americas, Europe and Middle East) whose constitutions incorporate the right to strike. The complete list is attached in Annex IV.

Further, in practically every other country in the world without a constitutional provision, the right to strike is nevertheless recognized in legislation. Space considerations preclude

[297] Customary international law refers to international legal obligations binding on all states which arise from 1) established state practice and 2) opinio juris – meaning that states view the custom as obligatory, not as a mere courtesy or moral obligation. See Military and Paramilitary Activities in and Against Nicaragua (Nicaragua V. USA) ICJ Reports 1986 pp. 87-8, paras 183-187. See also Continental Shelf (Libyan Arab Jarnahiriyu v. Malta), I. C.J. Reports 1985, pp. 29-30, para. 27.

[298] There is academic support for the argument that fundamental ILO principles have become part of customary international law. See, e.g., C W Jenks, *The International Protection of Trade Union Freedom* (1957) at pp 561-2; P. O'Higgins, "International Standards and British Labour Law", in R Lewis (ed), *Labour Law in Britain* (1986), at p 577; Creighton, "The ILO and protection of Freedom of Association in the UK", in Ewing, Gearty and Hepple (eds.) *Human Rights and Labour Law*, 1994, p.2, and see ILO, *International Labour Standards*, 3rd ed., 1990 at p.106. The logic adopted by the ECtHR in resting on international law standards is consistent with the common law principle of legality explained by Lord Hoffman in *R v Secretary of State for the Home Dept, ex p Simms* [2000] 2 AC 115 at p 131; followed by Gleeson CJ in *Electrolux etc v Australian Workers Union* (2004) 221 CLR 309 at p 329.

[299] North American Agreement on Labor Cooperation Between the Government of the United States of America, the Government of Canada and the Government of the United Mexican States, Annex 1, *Labor Principles* (1993).

[300] General Survey 2012, p. 50, para 123.

recounting them all. Two examples at polar opposites in political and economic terms are sufficient:

- In the United States, Section 13 of the National Labor Relations Act (NLRA) states, "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right."[301]

- In Vietnam, Article 5 of the Labour Code adopted in 2012 states, "The employees are entitled to . . . be on strike." Article 209 states, "The strike is the temporary, voluntary and organizational stopping of work of the labour collective in order to meet the requirements in the process of settlement of labour disputes."[302]

Both countries' laws and regulations set out various procedural requirements for engaging in strikes such as time frameworks for bargaining, mandatory use of mediation, advance notice of strikes, maintaining minimum services and so on. To a greater or lesser degree, such requirements are common to the laws of all countries, but always resting on the foundational premise that workers have a right to strike.

China, although it removed the right to strike from its Constitution in 1982, adopted a trade union law that implicitly acknowledges the right to strike in saying:

> In case of work-stoppage or slow-down strike in an enterprise or institution, the trade union shall, on behalf of the workers and staff members, hold consultation with the enterprise or institution or the parties concerned, present the opinions and demands of the workers and staff members, and put forth proposals for solutions. With respect to the reasonable demands made by the workers and staff members, the enterprise or institution shall try to satisfy them. The trade union shall assist the enterprise or institution in properly dealing with the matter so as to help restore the normal order of production and other work as soon as possible.[303]

The ILO has been compiling a Compendium of court decisions invoking Conventions 87 and 98 and decisions of the Committee on Freedom of Association regarding the right to strike.[304] While by no means complete, it includes the following rulings:

- In 1995, Russia's Constitutional Court found that a law prohibiting strikes in the civil aviation sector was unconstitutional. The Court acknowledged that "proceeding from the regulations of the International Covenant on Economic, Social and Cultural Rights, the prohibition of the right to strike is admissible with regard to persons who are the complement of the armed forces, police and administration of the state . . . In addition, the international legal acts on human rights ascribe the regulation of the

[301] National Labor Relations Act of 1935 § 13, 29 U.S.C. § 163 (2006).
[302] Labour Code of Vietnam, Law No. 10/2012/QH13 (2012).
[303] Trade Union Law of the People's Republic of China, Article 27 (2001).
[304] http://compendium.itcilo.org/en/decisions-by-subject.

right to strike to the sphere of internal legislation. But this legislation must not go beyond restrictions permitted by these acts." The Constitutional High Court concluded that any restriction of the flight personnel's right to strike was illegal.[305]

- In 2006, a Burkina Faso appeals court found that private sector workers who went on strike in support of a general labour protest movement were unlawfully dismissed, and ordered their reinstatement. The court considered that the strike, which was a general strike based on professional and economic interests aiming to find solutions to issues of social policy, was legitimate and lawful in accordance with the statements of the Committee on Freedom of Association of the Governing Body of the ILO as expressed in its Digest of Decisions. Interpreting the provisions of national law relating to strikes in the light of ILO Convention No. 87 and the Digest of Decisions, the Appeal Court ruled that the strike was legitimate and legal and declared that each of the appellants had been wrongfully dismissed.[306]

- In 2006, the Fiji Arbitration Tribunal, in *Fiji Electricity & Allied Workers Union v. Fiji Electricity Authority*, 9 May 2006, [2006] FJAT 62; FJAT Award 24 of 2006, found that a constitutional provision guaranteeing the right to freedom of association and collective bargaining must also include a qualified right to strike, relying on the ILO Committee of Experts.

- In a 2008 decision, Colombia's Constitutional Court upheld restrictions on strikes of a political nature, but in so doing reaffirmed the right to strike. The court said that "organizations whose role is to defend the socio-economic and professional interest of workers should, in principle, be able to have recourse to strike action to support their positions in search of solutions to problems deriving from important economic and social policy issues, which have immediate consequences for their members and workers in general, in particular in the sphere of employment, social protection and living conditions."[307]
- In another 2008 decision involving the dismissal of a worker for joining a strike, Brazil's Higher Labour Court ruled that the employer's argument that the dismissal had been due to the worker's refusal to carry out duties was an invalid one, since an absence from duties is inherent in strike action, and the behaviour of the employer in violating the principle of freedom of association and the free exercise of the right to strike could not be tolerated.[308]

- Botswana's High Court recognised the right to strike in a 2012 decision finding that the government's list of "essential services" in which strike were prohibited violated

[305] Constitutional Court of the Russian Federation, On the case concerning the verification of constitutionality of Article 12 of the Law of the USSR of 9 Oct., 1989 "On the Order of Settlement of Collective Labour Disputes (Conflicts)", 17 May 1995.
[306] Bobo – Dioulasso Appeal Court, Social Chamber, Messrs. Karama and Bakouan v. Société Industrielle du Faso (SIFA), 5 July 2006, No. 035.
[307] Constitutional Court, 3 Sept. 2008, Decision No. C-858/08.
[308] Higher Labour Court, *Zavascki, Roberto Antonio v. Companhia Minuano de Alimentos*, Brasilia, 15 February 2012, Case No. TST-RR-77200-27.2007.5.12.0019.

> the Constitution. The court said, "it is incumbent upon this court … to interpret the said section in a manner that is consistent with international law" and it noted that "[t]he right to freedom of association in international law includes the right to strike." Moreover, "international law does not accept the prohibition of strike action to safeguard economic interests as a limitation that is reasonably justifiable in a democratic society", which was the alleged justification for most of the added categories of essential services, and "the ILO Committee of Experts (…) seems to accept that it is reasonably justifiable in a democratic society to restrict the right to strike only to the extent that meets its definition of 'essential services'".[309]

Many other high national courts have also recognised the right to strike based on their own laws, without necessarily invoking ILO conventions. For example, the US Supreme Court, while denying states' ability to grant food stamps (publicly funded food assistance according to a salary-based means test) to strikers on the grounds that it would put the government on one side in a labour dispute instead of remaining neutral, acknowledged workers' right to strike and linked it to freedom of association. The Court said, "Exercising the right to strike inevitably risks economic hardship, but we are not inclined to hold that the right of association requires the Government to minimize that result by qualifying the striker for food stamps."[310]

In a 2012 decision involving non-union workers who had been dismissed for joining a strike without identifying themselves individually with 48 hours advance notice, South Africa's Constitutional Court ruled:

> [W]e should not restrict the right to strike more than is expressly required by the language of the provision [requiring advance notice], unless the purposes of the Act and the section on "a proper interpretation of the statute … imports them." The relevance of a restrictive approach is to raise a cautionary flag against restricting the right more than is expressly provided for. Intrusion into the right should only be as much as is necessary to achieve the purpose of the provision and this requires sensitivity to the constraints of the language used. . . to hold otherwise would place a greater restriction on the right to strike of non-unionised employees and minority union employees than on majority union employees.[311]

High courts in Spain and Brazil also have affirmed the right to strike in their national jurisprudence. In a landmark 1981 decision, Spain's Constitutional Tribunal said that the strike is:

> . . . un instrumento de presión que la experiencia secular ha mostrado ser necesario para la afirmación de los intereses de los trabajadores en los

[309] High Court of Lobatse, *Botswana Public Employees' Union and others v. Minister of Labour and Home Affairs and others*, MAHLB-000674-11, 9 August 2012.
[310] *Lyng v. Auto Workers*, 485 U.S. 360, 367 (1988).
[311] *South African Transport and Allied Workers Union (SATAWU) and Others v Moloto NO and Another* (CCT128/11) [2012] ZACC 19; 2012 (6) SA 249 (CC); 2012 (11) BCLR 1177 (CC); [2012] 12 BLLR 1193 (CC); (2012) 33 ILJ 2549 (CC) (21 September 2012).

> conflictos socioeconómicos, conflictos que el Estado social no puede excluir, pero a los que sí puede y debe proporcionar los adecuados cauces institucionales; lo es también con el derecho reconocido a los sindicatos en el art. 7 de la Constitución, ya que un sindicato sin derecho al ejercicio de la huelga quedaría, en una sociedad democrática, vaciado prácticamente de contenido; y lo es, en fin, con la promoción de las condiciones para que la libertad y la igualdad de los individuos y grupos sociales sean reales y efectivas (art. 9.2 de la Constitución). Ningún derecho constitucional, sin embargo, es un derecho ilimitado. Como todos, el de huelga ha de tener los suyos, que derivan, como más arriba se dijo, no sólo de su posible conexión con otros derechos constitucionales, sino también con otros bienes constitucionalmente protegidos. Puede el legislador introducir limitaciones o condiciones de ejercicio del derecho, siempre que con ello no rebase su contenido esencial.[312]

The Federal Supreme Court of Brazil similarly declared in a 2007 decision:

> A greve, poder de fato, é a arma mais eficaz de que dispõem os trabalhadores visando à conquista de melhores condições de vida. Sua auto-aplicabilidade é inquestionável; trata-se de direito fundamental de caráter instrumental. A Constituição, ao dispor sobre os trabalhadores em geral, não prevê limitação do direito de greve: a eles compete decidir sobre a oportunidade de exercê-lo e sobre os interesses que devam por meio dela defender. Por isso a lei não pode restringi-lo, senão protegê-lo, sendo constitucionalmente admissíveis todos os tipos de greve.[313]

And, whilst no argument is made that papal encyclicals are binding sources of law, the recognition of the right to strike by the Catholic Church is further evidence of the universally accepted nature of the right. In Encyclical *Rerum Novarum – On the Rights and Duties of Capital and Labour* (1891), Pope Leo XII explained:

> When work people have recourse to a strike and become voluntarily idle, it is frequently because the hours of labor are too long, or the work too hard, or because they consider their wages insufficient. The grave inconvenience of this not uncommon occurrence should be obviated by public remedial measures... The laws should forestall and prevent such troubles from arising; they should lend their influence and authority to the removal in good time of the causes which lead to conflicts between employers and employed.[314]

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[312] Tribunal Constitucional de España, Sentencia 11/1981, April 8, 1981, available at http://hj.tribunalconstitucional.es/HJ/es/Resolucion/Show/11.

[313] Supremo Tribunal Federal, MI 712/PA-PARÁ, Mandado de Injunção, Relator(a) Min. Eros Grau, Julgamento 25/10/2007, Órgão Julgador: Tribunal Pleno, available at http://www.stf.jus.br/portal/jurisprudencia/listarJurisprudencia.asp?s1=%28greve%2C+conquista%29&base=baseAcordaos&url=http://tinyurl.com/pf4f2rk

[314] See para. 39. Text available at http://www.vatican.va/holy_father/leo_xiii/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum_en.html.

Nearly 100 years later, John Paul II, in *Laborem Exercens* (1981), Section 20 "The Importance of Unions", explained:

> *One method* used by unions in pursuing the just rights of their members is *the strike* or work stoppage, as a kind of ultimatum to the competent bodies, especially the employers. This method is recognized by Catholic social teaching as legitimate in the proper conditions and within just limits. In this connection workers should be assured the *right to strike,* without being subjected to personal penal sanctions for taking part in a strike.[315]

Again, we do not argue that the right to strike is an absolute right under customary law. Most of the international instruments, national laws and decisions impose some procedural requirements of greater or lesser stringency. These are characterised variously as "necessary in a democratic society," "not jeopardizing public health," "in accordance with national law," and so on. This last is perhaps the most restrictive on its face, though national law cannot become an excuse to nullify basic rights.

Between the extremes of an unconditional right to strike and an absolute prohibition on strikes "in accordance with national law," the international community is converging on the general principle of the right to strike within reasonable limits. The authors of this document acknowledge the tension between countries' varying degrees of limitations on the right to strike and the normal requirement of uniformity of state practice to find customary international law. It is believed that the tension can be resolved by distinguishing between divergence in detail and convergence in principle. Procedural requirements in national law are details; the right to strike within reasonable limits is the common principle.

Importantly, customary international law does not require absolute uniformity of practice. As the International Court of Justice said in the Nicaragua Case:

> The Court does not consider that, for a rule to be established as customary, the corresponding practice must be in absolutely rigorous conformity with the rule. In order to deduce the existence of customary rules, the Court deems it sufficient that the conduct of States should, in general, be consistent with such rules...[316]

All states recognise the right to strike within reasonable limits, and their conduct is consistent with this rule.
What limits are reasonable? The ILO is the best placed and most appropriate forum to articulate such limits. It is the specialised agency of the United Nations and the entity

[315] Text available at http://www.vatican.va/holy_father/john_paul_ii/encyclicals/documents/hf_jp-ii_enc_14091981_laborem-exercens_en.html.
[316] Military and Paramilitary Activities (Nicaragua/United States of America) Merits. J. 27.6.1986 I.C.J. Reports 1986, p. 14.

charged by the international community with promoting "recognition of the principle of freedom of association."[317]

As set forth in previous sections of this document, the ILO has created the Committee of Experts and the CFA to oversee application of Conventions 87 and 98. These oversight committees give detail and substance to the international consensus on the general principle of the right to strike within reasonable limits. Customary international law supports the right to strike within reasonable limits. The Employers' Group argument to the contrary notwithstanding, the ILO is the competent international entity, and inside the ILO the two oversight committees are the competent bodies, to articulate the parameters of the customary law principle.

IX. CONCLUSION

This brief establishes that the right to strike is enshrined in ILO Convention 87, as well as within the broader international legal framework. Indeed, it can be said that the right to strike is now customary international law. The supervisory system of the ILO was correct in observing that the right to strike exists, and acted within their constitutional mandate and in conformity with the rules of treaty interpretation in so holding. Were the matter to be considered by the ICJ it is submitted that the latter should defer to the well-reasoned views of the ILO supervisory system, and in particular the Committee of Experts, and find that C87 protects the right to strike.

In addition to the legal reasoning herein, the ICJ should also support the observations of the ILO for policy reasons. A finding contrary to the decades-long uncontested "jurisprudence" of the supervisory system would throw it into complete disarray and dispel any legal certainty or coherence upon which the tripartite constituents rely. The Committee of Experts in particular would emerge as a severely weakened body whose observations would be perpetually open to question. It would also serve to undermine the instruments and jurisprudence of other intergovernmental institutions as well as regional and national courts that have relied on the ILO for guidance. Further, an opinion in the negative would upend industrial relations worldwide, opening a door for governments to (further) restrict or limit the right to strike – as the matter would be perceived to be one for national law only. Employers would have an enormous and unforeseen advantage over labour, as collective bargaining would essentially become a dead letter.

Dated April 2014

[317] ILO Constitution, Preamble

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ANNEX I: CONVENTION 87

C087 - Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Entry into force: 4 Jul 1950
Adoption: San Francisco, 31st ILC session (09 Jul 1948)
Status: Up-to-date instrument (Fundamental Convention)

Preamble

The General Conference of the International Labour Organisation,

Having been convened at San Francisco by the Governing Body of the International Labour Office, and having met in its Thirty-first Session on 17 June 1948;

Having decided to adopt, in the form of a Convention, certain proposals concerning freedom of association and protection of the right to organise, which is the seventh item on the agenda of the session;

Considering that the Preamble to the Constitution of the International Labour Organisation declares "recognition of the principle of freedom of association" to be a means of improving conditions of labour and of establishing peace;

Considering that the Declaration of Philadelphia reaffirms that "freedom of expression and of association are essential to sustained progress";

Considering that the International Labour Conference, at its Thirtieth Session, unanimously adopted the principles which should form the basis for international regulation;

Considering that the General Assembly of the United Nations, at its Second Session, endorsed these principles and requested the International Labour Organisation to continue every effort in order that it may be possible to adopt one or several international Conventions;

adopts this ninth day of July of the year one thousand nine hundred and forty-eight the following Convention, which may be cited as the Freedom of Association and Protection of the Right to Organise Convention, 1948:

PART I. FREEDOM OF ASSOCIATION

Article 1

Each Member of the International Labour Organisation for which this Convention is in force undertakes to give effect to the following provisions.

Article 2

Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.

Article 3

1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof.

Article 4

Workers' and employers' organisations shall not be liable to be dissolved or suspended by administrative authority.

Article 5

Workers' and employers' organisations shall have the right to establish and join federations and confederations and any such organisation, federation or confederation shall have the right to affiliate with international organisations of workers and employers.

Article 6

The provisions of Articles 2, 3 and 4 hereof apply to federations and confederations of workers' and employers' organisations.

Article 7

The acquisition of legal personality by workers' and employers' organisations, federations and confederations shall not be made subject to conditions of such a character as to restrict the application of the provisions of Articles 2, 3 and 4 hereof.

Article 8

1. In exercising the rights provided for in this Convention workers and employers and their respective organisations, like other persons or organised collectivities, shall respect the law of the land.
2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention.

Article 9

1. The extent to which the guarantees provided for in this Convention shall apply to the armed forces and the police shall be determined by national laws or regulations.
2. In accordance with the principle set forth in paragraph 8 of Article 19 of the Constitution of the International Labour Organisation the ratification of this Convention by any Member shall not be deemed to affect any existing law, award, custom or agreement in virtue of which members of the armed forces or the police enjoy any right guaranteed by this Convention.

Article 10

In this Convention the term ***organisation*** means any organisation of workers or of employers for furthering and defending the interests of workers or of employers.

PART II. PROTECTION OF THE RIGHT TO ORGANISE

Article 11

Each Member of the International Labour Organisation for which this Convention is in force undertakes to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise.

PART III. MISCELLANEOUS PROVISIONS

Article 12

1.In respect of the territories referred to in Article 35 of the Constitution of the International Labour Organisation as amended by the Constitution of the International Labour Organisation Instrument of Amendment 1946, other than the territories referred to in paragraphs 4 and 5 of the said article as so amended, each Member of the Organisation which ratifies this Convention shall communicate to the Director-General of the International Labour Office with or as soon as possible after its ratification a declaration stating:

(a) the territories in respect of which it undertakes that the provisions of the Convention shall be applied without modification;
(b) the territories in respect of which it undertakes that the provisions of the Convention shall be applied subject to modifications, together with details of the said modifications;
(c) the territories in respect of which the Convention is inapplicable and in such cases the grounds on which it is inapplicable;
(d) the territories in respect of which it reserves its decision.

2. The undertakings referred to in subparagraphs (a) and (b) of paragraph 1 of this Article shall be deemed to be an integral part of the ratification and shall have the force of ratification.

3. Any Member may at any time by a subsequent declaration cancel in whole or in part any reservations made in its original declaration in virtue of subparagraphs (b), (c) or (d) of paragraph 1 of this Article.
4. Any Member may, at any time at which the Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of such territories as it may specify.

Article 13

1. Where the subject-matter of this Convention is within the self-governing powers of any non-metropolitan territory, the Member responsible for the international relations of that territory may, in agreement with the government of the territory, communicate to the Director-General of the International Labour Office a declaration accepting on behalf of the territory the obligations of this Convention.
2. A declaration accepting the obligations of this Convention may be communicated to the Director-General of the International Labour Office:

(a) by two or more Members of the Organisation in respect of any territory which is under their joint authority; or

(b) by any international authority responsible for the administration of any territory, in virtue of the Charter of the United Nations or otherwise, in respect of any such territory.

3. Declarations communicated to the Director-General of the International Labour Office in accordance with the preceding paragraphs of this Article shall indicate whether the provisions of the Convention will be applied in the territory concerned without modification or subject to modifications; when the declaration indicates that the provisions of the Convention will be applied subject to modifications it shall give details of the said modifications.
4. The Member, Members or international authority concerned may at any time by a subsequent declaration renounce in whole or in part the right to have recourse to any modification indicated in any former declaration.
5. The Member, Members or international authority concerned may, at any time at which this Convention is subject to denunciation in accordance with the provisions of Article 16, communicate to the Director-General a declaration modifying in any other respect the terms of any former declaration and stating the present position in respect of the application of the Convention.

PART IV. FINAL PROVISIONS

Article 14

The formal ratifications of this Convention shall be communicated to the Director-General of the International Labour Office for registration.

Article 15

1. This Convention shall be binding only upon those Members of the International Labour Organisation whose ratifications have been registered with the Director-General.
2. It shall come into force twelve months after the date on which the ratifications of two Members have been registered with the Director-General.
3. Thereafter, this Convention shall come into force for any Member twelve months after the date on which its ratifications has been registered.

Article 16

1. A Member which has ratified this Convention may denounce it after the expiration of ten years from the date on which the Convention first comes into force, by an act communicated to the Director-General of the International Labour Office for registration. Such denunciation shall not take effect until one year after the date on which it is registered.
2. Each Member which has ratified this Convention and which does not, within the year following the expiration of the period of ten years mentioned in the preceding paragraph, exercise the right of denunciation provided for in this Article, will be bound for another period of ten years and, thereafter, may denounce this Convention at the expiration of each period of ten years under the terms provided for in this Article.

Article 17

1. The Director-General of the International Labour Office shall notify all Members of the International Labour Organisation of the registration of all ratifications, declarations and denunciations communicated to him by the Members of the Organisation.
2. When notifying the Members of the Organisation of the registration of the second ratification communicated to him, the Director-General shall draw the attention of the Members of the Organisation to the date upon which the Convention will come into force.

Article 18

The Director-General of the International Labour Office shall communicate to the Secretary-General of the United Nations for registration in accordance with Article 102 of the Charter of the United Nations full particulars of all ratifications, declarations and acts of denunciation registered by him in accordance with the provisions of the preceding articles.

Article 19

At such times as it may consider necessary the Governing Body of the International Labour Office shall present to the General Conference a report on the working of this Convention and shall examine the desirability of placing on the agenda of the Conference the question of its revision in whole or in part.

Article 20

1. Should the Conference adopt a new Convention revising this Convention in whole or in part, then, unless the new Convention otherwise provides:

(a) the ratification by a Member of the new revising Convention shall ipso jure involve the immediate denunciation of this Convention, notwithstanding the provisions of Article 16 above, if and when the new revising Convention shall have come into force;

(b) as from the date when the new revising Convention comes into force this Convention shall cease to be open to ratification by the Members.

2. This Convention shall in any case remain in force in its actual form and content for those Members which have ratified it but have not ratified the revising Convention.

Article 21

The English and French versions of the text of this Convention are equally authoritative.

ANNEX II: ILO SUPERVISORY MACHINERY

ILO supervision of obligations under the Organization's constitution and the standards it adopts is composed of a series of complementary procedures that form a unified supervisory process.

Tripartism: A unique feature of ILO supervision arises from the tripartite nature of the Organization. Unlike all other international supervisory procedures, the ILO's non-governmental constituents – organizations of employers and of workers – have standing under article 23 of the ILO Constitution to submit their own reports on governments' performance under a ratified Convention, and these comments form an important part of the supervisory process.[318] They may also file complaints under articles 24 and 26 of the Constitution (see under Complaints Procedures below), and they form an important part of several of the ILO's supervisory procedures. It is important to recognize that this is a full right of participation, and is not limited to providing additional information or informing supervisory bodies, as is the case in purely inter-governmental organizations.

A. Regular supervisory process

When a government ratifies an ILO Convention, the regular supervisory mechanism comes into operation. According to the Constitution,[319] each government is required to submit a report each year on each ratified Convention, covering 'the measures which it has taken to give effect to the provisions of Conventions to which it is a party.' Originally, these reports were examined directly by the plenary of International Labour Conference. This quickly became impractical as the number of conventions, ratifications and Members grew, and gradually greater intervals were introduced, while the ILO created other bodies to examine governments' reports. Today, reports on some more important conventions are required on a three-year basis, and all others are due at five-year intervals.[320] The ILO supervisory bodies can also call for more frequent reports if needed, for instance when violations are noted or suspected, or when a government consistently fails to provide full information.

The *Committee of Experts on the Application of Conventions and Recommendations* is the main supervisory body. It is composed of 20 independent experts on labour law and social questions, appointed by the Director-General with the approval of the Governing Body. It meets annually to examine reports received from governments – more than 2,000 reports are examined each year. If the Committee notes problems in the application of ratified

[318] In a typical year, some 15 per cent of governments' reports under article 22 are commented on by employers' and workers' organizations, either from the country concerned or from another country – including international trade union federations such as the International Trade Union Confederation (ITUC).
[319] ILO Constitution, Article 22.
[320] The 12 Conventions to which the three-year interval applies are the eight fundamental human rights conventions (Conventions Nos. 87 and 98 on freedom of Association and collective bargaining, Nos. 29 and 105 on forced labour, Nos. 100 and 111 on discrimination, and Nos. 138 and 182 on child labour), plus two Conventions on labour inspection (Conventions Nos. 81 and 129), the Employment Policy Convention, 1964 (No. 122) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Note that this system is under continuous review, and is subject to change. See the ILO website for the latest position.

Conventions, it may respond in two ways. In most cases it makes “Direct Requests”, which are sent directly to governments and to workers' and employers' organizations in the countries concerned, to seek corrective measures or simply to ask for more information. These are not immediately published,[321] and if governments furnish the information or take the measures requested, the matter goes no further. For more serious or persistent problems, the Committee of Experts makes “Observations”, which are published as part of the Committee's annual report to the International Labor Conference.[322]

The *Conference Committee on the Application of Conventions and Recommendations* is established each year by the International Labour Conference. It reflects the ILO's tripartite structure of governments and of workers' and employers' representatives. The Conference Committee holds a general discussion on the report of the Committee of Experts It then selects 25 especially important or persistent cases and requests the governments concerned to appear before it and explain the reasons for the situations commented on by the Committee of Experts. Discussions by the Conference Committee are in turn taken into account by the Committee of Experts when it next examines the application of the Convention concerned. The Conference Committee's report is published in the *Proceedings of the International Labor Conference* each year, along with the Conference's discussion of the Committee's report.

B. Complaint Procedures

There are also procedures to consider complaints that ILO conventions or basic principles are not being adequately applied, two of which are provided for in the constitution and the other established by agreement with the United Nations.

1. Representations Under Article 24 of the ILO Constitution

Under article 24 of the ILO Constitution, a representation may be filed if a country "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party."

A representation thus may be filed only against a State that has ratified the Convention concerned. Representations relating to freedom of association issues will normally be referred to the Committee on Freedom of Association (see below). A representation may be submitted by "an industrial association of employers or of workers", that is, a trade union or an employers' organization. They may be local or national organizations, or regional or international confederations.

The Constitution provides only that the Governing Body decide whether or not it is satisfied with the government’s reply to the representation, but in fact a rather elaborate procedure has been developed in this respect. After a representation has been declared receivable, a

[321] Direct requests are made public about six months after their adoption, in the ILO's data base on standards and supervision, NORMLEX, which is available on-line at www.ilo.org, under "Labour Standards". All other supervisory material is also published in this manner.

[322] Report III (Part 1A) at each session of the Conference.

special tripartite committee appointed by the Governing Body from among its members examines the substance of the representation. The committee communicates with the filing organization and with the government concerned. The government is asked to comment on the allegations and to "make such statement on the subject as it may think fit". When all the information from both parties has been received, or if no reply is received within the time limits set, the committee makes its findings on compliance and makes recommendations to the Governing Body.

If the Governing Body decides that the government's explanations are not satisfactory, it may decide to publish the representation and the government's reply, along with its own discussion of the case — i.e., to give it wider publicity than simply including the case in its records. The questions raised in a representation are followed up by the ILO's regular supervisory machinery, i.e., by the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations.

2. Complaints Under Article 26 of the ILO Constitution

As with representations, a *complaint* must be based on allegations that the country is not 'securing the effective observance of any Convention' it has ratified. A complaint may be filed against any Member State of the ILO. In fact, even if a State has withdrawn from the ILO but still has obligations under a Convention it ratified while a Member, a complaint may be filed. The complaint procedure may be instituted by *Governments that have ratified the same Convention,* by *delegates to the International Labor Conference*, or by *the Governing Body on its own motion*.

The Governing Body forwards the complaint to the government for its comments. It then normally establishes a Commission of Inquiry, composed of three prominent and independent personalities.[323] Commissions of Inquiry are free to set their own rules and procedures, but certain practices have gradually become established. Commissions of Inquiry usually hear representatives of the parties and witnesses presented by them and sometimes summon witnesses themselves. They often also conduct on-site visits to the countries concerned.

A Commission arrives at conclusions and may make recommendations to the parties (article 28 of the Constitution). A report of the case is communicated to the ILO Governing Body and published. Note that it is submitted for information, and not for adoption – i.e., the Commission of Inquiry has the entire authority to make findings of compliance or failure to comply once appointed subject to article 29 (see below). A Commission of Inquiry may even address broader questions, such as the necessity of ending a state of emergency in order to promote civil liberties.

A report of a Commission of Inquiry is communicated to the Governing Body and to each of the governments concerned and published in the ILO's *Official Bulletin*; it is also published

[323] There have been 13 Commissions of Inquiry in the ILO's history.

on the ILO's data base on standards and supervision, and made available on the Internet.[324] In most cases, the Committee of Experts and the Conference Committee will continue to examine implementation of the Conventions concerned, with reference to the findings of the Commission of Inquiry, as is done in connection with representations.

Under article 29(2) of the ILO Constitution, any government concerned in a complaint may refer the complaint to the International Court of Justice if it does not accept the Commission's recommendations. The decision of the International Court of Justice in such cases is final (Article 31), and the Court 'may affirm, vary, or reverse the findings or recommendations of the Commission of Inquiry' (Article 32). Article 33 of the Constitution contains the only provisions allowing the ILO take action on the application of a Convention other than providing evaluation or assistance:

> In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

Article 33 has been used only once in the history of the ILO, concerning Myanmar and forced labour.

3. Special Procedures for Complaints Concerning Freedom of Association

The most widely used ILO petition procedure is the special procedure established for complaints concerning violations of freedom of association. These procedures are not specifically provided for in the ILO Constitution but were established in 1951 by agreement between the ILO and the UN Economic and Social Council. The Committee on Freedom of Association has considered nearly 3,000 cases.

There are two bodies that consider complaints in this area: the Governing Body's *Committee on Freedom of Association* (CFA), and the *Fact-Finding and Conciliation Commission on Freedom of Association* (FFCC).

a) The Committee on Freedom of Association

This Committee was established in order to make a preliminary examination of complaints submitted to the Fact-Finding and Conciliation Commission (FFCC) (below). It shortly became evident that the requirement that governments agree to the referral of complaints to the FFCC would allow very few complaints to be considered as to their substance, and fairly quickly the CFA began making its own examination of such complaints.

[324] See NORMLEX on the ILO web site.

The basic authority for the examination of complaints lies in the ILO Constitution itself, which consecrates the principle of freedom of association.[325] A complaint may therefore be made against any Member of the ILO, whether or not the Conventions adopted on this subject have been ratified, and no formal relationship exists between the Conventions and the CFA procedures, though the CFA often refers to these Conventions.

The Committee's members are drawn from the Governing Body, and it meets as a committee of the Governing Body. It has nine members, three from each group, and is chaired by an independent person.

The CFA has gradually developed a set of principles developing its understanding of the requirements of the ILO Constitution, which have been summarized in a publication entitled *Freedom of Association: Digest of Decisions of the Freedom of Association Committee of the Governing Body of the ILO*, most recently updated by the International Labor Office in 2006.[326]

A government may submit complaints to the CFA alleging violations by another government, but no government has ever done so. Three categories of employers' and workers' organizations may file complaints: national organizations directly concerned with the matter; international organizations which have consultative status with the ILO; and other international organizations without consultative status, if the allegations relate to matters directly affecting their affiliated organizations.

If the CFA finds that no violation has been committed or that the alleged violation has ceased, it will halt further examination. If it finds that violations have occurred, it will make recommendations to the parties to correct the situation. The CFA may ask the government concerned to continue reporting to it, or it may refer the case to the Committee of Experts on the Application of Conventions and Recommendations (if the relevant Conventions have been ratified). In exceptional cases, the CFA may recommend referral of the case to the Fact-Finding and Conciliation Commission.

b) The Fact-Finding and Conciliation Commission

The FFCC is an *ad hoc* body of independent experts appointed by the Governing Body to examine allegations of infringement of freedom of association. It was established in 1951 at the same time as the CFA, and was intended to be the primary vehicle for examining such complaints, before it became clear that it could not function easily and the CFA gradually took over the responsibility for most complaints. It then became a forum for the

[325] The preamble of the Constitution provides for "recognition of the principle of freedom of association", and section I of the Declaration of Philadelphia provides that "freedom of expression and of association are essential to sustained progress." It also provides that '(d) the war against want requires to be carried on with unrelenting vigour within each nation, and by continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision with a view to the promotion of the common welfare.'

[326] ILO, D*igest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO* (5th rev. ed., 2006**).**

examination of the more serious cases of violations of freedom of association. Although it has been convened only rarely,[327] it has been utilized in cases of particular political delicacy. As in the case of complaints before the CFA, cases before the FFCC deal with freedom of association. A complaint may be submitted against any State, whether or not it has ratified the freedom of association Conventions or is a Member of the ILO. If a State is not a member of the ILO but is a Member of the United Nations, a complaint concerning it may be referred to the FFCC by ECOSOC. In all cases, however, the State concerned *must consent to the referral of the case* to the FFCC. The only exception to this rule is when a complaint under article 26 of the ILO Constitution concerns ratified freedom of association Conventions and is referred to the special procedures on this subject.

Cases may be referred to the FFCC in four ways, each of which requires the participation of a government or international body: *by the Governing Body, on the recommendation of the CFA*; *by the Governing Body, on the recommendation of the International Labor Conference*; *at the request of the government concerned*; and *by the UN Economic and Social Council*. With the consent of the government concerned, ECOSOC can even refer allegations against states that are Members of the United Nations but not of the ILO. (This has been done in cases concerning Lesotho and the United States, both of which had been ILO members but which had withdrawn at the time of the complaint. This process was used most recently with respect to South Africa. In all three cases, examination of a case by the FFCC preceded the country's return to the ILO.[328])

The mandate of a Commission is to ascertain the facts and to discuss the situation with the governments concerned, with a view to resolving the difficulties by agreement or friendly settlement. In its dual role of investigator and conciliator, it makes a thorough examination of the facts and formulates recommendations designed to provide a common ground for the resolution of a dispute. In doing so, it makes findings on compliance with the principles of freedom of association. Once a decision is reached, it is published in a special report on the case.

Like all international complaints procedures, a commission's recommendations have no "enforcement" measures available to ensure that its recommendations are implemented. Since a commission is convened to examine a particular case, it does not itself monitor the effect of its recommendations. However, compliance with the FFCC's recommendations is monitored by other ILO bodies. If the country concerned has ratified the ILO Conventions on freedom of association, the regular supervisory bodies continue to examine the effect given to FFCC recommendations and may refer to the FFCC's conclusions in subsequent comments on implementation of the convention in question. The situation also may be followed by the Conference Committee on the Application of Conventions and Recommendations, by the International Labor Conference in plenary session, and by the Governing Body. If the relevant Conventions have not been ratified, FFCC recommendations are followed up by the CFA.

[327] The FFCC has been convened only 6 times, most recently in 1992.

[328] See reports of FFCC cases at http://www.ilo.org/global/standards/information-resources-and-publications/WCMS_160778/lang--en/index.htm.

ANNEX III: VIENNA CONVENTION ON THE LAW OF TREATIES (VCLT) - RELEVANT SECTIONS

Article 4: Non-retroactivity of the present Convention

Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which are concluded by States after the entry into force of the present Convention with regard to such States.

Article 5: Treaties constituting international organizations and treaties adopted within an international organization

The present Convention applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization without prejudice to any relevant rules of the organization.

Article 31: General rule of interpretation

1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.

2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
(a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
(b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.

3. There shall be taken into account, together with the context:
(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
(b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
(c) any relevant rules of international law applicable in the relations between the parties.

4. A special meaning shall be given to a term if it is established that the parties so intended.

Article 32: Supplementary means of interpretation

Recourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning resulting from the application of article 31, or to determine the meaning when the interpretation according to article 31:

(a) leaves the meaning ambiguous or obscure; or
(b) leads to a result which is manifestly absurd or unreasonable

ANNEX IV: THE RIGHT TO STRIKE IN CONSITUTIONS OF THE WORLD

Country	Reference to 'Right to Strike' in the Constitution
Albania (1998)	*Article 51* 1. The **right of an employee to strike** in connection with work relations is guaranteed. 2. Limitations on particular categories of employees may be established by law to assure essential social services.
Algeria (1989)	*Article 57 - Le **droit de grève** est reconnu.* Il s'exerce dans le cadre de la loi. Celle-ci peut en interdire ou en limiter l'exercice dans les domaines de défense nationale et de sécurité, ou pour tous services ou activités publics d'intérêt vital pour la communauté.
Angola (2010)	*Article 51 (Right to strike and prohibition of lock-outs)* 1. Workers shall have the **right to strike.** 2. Lock-outs shall be prohibited and employers may not bring a company totally or partially to standstill by forbidding workers access to workplaces or similar as a means of influencing the outcome of labour conflicts. 3. The law shall regulate the exercise of the **right to strike** and shall establish limitations on the services and activities considered essential and urgent in terms of meeting vital social needs.
Argentina (1994)	*Artículo 14* Queda garantizado a los gremios: concertar convenios colectivos de trabajo; recurrir a la conciliación y al arbitraje; **el derecho de huelga.** Los representantes gremiales gozarán de las garantías necesarias para el cumplimiento de su gestión sindical y las relacionadas con la estabilidad de su empleo.
Armenia (1995)	*Article 32* Employees shall have the **right to strike** for the protection of their economic, social and employment interests, the procedure for and limitations thereon shall be prescribed by law.
Azerbaijan (1995)	*Article 36. Right to strike* I. Everyone has the **right to be on strike**, both individually and together with others. II. **Right to strike** for those working based on labor agreements might be restricted only in cases envisaged by the law. Soldiers and civilians employed in the Army and other military formations of the Azerbaijan Republic have no right to go on strike. III. Individual and collective labor disputes are settled in line with legislation.
Belarus (1994)	*Article 41* Citizens shall have the right to protection of their economic and social interests, including the right to form trade unions and conclude collective contracts (agreements), and the **right to strike**.
Benin (1990)	*Article 31* L'État reconnaît et garantit le **droit de grève**. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et ses intérêts soit individuellement, soit collectivement ou par l'action syndicale. Le droit de grève s'exerce dans les conditions définies par la loi.

Plurinational State of Bolivia (2009)	*Artículo* *53* Se garantiza el **derecho a la huelga** como el ejercicio de la facultad legal de las trabajadoras y los trabajadores de suspender labores para la defensa de sus derechos, de acuerdo con la ley.
Brazil (1988)	*Article* *9* The **right to strike** is guaranteed, it being the competence of workers to decide on the advisability of exercising it and on the interests to defend thereby.
Bulgaria (1991)	*Article* *50* Workers and employees shall have the **right to strike** in defence of their collective economic and social interests. This right shall be exercised in accordance with conditions and procedures established by law.
Burkina Faso (1991)	*Article* *22* Le **droit de grève** est garanti. Il s'exerce conformément aux lois en vigueur.
Burundi (2005)	*Article* *37* Le droit de fonder des syndicats et de s'y affilier, ainsi que le **droit de grève**, sont reconnus. La loi peut réglementer l'exercice de ces droits et interdire à certaines catégories de personnes de se mettre en grève. Dans tous les cas, ces droits sont interdits aux membres des corps de défense et de sécurité ainsi qu'aux magistrats.
Cambodia (1993)	*Article* *37* Les **droits de grève** et de manifestations pacifiques doivent s'exercer dans le cadre de la loi.
Cameroon (1972)	La liberté d'association, la liberté syndicale et le **droit de grève** sont garantis dans les conditions fixées par la loi.
Cape Verde (1992)	*Article 66. The Right to Strike and Prohibition of Lock-Out* (1) The **right to strike** shall be guaranteed; workers have the right to decide on the occasions to strike and the interests which the strike is intended to defend. (2) The law shall regulate the exercise of the right to strike. (3) Lock-outs shall be prohibited.
Central African Republic (2004)	*Article* *10* Le droit syndical est garanti et s'exerce librement dans le cadre des lois qui le régissent. Tout travailleur peut adhérer au syndicat de son choix et défendre ses droits et intérêts par l'action syndicale. Le **droit de grève** est garanti et s'exerce dans le cadre des lois qui le régissent et ne peut, en aucun cas, porter atteinte ni à la liberté de travail, ni au libre exercice du droit de propriété.
Chad (1996)	*Article* *29* Le **droit de grève** est reconnu. Il s'exerce dans le cadre des lois qui le réglementent.

Colombia (1991)	*Artículo* *56* Se garantiza el **derecho de huelga**, salvo en los servicios públicos esenciales definidos por el legislador. La ley reglamentará este derecho. Una comisión permanente integrada por el Gobierno, por representantes de los empleadores y de los trabajadores, fomentará las buenas relaciones laborales, contribuirá a la solución de los conflictos colectivos de trabajo y concertará las políticas salariales y laborales. La ley reglamentará su composición y funcionamiento.
Congo (2002)	*Article* *25* A l'exception des agents de la force publique, les citoyens congolais jouissent des libertés syndicales et du **droit de grève** dans les conditions fixées par la loi.
Democratic Republic of the Congo (2005)	*Article* *39* Le **droit de grève** est reconnu et garanti. Il s'exerce dans les conditions fixées par la loi qui peut en interdire ou en limiter l'exercice dans les domaines de la défense nationale et de la sécurité ou pour toute activité ou tout service public d'intérêt vital pour la nation.
Costa Rica (1949)	*Artículo* *61* Se reconoce el derecho de los patronos al paro y el de los **trabajadores a la huelg**a, salvo en los servicios públicos, de acuerdo con la determinación que de éstos haga la ley y conforme a las regulaciones que la misma establezca, las cuales deberán desautorizar todo acto de coacción o de violencia.
Côte d'Ivoire (2000)	*Article* *18* Le droit syndical et le **droit de grève** sont reconnus aux travailleurs des secteurs public et privé qui les exercent dans les limites déterminées par la loi.
Croatia (1990)	*Article* *61* The **right to strike** shall be guaranteed. The **right to strike** may be restricted in the armed forces, the police, the civil service and public services as specified by law.
Cyprus (1960)	*Article* *27* 1. The **right to strike** is recognised and its exercise may be regulated by law for the purposes only of safeguarding the security of the Republic or the constitutional order or the public order or the public safety or the maintenance of supplies and services essential to the life of the inhabitants or the protection of the rights and liberties guaranteed by this Constitution to any person. 2. The members of the armed forces, of the police and of the gendarmerie shall not have the right to strike. A law may extend such prohibition to the members of the public service.
Czech Republic (1992)	*Article* *27* (1) Everyone has the right to associate freely with others for the protection of his economic and social interests. (2) Trade unions shall be established independently of the state. No limits may be placed upon the number of trade union organizations, nor may any of them be given preferential treatment in a particular enterprise or sector of industry. (3) The activities of trade unions and the formation and activities of similar associations for the protection of economic and social interests may be limited by law in the case of measures necessary in a democratic society for the protection of the security of the state, public order, or the rights and freedoms of others.

	(4) The **right to strike** is guaranteed under the conditions provided for by law; this right does not appertain to judges, prosecutors, or members of the armed forces or security corps.
Djibouti (1992)	*Article* *15* Tous les citoyens ont le droit de constituer librement des associations et syndicats sous réserve de se conformer aux formalités édictées par les lois et règlements. Le **droit de grève** est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail.
Dominican Republic (2010)	*Artículo* *56* 6) Para resolver conflictos laborales y pacíficos se reconoce el **derecho de trabajadores a la huelga** y de empleadores al paro de las empresas privadas, siempre que se ejerzan con arreglo a la ley, la cual dispondrá las medidas para garantizar el mantenimiento de los servicios públicos o los de utilidad pública.
Ecuador (2008)	*Article* *326* 14. Se reconocerá el **derecho de las personas trabajadoras y sus organizaciones sindicales a la huelga**. Los representantes gremiales gozarán de las garantías necesarias en estos casos. Las personas empleadoras tendrán derecho al paro de acuerdo con la ley.
El Salvador (1983)	*Article* *48* se reconoce el derecho de los patronos al paro y el de los **trabajadores a la huelga**, salvo en los servicios públicos esenciales determinados por la ley. Para el ejercicio de estos derechos no será necesaria la calificación previa, después de haberse procurado la solución del conflicto que los genera mediante las etapas de solución pacífica establecidas por la ley. Los efectos de la huelga o el paro se retrotraerán al momento en que éstos se inicien. La ley regulará estos derechos en cuanto a sus condiciones y ejercicio.
Equatorial Guinea (1991)	*Artículo* *10* El **derecho a la huelga** es reconocido y se ejerce en las condiciones previstas por la Ley.
Estonia (1992)	*Article* *29* Everyone may freely belong to unions and federations of employees and employers. Unions and federations of employees and employers may uphold their rights and lawful interests by means which are not prohibited by law. The conditions and procedure for the exercise of the **right to strike** shall be provided by law.
Ethiopia (1994)	*Article* *42* 1. (a) Factory and service workers, farmers, farm labourers, other rural workers and government employees whose work compatibility allows for it and who are below a certain level of responsibility, have the right to form associations to improve their conditions of employment and economic well-being. This right includes the right to form trade unions and other associations to bargain collectively with employers or other organizations that affect their interests. (b) Categories of persons referred to in paragraph (a) of this sub-Article has the right to express grievances, including the **right to strike.** (c) Government employees who enjoy the rights provided under paragraphs (a) and (b) of this sub - Article shall be determined by law.

France (1958)	*Préambule, C 1946* La loi garantit à la femme, dans tous les domaines, des droits égaux à ceux de l'homme. Chacun a le devoir de travailler et le droit d'obtenir un emploi. Nul ne peut être lésé, dans son travail ou son emploi, en raison de ses origines, de ses opinions ou de ses croyances. Tout homme peut défendre ses droits et ses intérêts par l'action syndicale et adhérer au syndicat de son choix. Le **droit de grève** s'exerce dans le cadre des lois qui le réglementent. Tout travailleur participe, par l'intermédiaire de ses délégués, à la détermination collective des conditions de travail ainsi qu'à la gestion des entreprises. La Nation garantit l'égal accès de l'enfant et de l'adulte à l'instruction, à la formation professionnelle et à la culture. L'organisation de l'enseignement public gratuit et laïque à tous les degrés est un devoir de l'Etat.
Georgia (1995)	*Article 33* The **right to strike** shall be recognised. Procedure of exercising this right shall be determined by law. The law shall also establish the guarantees for the functioning of services of vital importance.
Greece (1975)	*Article 23* 1. The State shall adopt due measures safeguarding the freedom to unionise and the unhindered exercise of related rights against any infringement thereon within the limits of the law. 2. **Strike constitutes a right** to be exercised by lawfully established trade unions in order to protect and promote the financial and the general labour interests of working people. Strikes of any nature whatsoever are prohibited in the case of judicial functionaries and those serving in the security corps. The **right to strike** shall be subject to the specific limitations of the law regulating this right in the case of public servants and employees of local government agencies and of public law legal persons as well as in the case of the employees of all types of enterprises of a public nature or of public benefit, the operation of which is of vital importance in serving the basic needs of the society as a whole. These limitations may not be carried to the point of abolishing the right to strike or hindering the lawful exercise thereof.
Guatemala (1985)	*Artículo 104* Derecho de huelga y paro. Se reconoce el **derecho de huelga** y para ejercido de conformidad con la ley, después de agotados todos los procedimientos de conciliación. Estos derechos podrán ejercerse únicamente por razones de orden económico social. Las leyes establecerán los casos y situaciones en que no serán permitidos la huelga y el paro. ARTICULO 116 Se reconoce el derecho de huelga de los trabajadores del Estado y sus entidades descentralizadas y autónomas. Este derecho únicamente podrá ejercitarse en la forma que preceptúe la ley de la materia y en ningún caso deberá afectar la tensión de los ser vicios públicos esenciales.

Guinea (2010)	*Article* *20* Le droit au travail est reconnu à tous. L'État crée les conditions nécessaires à l'exercice de ce droit. Nul ne put être lésé dans son travail en raison de son sexe, de sa race, de son ethnie, de ses opinions ou de toute autre cause de discrimination. Chacun a le droit d'adhérer au syndicat de son choix, et de défendre ses droits par l'action syndicale. Chaque travailleur a le droit de participer par l'intermédiaire de ses délégués à la détermination des conditions de travail. Le **droit de grève** est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas porter atteinte à la liberté du travail. La loi fixe les conditions d'assistance et de protection auxquelles ont droit les travailleurs.
Guinea-Bissau (1984)	*Article* *47* 1 - It is recognized workers' **right to strike** under the law which is responsible for defining the scope of professional interests to defend through the strike, and its limitations in essential services and activities in the interest of the pressing needs of society. 2 - It is forbidden to lock out.
Guyana (1980)	*Article* *147* (1) Except with his or her own consent, no person shall be hindered in the enjoyment of his or her freedom of assembly, association and freedom to demonstrate peacefully, that to say, his or her right to assemble freely, to demonstrate peacefully and to associate with other persons and in particular to form or belong to political parties, trade unions or other associations for the protection of his or her interests. (2) Except with his or her own consent no person shall be hindered in the enjoyment of his or her **freedom to strike**. (3) Neither an employer nor a trade union shall be deprived of the right to enter into collective agreements.
Haiti (1987)	*Article* *35.5* Le **droit de grève** est reconnu dans les limites déterminées par la loi.
Honduras (1982)	Artículo 128 Las leyes que rigen las relaciones entre patronos y trabajadores son de orden público. Son nulos los actos, estipulaciones o convenciones que impliquen renuncia, disminuyan, restrinjan o tergiversen las siguientes garantías: 13. Se reconoce el **derecho de huelga** y de paro. La Ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que determine.
Hungary (1949)	*Article* *70/C* (1) Everyone has the right to establish or join organizations together with others with the objective of protecting his economic or social interests. (2) The **right to strike** may be exercised within the framework of the law regulating such right. (3) A majority of two-thirds of the votes of the Members of Parliament present is required to pass the law on the right to strike.
Italy (1947)	Art. 40 The **right to strike** shall be exercised in compliance with the law.

Kazakhstan (1995)	*Article* *24* 3. The right to individual and collective labor disputes with the use of methods for resolving them, stipulated by law including the **right to strike**, shall be recognized.
Kenya (2010)	*Article* *41* (1) Every person has the right to fair labour practices. (2) Every worker has the right— (a) to fair remuneration; (c) to form, join or participate in the activities and programmes of a trade union; and (d) **to go on strike.** (3) Every employer has the right— (e) to form and join an employers organisation; and (f) to participate in the activities and programmes of an employers organisation.
Kyrgyzstan (2010)	*Article* *43* Everyone shall have the **right to strike.**
Latvia (1922)	*Article* *108* Employed persons have the right to a collective labour agreement, and the **right to strike**. The State shall protect the freedom of trade unions.
Lithuania (1992)	*Article* *51* While defending their economic and social interests, employees shall have the **right to strike**. The limitations of this right and the conditions and procedure for its implementation shall be established by law.
Luxembourg (1868)	*Article* *11* (4) La loi garantit le droit au travail et l'Etat veille à assurer à chaque citoyen l'exercice de ce droit. La loi garantit les libertés syndicales et organise le **droit de grève.**
the former Yugoslav Republic of Macedonia (1991)	*Article* *38* The **right to strike** is guaranteed. The law may restrict the conditions for the exercise of the right to strike in the armed forces, the police and administrative bodies.
Madagascar (2010)	*Article* *33* Le **droit de grève** est reconnu sans qu'il puisse être porté préjudice à la continuité du service public ni aux intérêts fondamentaux de la Nation. Les autres conditions d'exercice de ce droit sont fixées par la loi.
Maldives (2008)	*Article* *31* Every person employed in the Maldives and all other workers have the **freedom to stop work and to strike** in order to protest.
Mali (1992)	*Article* *21* Le **droit de grève** est garanti. Il s'exerce dans le cadre des lois et règlements en vigueur.
Mauritania (1991)	*Article* *14* Le **droit de grèv**e est reconnu. Il s'exerce dans le cadre des lois qui le réglementent. La grève peut être interdite par la loi pour tous services ou activités publics d'intérêt vital pour la Nation.

Mexico (1917)	*Artículo 123* XVII. Las leyes **reconocerán como un derecho de los obreros y de los patronos, las huelgas** y los paros; XVIII. Las huelgas serán lícitas cuando tengan por objeto conseguir el equilibrio entre los diversos factores de la producción, armonizando los derechos del trabajo con los del capital. En los servicios públicos será obligatorio para los trabajadores dar aviso, con diez días de anticipación, a la Junta de Conciliación y Arbitraje, de la fecha señalada para la suspensión del trabajo. Las huelgas serán consideradas como ilícitas únicamente cuando la mayoría de los huelguistas ejerciera actos violentos contra las personas o las propiedades, o en caso de guerra, cuando aquéllos pertenezcan a los establecimientos y servicios que dependan del Gobierno.
Republic of Moldova (1994)	*Article 45. Right to strike* (1) The **right to strike** shall be acknowledged. Strikes may be unleashed only with the view of protection the employees' professional interests of economic and social nature. (2) The law shall set forth conditions governing the exercise of the right to strike, as well as the responsibility for illegal unleash of the strikes.
Montenegro (2007)	*Article 66-Strike* The employed shall have the **right to strike.** The right to strike may be limited to the employed in the Army, police, state bodies and public service with the aim to protect public interest, in accordance with the law.
Morocco (2011)	*Article 29* The freedoms of reunion, of assembly, of peaceful demonstration, of association and of syndical and political membership [appartenance], are guaranteed. The **right to strike** is guaranteed. An organic law establishes the conditions and the modalities of its exercise.
Mozambique (2004)	*Article 87* 1. Workers shall have the **right to strike,** and the law shall regulate the exercise of this right. 2. The law shall restrict the exercise of the **right to strike** in essential services and activities, in the interest of the pressing needs of society and of national security. 3. Lock outs shall be prohibited.
Nicaragua (1987)	*Artículo 83* Se reconoce el **derecho a la huelga.**
Niger (2010)	*Article 34* L'État reconnaît et garantit le droit syndical et le **droit de grève** qui s'exercent dans les conditions prévues par les lois et règlements en vigueur.
Panama (1972)	*Artículo 69* Se reconoce el **derecho de huelga**. La Ley reglamentará su ejercicio y podrá someterlo a restricciones especiales en los servicios públicos que ella determine.
Paraguay (1992)	*Artículo 98 - DEL DERECHO DE HUELGA Y DE PARO* Todos los trabajadores de los sectores públicos y privados tienen el **derecho a recurrir a la huelga** en caso de conflicto de intereses. Los empleadores gozan del derecho de paro en las mismas condiciones. Los **derechos de huelga** y de paro no alcanzan a los miembros de las Fuerzas

	Armadas de la Nación, ni a los de las policiales. La ley regulará el ejercicio de estos derechos, de tal manera que no afecten servicios públicos imprescindibles para la comunidad.
Peru (1993)	*Artículo 28°* El Estado reconoce los derechos de sindicación, negociación colectiva y **huelga**. Cautela su ejercicio democrático: 1. Garantiza la libertad sindical. 2. Fomenta la negociación colectiva y promueve formas de solución pacífica de los conflictos laborales. La convención colectiva tiene fuerza vinculante en el ámbito de lo concertado. 3. **Regula el derecho de huelga** para que se ejerza en armonía con el interés social. Señala sus excepciones y limitaciones. *Artículo 42°* Se reconocen los derechos de sindicación y **huelga de los servidores públicos.** No están comprendidos los funcionarios del Estado con poder de decisión y los que desempeñan cargos de confianza o de dirección, así como los miembros de las Fuerzas Armadas y de la Policía Nacional.
Philippines (1987)	*Section 3* The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the **right to strike** in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
Poland (1997)	*Article 59* Les syndicats ont **le droit d'organiser des grèves** et autres formes de protestation dans les limites prévues par la loi. Celle-ci peut limiter le **droit de grève** ou interdire la grève de certaines catégories de travailleurs ou dans des secteurs déterminés, dans l'intérêt public.
Portugal (1976)	*Article 57 (Right to strike and prohibition of lock-outs)* 1. The **right to strike** shall be guaranteed. 2. Workers shall be responsible for defining the scope of the interests that are to be defended by a strike and the law shall not limit that scope. 3. The law shall define the conditions under which such services as are needed to ensure the safety and maintenance of equipment and facilities and such minimum services as are indispensable to the fulfilment of essential social needs are provided during strikes. 4. Lock-outs shall be prohibited.
Romania (1991)	*Article 43* (1) The employees have the **right to strike** in the defence of their professional, economic and social interests. (2) The law shall regulate the conditions and limits governing the exercise of this right, as well as the guarantees necessary to ensure the essential services for the society.

Russian Federation (1993)	*Article 37* 4. The right of individual and collective labour disputes with the use of the methods for their resolution, which are provided for by federal law, including the **right to strike**, shall be recognized.
Rwanda (2003)	*Article 39* Le **droit de grève** des travailleurs est reconnu et s'exerce dans les conditions définies par la loi, mais l'exercice de ce droit ne peut porter atteinte à la liberté du travail reconnue à chacun.
San Marino (1974)	*Article 9* Le travail est un droit et un devoir de tous les citoyens. La loi assure au travailleur une rétribution juste, les fêtes, le repos hebdomadaire et le **droit de grève**.
Sao Tome and Principe (1975)	*Article 42: Rights of workers* All the workers have rights: a) To recompense for work, according to quantity, nature and quality, observing the principal of equal salary for equal work, so as to guarantee a deserved living; b) To labour-union freedom, as a means of promoting their unity, defending their legitimate rights and protecting their interests; f) **To strike,** under terms to be regulated by law, taking into account the interests of the workers and of the national economy.
Senegal (2001)	*Article 25* Le **droit de grève** est reconnu. Il s'exerce dans le cadre des lois qui le régissent. Il ne peut en aucun cas ni porter atteinte à la liberté de travail, ni mettre l'entreprise en péril.
Serbia (2006)	*Article 61* The employed shall have the **right to strike** in accordance with the law and collective agreement. The right to strike may be restricted only by the law in accordance with nature or type of business activity.
Seychelles (1993)	*Article 35* g) sous réserve des restrictions jugées nécessaires dans une société démocratique et nécessaires à la protection de l'ordre public, de la santé, des moeurs et des droits et libertés d'autrui, à protéger le droit des travailleurs de constituer des syndicats et à garantir le **droit de grève.**
Slovakia (1992)	*Article 37* (4) The **right to strike** is guaranteed. The conditions shall be laid down by law. Judges, prosecutors, members of the armed forces and armed corps, and members and employees of the fire and rescue brigades do not have this right.
Slovenia (1991)	*Article 77 (Right to Strike)* Employees have the **right to strike**. Where required by the public interest, the right to strike may be restricted by law, with due consideration given to the type and nature of activity involved.
Somalia (2004)	*Article 19* *RIGHT TO ASSEMBLE AND **FREEDOM TO STRIKE**.* 1. Every person shall have the right to : - (a) **Assemble freely** with other persons and in particular to form or belong to trade unions or other associations for the protection of his/her interests; 2. The workers of the Transitional Federal Government of Somalia shall have the right to form Trade Unions for the protection of their interests as specified by law.

South Africa (1996)	*Article 23. Labour relations* 1. Everyone has the right to fair labour practices. 2. Every worker has the right a. to form and join a trade union; b. to participate in the activities and programmes of a trade union; and c. **to strike.** 3. Every employer has the right a. to form and join an employers' organisation; and b. to participate in the activities and programmes of an employers' organisation. 4. Every trade union and every employers' organisation has the right a. to determine its own administration, programmes and activities; b. to organise; and c. to form and join a federation.
Spain (1978)	*Section 28* (2) The r**ight of workers to strike** in defence of their interests is recognized. The law governing the exercise of this right shall establish the safeguards necessary to ensure the maintenance of essential public services.
Suriname (1987)	Article 33 The **right to strike** is recognized subject to the limitations which stem from the law.
Switzerland (1999)	*Article 28. Liberté syndicale* 1 Les travailleurs, les employeurs et leurs organisations ont le droit de se syndiquer pour la défense de leurs intérêts, de créer des associations et d'y adhérer ou non. 2 Les conflits sont, autant que possible, réglés par la négociation ou la médiation. 3 La **grève et le lock-out sont licites** quand ils se rapportent aux relations de travail et sont conformes aux obligations de préserver la paix du travail ou de recourir à une conciliation. 4 La loi peut interdire le recours à la grève à certaines catégories de personnes.
Timor-Leste (2002)	*Section 51 (Right to strike and prohibition of lock-out)* 1. Every worker has the **right to resort to strike**, the exercise of which shall be regulated by law. 2. The law shall determine the conditions under which services are provided, during a strike, that are necessary for the safety and maintenance of equipment and facilities, as well as minimum services that are necessary to meet essential social needs.
Togo (1992)	*Article 39* Le **droit de grève** est reconnu aux travailleurs. Il s'exerce dans le cadre des lois qui le réglementent. Les travailleurs peuvent constituer des syndicats ou adhérer à des syndicats de leur choix. Tout travailleur peut défendre, dans les conditions prévues par la loi, ses droits et intérêts, soit individuellement, soit collectivement ou par l'action syndicale.

Turkey (1982)	*Article* *54* Workers have the **right to strike** if a dispute arises during the collective bargaining process. The procedures and conditions governing the exercise of this right and the employer's recourse to a lockout, the scope of both actions, and the exceptions to which they are subject shall be regulated by law. The **right to strike**, and lockout shall not be exercised in a manner contrary to the principle of goodwill to the detriment of society, and in a manner damaging national wealth. During a strike, the labour union is liable for any material damage caused in a work-place where the strike is being held, as a result of deliberately negligent behaviour by the workers and the labour union. The circumstances and places in which strikes and lockouts may be prohibited or postponed shall be regulated by law. In cases where a strike or a lockout is prohibited or postponed, the dispute shall be settled by the Supreme Arbitration Board at the end of the period of postponement. The disputing parties may apply to the Supreme Arbitration Board by mutual agreement at any stage of the dispute. The decisions of the Supreme Arbitration Board shall be final and have the force of a collective bargaining agreement. The organisation and functions of the Supreme Arbitration Board shall be regulated by law. Politically motivated strikes and lockouts, solidarity strikes and lockouts, occupation of work premises, labour go- slows, and other forms of obstruction are prohibited. Those who refuse to go on strike, shall in no way be barred from working at their work-place by strikers.
Ukraine (1996)	*Article* *44* Those who are employed shall have the **right to strike** in order to protect their economic and social interests. A procedure for exercising the right to strike shall be established by law taking into account the necessity to ensure national security, public health protection, and rights and freedoms of others. No one shall be forced to participate or not to participate in a strike. The prohibition of a strike shall be possible only on the basis of the law.
Uruguay (1967)	*Artículo* *57* La ley promoverá la organización de sindicatos gremiales, acordándoles franquicias y dictando normas para reconocerles personería jurídica. Promoverá, asimismo, la creación de tribunales de conciliación y arbitraje. Declárase que **la huelga** es un derecho gremial. Sobre esta base se reglamentará su ejercicio y efectividad.
Bolivarian Republic of Venezuela (1999)	*Artículo* *97* Todos los trabajadores y trabajadoras del sector público y del privado tienen **derecho a la huelga**, dentro de las condiciones que establezca la ley.

Annex 7

CONSTITUTION

Amended at the 30th Constitutional Convention
held at the Palais des congrès de Montréal from May 8-12, 2023

CANADIAN LABOUR CONGRESS
CONGRÈS DU TRAVAIL DU CANADA

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TERMS

affiliate
any national, international, regional or provincial union that pays membership dues to the CLC

chartered body
directly chartered locals, provincial and territorial federations of labour, labour councils, and trade departments

chartered local or directly chartered local
local union that has received its charter directly from the CLC

federations
provincial and territorial federations of labour

labour councils
local labour councils, district labour council

locals
includes locals, units, branches, lodges or other subdivisions of affiliates

policies
includes rules and regulations

PREAMBLE

Preamble

The strength of the labour movement is built on solidarity and respect among workers. We commit ourselves to the goals of worker democracy, social justice, equality and peace. We are dedicated to making the lives of workers and their families safe, secure and healthy.

We believe that every worker is entitled, without discrimination, to a job with decent wages and working conditions, union representation, free collective bargaining, a safe and healthy workplace, and the right to strike.

We believe that we, as members of society, are entitled to basic human rights, political freedom, quality public services, good democratic government, a safe and sustainable environment, a just and equitable society, and a peaceful world.

We believe that diversity in our society must be protected, promoted and celebrated. We believe that every worker is an equal member of the human family, regardless of gender, gender identity, colour, creed, ethnic origin, disability, sexual orientation or age. We stand for inclusiveness. We stand against abuses of human rights in our workplaces, our communities, our country, and around the world.

The Canadian Labour Congress, as the voice of working women and men, promotes their interests in the community and at national and international forums. We speak out forcefully for our affiliates and their members to employers, governments and the public to ensure the rights of workers are protected and expanded.

The Congress provides inspiration and leadership to its affiliates and guidance to its provincial and territorial federations of labour and local labour councils. Working with the federations and councils, the Congress mobilizes resources, coordinates the efforts of affiliates, and joins with other progressive organizations in mounting national campaigns.

In all its work, the Congress defends and promotes the principles of democracy and equality and holds true to the ideal of human rights for all.

We are sisters and brothers who, in solidarity, always pursue social, economic and political justice – the goals on which the labour movement was founded.

CHARTER OF LABOUR RIGHTS

Charter of labour rights

All workers have the right to:

1. Assemble peacefully and picket.

2. Bargain collectively on all matters arising from technological change.

3. Strike during the term of an agreement if bargaining cannot resolve a dispute about a matter not covered in the agreement.

4. Have a meaningful say on all vital economic and social questions affecting workers and have union representation on all government boards that administer social programs.

5. Be trained or retrained at employer and government expense.

6. Take all measures necessary to protect the safety and health of workers on the job.

7. Enjoy leisure through extended vacations and paid holidays.

8. Take a comfortable, secure retirement at age 60 if they wish it.

Article 1
Name and headquarters

1. This Congress is known as the Canadian Labour Congress (CLC) and in French as the Congrès du travail du Canada (CTC).

2. The headquarters are in Ottawa, Ontario.

Article 2
Purposes

The Congress exists to:

1. Promote the interests of its affiliates and advance the economic and social welfare of Canadian workers, including those who are unemployed or retired.

2. Affiliate national, international, regional and provincial labour unions.

3. Respond to requests from affiliates and chartered bodies to help them extend the benefits of collective bargaining to workers not yet in unions.

4. Set up and assist provincial and territorial federations of labour and local labour councils.

5. Work for laws that protect workers' rights, such as free collective bargaining and the right to strike, and the security and welfare of all Canadians.

6. Protect and strengthen our democratic institutions and ensure full recognition and enjoyment of the rights and liberties to which we are entitled.

7. Safeguard the democratic nature of the labour movement and respect the autonomy of every affiliate.

8. Help create and participate in coalitions with groups that share our goals and principles.

9. Promote peace and freedom throughout the world and work with labour movements and peace groups in other countries.

10. Provide an efficient and orderly method for settling disputes between affiliates.

11. Actively encourage mergers between compatible affiliates to create stronger, more effective unions and reduce conflict and duplication.

12. Speak for labour on national and international issues, explain union policies and represent the labour movement with national and international agencies.

13. Keep the labour movement independent of political control while encouraging workers to exercise their full rights and duties as citizens and play their rightful part in the political system at every level.

14. Promote labour media and other means of informing and educating union members.

15. Encourage the sale and use of union-made goods and union services through the use of the union label and other symbols.

Article 3
Membership

1. Members of the Congress are:

- **a.** affiliated national, international, regional and provincial unions;
- **b.** directly chartered local unions; and
- **c.** chartered provincial and territorial federations of labour and local labour councils.

2. The Canadian Council can issue charters or certificates of affiliation.

3. Affiliates and chartered bodies must abide by this Constitution.

4. A majority vote at convention may expel an affiliate or revoke a charter.

5.
- **a.** The Congress and its subordinate bodies will not recognize an affiliate or chartered body that has left the Congress or been suspended or expelled.
- **b.** The Congress and its subordinate bodies will not recognize a local union or person that has been suspended or expelled by an affiliate or chartered body. A body that violates this provision will be suspended.
- **c.** A union that has left an affiliate cannot affiliate to the Congress without the consent of the union it left.

6. Any suspended or expelled union cannot reaffiliate unless the Canadian Council is satisfied that the causes of the suspension or expulsion no longer exist, and that the applicant will abide by the Constitution, principles and policies of the Congress.

7. Each affiliate and subordinate body must give the secretary-treasurer a copy of all their official reports and a statement of their membership numbers.

Article 4
Disputes procedures

1. This article does not apply to affiliates and chartered locals in the Province of Quebec. They are governed by the Quebec Federation of Labour Protocol.

2. The interests of unorganized workers can be served best when they join a union that has proven itself by representing workers in the same industry, service (public or private) or trade. Therefore, the Congress encourages affiliates to organize mainly in the jurisdictions they have occupied in the past, where they have the resources and abilities to provide high standards of servicing. This applies equally to the public and private sectors. Following this guideline promotes trust and goodwill, builds cooperation and solidarity, and conserves scarce union resources. If there is an organizing dispute, the Congress is prepared to help resolve it in a fair way that satisfies the parties involved.

3. **a.** Settlements under this article are limited to the specific dispute and do not determine the general work or trade jurisdiction of any affiliate.

b. The terms of this article are the sole and exclusive method for settling any disputes described in this article or enforcing any settlement made under this article.

No affiliate will use court or legal proceedings to settle such disputes or enforce any settlement

4. **a.** Each affiliate is responsible for any action of any of its subordinate bodies that is contrary to this article.

b. Affiliates must make sure that the Congress does not lose members to an unaffiliated union because of a dispute.

c. Affiliates must support the decision when a claim for justification is denied and assist the affiliate that is being raided.

5. **a.** Each affiliate respects the established collective bargaining relationships of every other affiliate. No affiliate will try to organize or represent employees who have an established bargaining relationship with another affiliate or otherwise seek to disrupt the relationship.

b. An established collective bargaining relationship is any situation in which an affiliate or any of its subordinate bodies:

i. is recognized by the employer as the bargaining representative for the employees involved for at least one year, or

ii. is certified under any federal, provincial or territorial labour law, or

iii. is under a government bargaining procedure.

6. **a.** Affiliates must respect the established work relationships of other affiliates. An "established work relationship" exists where work that members of a union have customarily performed is being done at a particular plant, office, institution or work site, whether the employer is the plant operator, a contractor or other employer.

b. No affiliate shall agree or collude with an employer or use economic pressure to seek work for its members that is already being done by another affiliate, except with the consent of that affiliate.

c. Affiliates shall refer directly to the president cases involving the merger or reorganization of plants or companies that will eliminate or combine bargaining units.

7. No affiliate shall circulate any information designed to publicly discredit another affiliate or the Congress or any information that results in such discredit.

8. **a.** When any elected or staff member of an affiliate is approached by members of another affiliate they shall:

i. encourage those members to work within the constitutional provisions and policy procedures of their own union; and

ii. immediately pass this information on to the ranking officer of the union that holds the bargaining rights for those members and the President of the Canadian Labour Congress.

b. If an affiliate believes that another affiliate is raiding its members in violation of 'Article 4 – Disputes procedures, Sections 5, 6 or 7', the ranking officer shall inform the President of the Canadian Labour Congress (including providing *prima facie* evidence of the alleged raid) and the ranking officer of the affiliate alleged to be involved in the raiding activities.

c. If the process above is not followed and/or if the ranking officer of the affiliate alleging it is being raided believes the raiding activity has not ceased, it will request that the President of the Canadian Labour Congress convene a meeting of the ranking officers of the two unions as soon as possible, but no longer than seven days, to attempt to resolve the dispute.

d. The national ranking officer of the affiliate alleged to be involved in raiding activities shall have one week to investigate the allegations against their union. If within that time period, the allegations are found to be valid, the ranking officer will direct the activists/staff of their union to immediately cease and desist such activities.

e. If at that stage, there is no resolve, the President of the Canadian Labour Congress will immediately refer the dispute to an Impartial Umpire, for a final and binding determination.

f. The Umpire shall immediately convene a hearing to determine the validity of the allegation.

g. The Umpire will review all the information provided by the unions involved, including any evidence that an affiliate has established or assisted an independent union for the purposes of raiding members of another affiliate.

h. The hearing and a report will be completed as soon as possible. The Umpire's report shall be final and binding. It shall contain either:

i. a determination as to whether an affiliate has been involved in a raid and therefore in violation in whole or in part of 'Article 4 – Disputes procedures, Sections 5, 6 or 7'.

or

ii. a determination that both parties have mutually reached an agreement to a resolve to the dispute.

i. If there is a determination by the Umpire that a raid has occurred, sanctions will be automatically applied pursuant to Article 4, Section 11.

9. In keeping with the principle that union members at times may have valid reasons which may justify changing unions, the following justification process is available to all members of Canadian Labour Congress affiliates:

a. Where the Canadian Labour Congress receives a request from a group of workers wanting to leave their own union, the Canadian Labour Congress shall encourage those members to work within the constitutional provisions and policy procedures of their own union. The Canadian Labour Congress will also contact the ranking officer of the members' union to convene a meeting within one week with the workers and their union in an attempt to mediate and resolve the situation.

b. When an affiliate is made aware of workers wanting to join another union, that affiliate has the obligation to immediately inform the ranking officer of the union that currently represents the members and the President of the Canadian Labour Congress.

c. Where the Canadian Labour Congress receives a request for justification pursuant to a. above or notification pursuant to b. above, the Canadian Labour Congress will immediately contact the ranking officer of the unions involved, to convene a meeting within one week in an attempt to mediate resolve to the situation.

d. If a resolution to the situation is not reached within two weeks, the matter will be referred to an Investigator/Mediator. The affiliates involved will cooperate fully with the work of the Investigator/Mediator.

e. The investigation, mediation and resolution process is based on early intervention and is intended to provide affiliates with a timely, transparent, and professional process to deal with instances when workers indicate they wish to change unions. During this process, the unions involved are encouraged to work on finding their own solutions and may agree on proposals to remedy the situation. The process is also intended to give the

affected union the time and ability to address the problems giving rise to the situation.

f. The panel of Investigator/Mediators will be persons who have the confidence of the affiliate leadership, are skilled in negotiations, mediation and informal adjudication, and who will be available on short notice. The panel members will be recommended by the Executive Committee to the Canadian Council. The Investigator/Mediators will not be current officers or staff of affiliates, the Canadian Labour Congress or Federations of Labour.

g. An Investigator/Mediator shall be appointed to a case by the President. Investigator/Mediator shall not be or have been formally associated to the parties involved in the case.

h. The terms of reference for the Investigator/Mediator will be to investigate the issue, suggest remedies to the parties, and report to the President of the Canadian Labour Congress in accordance with the following:

i. Have as a primary objective, working with the affected members and the affiliate, to have them remain with their union;

ii. Convene meetings/discussions, in order to provide a forum for the parties involved to present information, address issues raised, provide clarification and have an opportunity to be heard;

iii. Decide whether or not the affected union needs time to address the underlying issues and if it can remedy the issue;

iv. Identify if there is a case for justification;

v. Where necessary, make recommendations to the President on the following:

a. the appointment of an ombudsperson or monitor to work with the union to rebuild the relationship;

b. provide for a cooling-off period;

c. to establish a directly chartered affiliated local of the Canadian Labour Congress in accordance with ‘Article 6 – Directly chartered local unions’ of the Canadian Labour Congress Constitution; and

d. any other recommendations to the parties involved in the dispute as deemed necessary to resolve the matter;

e. whether there is interference from another organization;

f. whether there is *prima facie* evidence that a raid is occurring and there are grounds for a formal raiding charge.

vi. The Investigator/Mediator shall be authorized to make final and binding determinations on whether justification is to be granted and a vote held. The findings and the determination will be forwarded to the CLC President.

vii. Consider any claim that an affiliate has established or assisted an independent organization for the purpose of interfering with the members of a Canadian Labour Congress affiliate.

i. Consideration of concerns expressed by members about their union or a claim of justification by a union should be guided by those principles set out in 'Article 24 – Code of union citizenship' and in Article 25 – Code of ethics' of the Canadian Labour Congress Constitution.

j. If the Investigator/Mediator concludes that another affiliate has attempted to influence or interfere with an affiliate's membership either directly or indirectly, in any matter covered by this protocol, the offending affiliate will not be entitled to exercise any rights under this protocol, 'Article 4 – Disputes procedures', or be on a ballot with respect to the issue.

k. Where there is a determination that justification is to be granted, the affiliates agree to cooperate in a vote organized by the CLC.

l. If the members vote to leave their union, that union will cooperate in the process to transfer the bargaining rights.

m. If a claim for justification is not granted and an affiliate proceeds to sign up the member involved, they are violating Section 5. This will result in the automatic application of the sanctions in section 11.

10. **a.** If a bargaining unit leaves its affiliate before the disputes procedure is finished, the unit must apply to the president to become a directly chartered local. If granted, the charter will be issued for a maximum of three years. Then the existing transfer procedure would take place.

b. Any affiliate that seeks to take members from a directly chartered local without following the transfer procedure is subject to sanctions in section 11.

11. Any affiliate found in violation of sections 5, 6 and/or 7 will be placed under sanctions.

a. The affiliate will immediately lose the following:

i. the right of any representative to vote on the Canadian Council

ii. the right to take part in Congress committees

iii. access to all Congress services, such as attending education functions, conferences and the Labour College

iv. access to the justification and transfer procedures.

b. After three months if the dispute is not settled, the affiliate will also lose one or the other of the following:

i. right of any representatives to vote at executive councils or boards of federations of labour and labour councils

ii. right to take part in federation and labour council committees

iii. access to services of federations and labour councils.

c. After another three months if the dispute is not resolved, the affiliate will also lose the following:

i. any seat it holds on the Canadian Council

ii. access to their disputes procedures

iii. any seat it holds on an executive council or board of a federation of labour or labour council

iv. right to participate in these chartered bodies.

d. If the affiliate continues to violate section 5 or refuses to pay its per capita tax, the president, subject to Executive Committee approval, may apply all sanctions prior to the set time.

e. When applying sanctions, the president will notify the Canadian Council and the affiliates.

12. Sanctions can be applied to an affiliate in a situation where it is part of a joint certification or a multi-union bargaining unit.

13. **a.** An affiliate that is under sanctions may apply to the President to have the sanctions lifted. The President will notify the affiliate(s) involved. If the affiliate(s) consent, the President will bring a recommendation to Canadian Council for a vote to remove the sanctions.

b. If any of these affiliates opposes the application, the matter comes before the next meeting of the Canadian Council. The sanctions are lifted only under these conditions:

i. the non-complying affiliate says, in writing, that it will comply with the provisions of this article

ii. the non-complying affiliate does what is necessary and feasible to remedy the situation

iii. the non-complying affiliate pays all per capita taxes owing to the Congress

iv. two thirds of those present and voting at the Canadian Council or a majority at a convention approve the application.

14. Where two or more affiliates of the Congress are seeking to organize the same members, and the unions involved cannot come to an agreement in order to allow only one union to proceed, the CLC may intervene at the request of one of the unions or the members involved in the organizing drive. In these situations, the president shall make his decision based on the following criteria:

a. the chronology of contacts clearly established by the unions involved

b. the type of members the unions generally represent and whether or not a successorship is involved

c. the ability of the unions to provide adequate service to the workers being organized

d. the possibility that the unions involved can carry out a successful organizing campaign, and

e. the union ethics of the affiliates involved.

15. Where it is determined that another affiliate has attempted to influence or interfered with an affiliate's membership, in any matter covered by the Raiding and Justification Protocol, the offending affiliate will not be entitled to be on any ballots or to exercise rights under this Article or the Protocol with respect to the application. Where the president determines that the interference may make it difficult to determine the wishes of the members, the president may consider the appointment of a CLC monitor to work with the affiliate and the members.

16. A majority vote at convention can amend this article.

Article 5
Federations of labour and labour councils

1. The Canadian Council can set up and charter provincial and territorial federations of labour and local labour councils.

2. Such a chartered body is composed of the locals of affiliates and directly chartered locals.

3. **a**. Under special circumstances, a provincial union in a jurisdiction not predominantly represented by Congress affiliates may affiliate to a federation for three years. During that time the union does not have to pay per capita to the Congress and is not entitled to representation on the Canadian Council or at conventions. After these three years, the union must affiliate to the Congress or lose its affiliation with the federation.

b. If more than one such union in a jurisdiction has affiliated to a federation in that three years, these unions can affiliate to the Congress in one of three ways:

i. by joining an existing affiliate

ii. by joining an existing national organization in their jurisdiction and having that organization affiliate to the Congress

or

iii. by forming a new national organization with the other compatible unions affiliated to a federation and having that new organization affiliate to the Congress.

c. After the three years, if only one union in a jurisdiction has affiliated to a federation and that union chooses to join the Congress, it then represents that jurisdiction. After that, other unions representing similar groups will affiliate through the first one, either by merging or forming a new national union.

4. **a**. All affiliates must require their local unions to join federations and labour councils where such exist.

b. All directly chartered locals must affiliate with their federation and labour council.

c. All labour councils must affiliate with their provincial or territorial federation.

5. The Canadian Council must issue rules governing the affairs, finances and property of federations and labour councils and provide discipline procedures. The rules must provide for appeals to the Canadian Council and the convention, but decisions remain in effect until the appeal is settled.

6. If a federation or labour council is dissolved or suspended or has its charter revoked, all its funds and property revert to the Congress to be held in trust until it is reorganized and able to conform with this constitution. The officers of such a federation or labour council must deliver all funds and property to the Congress secretary-treasurer or designate. If the funds and property are not delivered, all expenses the Congress incurs in recovering them are a lawful charge. When they are recovered, the Congress will reimburse itself.

Article 6
Directly chartered local unions

1. The Congress, through the Canadian Council, may issue charters directly to local unions, may revoke such charters, and may suspend, expel, dissolve or terminate a directly chartered local.

2. The Canadian Council must issue rules governing the affairs, finances and property of these locals and their suspension, expulsion and termination. The rules must define the powers of the Congress president, or designate, to take disciplinary action against such locals or their officers. The rules must also provide for appeals to the council and the convention, but decisions remain in effect until the appeal is settled.

3. **a.** The Canadian Council may combine locals in related fields or assign them to affiliates when appropriate. Any local or group of locals may ask the Canadian Council to authorize such a combination.

b. When grouped into a council, they remain directly chartered local unions.

4. If a directly chartered local is dissolved or suspended or has its charter revoked, all its funds and property revert to the Congress to be held in trust until it is reorganized and able to conform with this constitution.

The officers of such a local must deliver all funds and property to the Congress secretary-treasurer or designate. If the funds and property are not delivered, all expenses the Congress incurs in recovering them are a lawful charge. When they are recovered, the Congress will reimburse itself.

Article 7
Revenue

1. Each affiliate and directly chartered local must pay a per capita tax on their entire paid-up membership.

2. Effective January 1, 2021, each affiliate must pay before the last day of each month, for the preceding month, a per capita tax of 77 cents per dues-paying member. That rate will increase to 79 cents in 2022 and 81 cents in 2023. When remitting their per capita tax for June, affiliates must report the location of and number of members in each local.

3. **a.** Each directly chartered local must pay on or before the fifteenth of each month, for the preceding month, a per capita tax equal to 0.5 per cent of the members' regular monthly earnings. Each local must also pay a portion, set by the Canadian Council, of the initiation fee received from its members. This payment must be no less than one dollar per member.

b. One dollar and fifty cents of the per capita tax paid by chartered locals must go into a defence fund. The Executive Committee administers this fund and reports on it to convention.

4. The secretary-treasurer notifies any body that has not paid its per capita tax by the deadline. The Congress may suspend any body three months in arrears and reinstate that body only after arrears are paid in full.

5. The Canadian Council, by a two-thirds majority vote, may levy a special assessment on affiliated organizations in order to fund a campaign or for another purpose that is in the interests of the Congress and its affiliated organizations.

6. Each application for a local union charter must include a fee of $25.

Article 8
Trade departments

1. The Congress can set up and charter trade departments.

2. Departments have their headquarters in the Congress headquarters unless permitted to locate elsewhere.

3. Each department is subordinate to the Congress and manages and finances its own affairs.

4. **a.** Affiliation to the departments is open to all appropriate Congress affiliates.

b. To be affiliated to a local department council, a local union must be part of a Congress affiliate or a directly chartered local. The local must also be an affiliate of its local labour council.

5. The constitution and policies of each department must conform to the constitution and policies of the Congress.

6. A body affiliated with one or more departments pays per capita tax to each department based on the number of members whose occupation comes under that department.

7. Department officers submit a report of the work of their department to the Canadian Council.

Article 9
Congress administration

The Congress can set up the departments needed to carry out constitutional requirements, convention and Canadian Council decisions, and to provide services.

Article 10
Regular conventions

1. The convention is the supreme governing body of the Congress.

2. Regular conventions are held every three years prior to May 31. In special circumstances, a convention can be held as late as June 30.

3. The Canadian Council chooses the time and place, sets the convention hours and gives at least 120 days' notice.

4. There are five categories of delegates: affiliate, youth, federations and labour councils, and ex-officio.

- **a.** Affiliates and directly chartered local unions get one delegate for 1,000 or fewer members and one additional delegate for each additional 500 members or major fraction thereof.
- **b.** Affiliates that affiliate their entire Canadian membership directly from headquarters can send two delegates from Canada.
- **c.** The five largest private sector and five largest public sector unions get four youth delegates each.

  The remaining affiliates on the Canadian Council each get two youth delegates.

  Youth delegates are 30 or younger.
- **d.** Federations and labour councils shall be entitled to a maximum of two delegates plus a youth delegate aged 30 or younger. These delegates must be members in good standing of an affiliated or directly chartered local.
- **e.** The Congress president, secretary-treasurer, and two executive vice-presidents are delegates.

5. The Canadian Council sets the registration fee for delegates and guests.

6. By 120 days before the convention, the secretary-treasurer will issue credentials to affiliated organizations.

The credential will be in digital or paper format and will provide for the designation of an alternate delegate.

A digital credential will provide for a secure electronic signature by the presiding officer of the affiliated organization. It must be submitted electronically to the secretary-treasurer at least 30 days before the convention.

Upon receipt of the digital credential, the CLC will issue a copy of the credential to the delegate. This credential must be shown upon registering at the convention.

If a paper credential has been requested, the delegate keeps the original, signed form. The copy must be returned to the secretary-treasurer at least 30 days before the convention.

All delegates must be registered by 5:00 pm on the day preceding the elections scheduled in the Convention Program of Business.

7. A body is not entitled to representation if, by convention opening:

a. it is in arrears for per capita tax for three months or more, or

b. it has had its certificate of affiliation or charter for less than one month.

Article 11
Convention committees

1. The president, consulting with the Canadian Council, appoints committees to prepare the work of the convention.

2. Each committee has at least five members and meets before the convention for as long as they need to complete their work. The Congress pays the members' wages and expenses for these extra days as the Canadian Council decides.

3. **a.** The credentials committee examines the credentials received and registers those they approve.

b. The committee may consider incomplete or late credentials, but their recommendation must be approved by a two-thirds vote of the convention.

c. The committee reports to the convention on the first day and subsequent days if needed.

d. When a majority of the delegates approve the first committee report, the convention may start its official business.

e. Appeals are made to the convention.

4. a**.** The Canadian Council, an affiliate, a local of an affiliate, or a chartered body can submit a resolution in either electronic or paper format. It must be signed by the presiding officer. The signature can be either digital for electronic resolutions or written for paper resolutions. The resolution must deal with one subject, include an action, and contain no more than 150 words.

b. The secretary-treasurer must receive all resolutions at CLC Headquarters at least 90 days before convention.

c. Resolutions are sorted and referred to an appropriate convention committee.

Committees may combine resolutions into a composite resolution or prepare a substitute resolution that covers the intent.

The committees report to the convention before the delegates consider the matter.

d. Copies of the resolutions in English and French are to be made available to the delegates at least 30 days before the convention.

e. The Canadian Council receives any resolutions that are late or not in the proper form and may bring them to the convention. Two thirds of delegates must agree before these resolutions can be considered.

Article 12
Convention conduct and rules

1. A quorum is one quarter of the registered delegates.

2. The president or a member of the Canadian Council chairs the convention. In the absence of the president and the designate, the council chooses a chairperson.

3. The chairperson has the same rights as other delegates.

4. Solidarity delegates (special guests) may not propose motions, vote or stand for office.

5. Delegates must respect, in word and deed, the Congress policy against harassment.

6. Delegates wishing to speak go to a microphone. When recognized by the chairperson, delegates state their name and the organization they represent and confine their remarks to the issue being discussed.

7. Speakers to a resolution are limited to three minutes.

8. Delegates do not speak more than once on a subject until all who wish to speak have done so.

9. Delegates do not interrupt except for a point of order.

10. **a.** Each delegate has one vote.

b. If there is a tie, the chairperson casts the deciding vote.

11. A majority vote is needed to make decisions. The exceptions to this, which need a two-thirds vote, are:

a. constitutional amendments

b. notice of motion for reconsideration.

12. When the convention is ready to vote, the chairperson describes the matter to be voted on and says, “Are you ready to end debate and vote on the motion?” If no delegate wishes to speak, the delegates vote.

13. Votes can be indicated by a show of hands or by standing. One third of the delegates may demand a roll call vote (in which each delegate goes to a microphone to vote when their name is called).

14. When a delegate moves to end debate (previous question), there can be no discussion. If the majority votes that “the question be now put,” then delegates vote on the original motion with no more debate. If the motion to end debate is defeated, discussion continues on the original motion.

15. Committee reports cannot be amended except when the change is acceptable to the committee. However, a delegate can move to refer something back to the committee for reconsideration.

16. If a committee report is adopted it becomes the decision of the convention. If a report is defeated it then may be referred back to the committee.

17. When the convention is discussing a motion, the only other motions that are permitted (in order) are:

a. to end debate (put the previous question)

b. to refer the motion

c. to postpone (table) for a definite time.

If the delegates defeat any of these motions, no one can bring them up again until the next session of the convention.

18. **a.** A motion to refer is not debatable and is immediately put to a vote.

b. A delegate cannot make a motion to refer after speaking on the motion.

19. After delegates have voted on a motion, they may reconsider it under these conditions:

a. the delegate who wants the matter to be reconsidered voted with the majority

b. the delegate gives notice of motion, (moves) to reconsider the matter at the next sitting, and

c. two-thirds of the delegates vote for the notice of motion.

20. Two delegates may appeal a decision of the chair. The chairperson says, “Shall the decision of the chair be upheld?”

The chairperson can explain the decision but the appeal is not debatable.

21. If the chairperson calls a delegate to order, the delegate sits down until the convention decides on the question of order.

22. If the delegate persists in unparliamentary conduct, the chairperson names the delegate. The delegate may explain his or her conduct to the convention and then must leave the floor, and the convention decides how to pursue the matter.

23. Unless otherwise specified, any convention decision takes effect immediately after the convention adjourns.

24. *Bourinot’s Rules of Order* governs in matters not discussed in these rules.

Article 13
Special conventions

1. Special conventions can be called by:

a. a regular convention

b. Canadian Council, or

c. a group of affiliates representing a majority of the Congress membership, according to the records reported at the last convention.

2. If the convention is a result of a request from affiliates, the Canadian Council will issue the convention call within 30 days. In any case, the council will give all affiliates and chartered bodies 60 days' notice of the time and place of the convention and a statement of the matters to be discussed.

3. Representation to special conventions is the same as regular conventions.

4. A special convention has the same authority as a regular convention.

5. These deadlines apply for special conventions:

a. 60 days for the secretary-treasurer to provide credential blanks

b. 15 days for copies of credentials to be returned.

Article 14
Congress officers

1. The Congress officers are:

a. the president

b. secretary-treasurer

c. two executive vice-presidents.

2. An officer must be a member of an affiliate or chartered body.

3. Delegates elect the officers on Thursday of the convention week. The convention can change the election day.

4. Nominees who let their names stand agree to the following: "In accepting this nomination, I give my word that I will uphold the constitution, principles and policies of the Canadian Labour Congress."

5. **a.** The vote is by secret ballot.

b. The winning candidate must receive a majority of votes cast. If needed, subsequent votes are taken. On these votes, the candidate who got the least votes in the previous round is dropped.

c. In case of a final tie, the chairperson may cast the deciding vote.

6. When more than one candidate is to be elected to an office, delegates must vote for the full number or the ballot will be declared spoiled.

7. The election of each office is completed before nominations are accepted for the next office.

8. The term of the officers and Canadian Council members starts within 60 days of convention adjournment.

9. **a.** If the office of the president becomes vacant, the secretary-treasurer performs the president's duties until a successor is elected.

Within 15 days of the vacancy, the secretary-treasurer will call a Canadian Council meeting, giving 30 days' notice, to fill the vacancy. If the secretary-treasurer is unable to do this, the executive vice-presidents will do it.

b. If there is a vacancy in the offices of executive vice-president or secretary-treasurer, the president performs the duties of the office until a successor is elected. Within 15 days of the vacancy, the president will call a Canadian Council meeting, giving 30 days' notice, to fill the vacancy.

c. If a Canadian Council meeting or convention is scheduled within 60 days of the vacancy, a majority of council members may agree to postpone the decision until that meeting.

10. The Congress provides the officers an equitable pension plan as approved by the Canadian Council.

11. The officers, as trustees for the Congress, hold title to the Congress real estate. They have no right to sell, convey or encumber any real estate without the approval of the Canadian Council.

12. The Canadian Council recommends to the convention, as necessary, changes in the salary of officers.

13. **a.** The executive officers must work full time in the interests of the Congress.

b. The salary of the president shall be set at $178,800 effective June 1, 2017.

c. The salary of the president shall be increased by the previous 12 month increase in the Consumer Price Index on January 1, 2018 and on January 1 of each year thereafter.

d. The salary of the secretary-treasurer will be set at 90% of the president's salary.

e. The salary of the executive vice-presidents shall be set at 85% of the president's salary.

f. The CLC Finance Committee will review the financial statements and other relevant information and provide reports on the state of the CLC's financial situation to the Executive Committee with recommendations. The Committee will also review the question of CLC full-time Executive Officers' compensation before each tri-annual convention and report back to the Executive Committee who will determine if a resolution needs to be submitted to the convention.

Article 15
Duties of the president

1. The president is the chief executive officer of the Congress. The president:

a. supervises the affairs of the Congress

b. signs all official documents

c. presides at conventions and meetings of the Canadian Council and Executive Committee

d. assigns departments and duties to the executive vice-presidents

e. calls meetings of the Canadian Council and Executive Committee.

2. The president has the authority to interpret the Constitution. That interpretation is conclusive and remains in effect unless the Canadian Council or a convention changes it.

3. The president hires staff and sets their compensation, subject to Executive Committee approval. The president or a designate direct all staff.

4. The president reports on the administration of that office and on Congress affairs to the convention through the Canadian Council report.

Article 16
President emeritus

On their retirement, presidents become president emeritus in recognition of their service to the Congress.

Article 17
Duties of the secretary-treasurer

1. The secretary-treasurer is the chief financial officer of the Congress. The secretary-treasurer:

a. has charge of books, documents, files and effects of the Congress. At all times, these are subject to inspection by the president, executive vice-presidents and Canadian Council

b. prepares a financial statement for each Canadian Council meeting

c. has the books audited each year by a firm of chartered accountants selected by the president and approved by the Canadian Council

d. presents the audits to Canadian Council and convention

e. issues the call for and acts as secretary at conventions

f. sees that the proceedings of all conventions and Canadian Council meetings are recorded.

2. The secretary-treasurer, subject to Canadian Council approval, invests surplus funds in securities or deposits them in the name of the Congress.

3. The Canadian Council decides the amount for which the secretary-treasurer is bonded.

4. The secretary-treasurer can require affiliates and subordinate bodies to provide statistical data on their membership.

5. The secretary-treasurer, with approval of the president, hires, directs and sets compensation for all administrative help.

6. The secretary-treasurer reports on the administration of that office to the convention.

Article 18
Duties of executive vice-presidents

1. The executive vice-presidents aid the president in the duties of chief executive officer and act on behalf of the president when asked. Each administers the departments and responsibilities the president assigns.

2. Each executive vice-president reports to the convention through the Canadian Council report.

Article 19
Council and officers' oath

I _____ promise that I will truly and faithfully carry out my duties as a member of the Canadian Council of the Canadian Labour Congress to the best of my abilities.

I promise that I will uphold the Constitution and principles of the Congress.

I commit that in good faith I will support and promote the policies of the Congress.

I will be guided by the principles in the Preamble to the Constitution and its Purposes as outlined in Article 2.

I will endeavour to build harmony and solidarity in the labour movement and in the Congress.

I pledge that I will support other affiliates of the Congress in their struggles and will not attempt to recruit their members.

Article 20
Canadian Council

1. The Canadian Council is the governing body of the Congress between conventions. It takes action and makes decisions as needed to carry out convention decisions and to enforce the provisions of this constitution.

2. The council initiates legislative action in the interests of working people.

3. The council consists of:

- **a.** the president
- **b.** the secretary-treasurer
- **c.** the two executive vice-presidents

d. vice-presidents representing each of the unions affiliated to the Congress.

These are the ranking Canadian officers in their union

e. 10 vice-presidents who are women designated by the 5 largest private sector and 5 largest public sector unions

f. 12 vice presidents who are the presidents of the provincial and territorial federations of labour

g. two vice-presidents representing workers of colour who are endorsed by their affiliate and elected at the appropriate caucus at convention

h. one vice-president representing Indigenous workers who is endorsed by his or her affiliate and elected at the appropriate caucus at convention

i. one vice-president representing workers with disabilities who is endorsed by her or his affiliate and elected at the appropriate caucus at convention

j. one vice-president representing lesbian, gay, bisexual, transgender, queer, two-spirit, intersex (LGBTQ2SI) who is endorsed by her or his affiliate and elected at the appropriate caucus at convention

k. one vice-president representing young workers who is endorsed by his or her affiliate and elected at the appropriate caucus at convention

l. one vice-president representing retired workers who is elected at the convention of the Congress of Union Retirees of Canada

m. four vice-presidents representing labour councils who are elected at Labour Council caucus the Sunday before convention, one from the Pacific Region, one from the Prairie Region, one from the Ontario Region and one from the Atlantic Region, at least one of whom shall be a woman.

4. The workers of colour caucus at the convention also elects two alternates. The other caucuses (Indigenous workers; workers with disabilities; young workers; and lesbian, gay, bisexual, transgender, queer, two-spirit, and intersex workers) elect one alternate each.

An alternate will serve on the council if the first nominees are unable to complete their term.

5. Vice-presidents hold office as long as they maintain the endorsement of their union.

6. **a.** The number used for representation on the Executive Committee is the affiliate's average monthly dues-paying membership in the year prior to the convention.

If a union only started paying per capita during this year, then the number is the average for the months that it has paid.

b. An affiliate must be in good standing with the Congress at the time of the convention to be eligible to have a representative on the council.

7. If an affiliate's vice-president position becomes vacant, the affiliate represented can name a replacement.

8. The council meets at least two times each year.

9. A quorum is a majority of the members of the council.

10. The council presents a printed report in English and French of Congress activities to each convention.

11. The council has the power to investigate any situation in which there is reason to believe that a Congress affiliate or chartered body is controlled or substantially influenced by any corrupt influence or that its activities are contrary to Congress principles. After the investigation, including a hearing if requested, the council can make recommendations. Upon a two-thirds vote, the council can suspend the affiliate or chartered body. Any action under this section may be appealed to the convention.

12. The council can reimburse its members for necessary expenses in performing their Congress duties.`

13. The council can set up advisory committees.

Article 21
Executive Committee

1. The Executive Committee is responsible for the administration of the affairs and activities of the Congress.

2. It meets at least four times a year.

3. These members of Canadian Council make up the committee:

- **a.** the four executive officers
- **b.** the ten vice-presidents from the five largest private sector unions and five largest public sector unions
- **c.** two vice-presidents elected by the members of the Canadian Council from the ranking officers of the national or international unions which are not on the Executive Committee
- **d.** the ranking officer of the largest building and construction trades union
- **e.** the president of the Quebec Federation of Labour
- **f.** two women vice-presidents, elected by the women on the Canadian Council; they shall be elected from the women ranking officers of national or international unions and the women vice-presidents representing the five largest public sector and five largest private sector unions
- **g.** One vice-president elected by and from the equity vice-presidents on the Canadian Council

4. The committee members, other than the four officers, are called general vice-presidents.

5. If a general vice-president position becomes vacant, it is filled in the same way that the previous incumbent was chosen.

Article 22
National Campaign Committee

The National Campaign Committee will consist of the Executive Committee and the presidents of the provincial and territorial federations of labour. The National Campaign Committee will coordinate the implementation and delivery of national and regional campaigns.

Article 23
Amendments

1. A two-thirds vote of convention may amend this constitution. The exceptions, which need a simple majority, are Article 4 and those sections dealing with officers' salaries.

2. The procedure for submitting amendments is the same as for resolutions.

3. All amendments take effect immediately unless otherwise specified.

Article 24
Code of union citizenship

The affiliates of the Canadian Labour Congress vary substantially in their size, internal structures and geographic distribution. All unions develop in a way that fits their industries and their collective bargaining situations. Within those differences, all affiliates serve their members and promote union principles and practices according to this constitution.

Affiliates strive to:

1. Fully protect workers' rights and make sure they are applied at work and in the community.

2. Conduct union business and provide services to all members without regard to race, colour, creed, sex, age or national origin in an environment free of harassment.

3. Provide whatever help is needed to ensure members get all the social insurance benefits that may be available for lay-off, unemployment, disability, retirement or any other legitimate cause.

4. Provide all possible help to members who are injured or disabled at work or suffer from industrial disease.

5. Provide the best available facts on wage levels, benefits and contract language and other negotiating services to get the best possible contract.

6. Coordinate bargaining or other activities with other unions where such cooperation will benefit the members of each union.

7. Press for changes in the law to protect and enhance their members' welfare and rights.

8. Educate their members about union principles and practices, the duties of officers and representatives, their union structure, and the important issues in their own union, the Canadian Labour Congress and the labour movement.

9. Ensure that all their members can exercise their union rights.

10. Provide the means for all their members to have an equal opportunity to participate actively and effectively in their own union.

11. Encourage their members to participate actively in local labour councils and federations of labour.

12. Encourage their members to participate fully in the political life of this country.

Article 25
Code of ethics

The overwhelming majority of unions both preach and practise the principles of democracy. Still, too often members forfeit their union citizenship through their own indifference.

The record of union democracy, like the record of our country's democracy, is not perfect. A few constitutions do not adequately set out the elements of democratic practice. A few unions do not practise the principles in their constitutions.

All unions try to get as many of their members as possible to take part in union meetings and affairs. The answer is not so much setting out new principles as using present rights. Just as eternal vigilance is the price of liberty, so is the constant exercise of union citizenship the price of union democracy.

All free and democratic unions abide by these principles:

1. All members have the right to take part fully and freely in their union. This includes the right to:

- **a.** vote regularly in honest elections for their local, national and international officers, either directly or through delegated bodies
- **b.** stand for and hold office, subject only to fair qualifications uniformly imposed
- **c.** voice their views about how their union conducts its affairs
- **d.** attend local membership meetings, which are held regularly with proper notice of time and place.

2. All members use their rights as union citizens. They also loyally support their union. Their right to criticize the policies and personalities of union officers does not include the right to undermine the union as an institution, to advocate dual unionism, to destroy or weaken the union as a collective bargaining agent, or to carry on slander and libel.

3. All members are treated fairly under union rules. Union disciplinary procedures contain all the elements of fair play. No particular formality is required. No lawyers need be used. However, the basic requirements – notice, hearing and

judgement based on evidence—are observed. A method of appeal to a higher body exists to ensure that judgement at the local level is impartial.

4. Unions hold regular conventions, not more than four years apart. The convention is the supreme governing body of the union.

5. All conventions are open, except for needed closed sessions. Convention proceedings or an accurate summary are published and open to the members.

6. The officials and bodies that govern between conventions are elected. They abide by and enforce the union's constitution and carry out the decisions of the convention.

7. The term of office of all officials is stated in the constitution or bylaws and is for a reasonable period.

8. To ensure democratic, responsible, and honest administration of their locals and other subordinate bodies, unions have the power to start disciplinary proceedings, including the power to set up trusteeships. Such powers are used rarely and only under the union's constitution. Autonomy is restored promptly.

9. Unions ensure, through appropriate constitutional or administrative measures, that anyone who exercises a corrupt influence or engages in corrupt practices does not hold union office.

10. Unions ensure that no person can hold office or appointed position who has been proven guilty through union procedure or court of law of preying on the labour movement for corrupt purposes.

11. If changes to a constitution or procedures are needed to comply with this code, the union will make these changes as soon as practical.

Article 26
Self-government standards

Members of affiliates exercise their rights as citizens of a sovereign nation and govern the affairs of the union within this right.

1. Canadians elect Canadian officers.

2. Canadian members and elected officers set policies that deal with national affairs.

3. Canadian elected representatives have authority to speak for the union in Canada.

4. Where an international union is affiliated to a global union federation, the Canadian section of the union affiliates separately.

5. International unions ensure that no constitutional requirements or policy decisions prevent Canadian members from participating in the social, cultural, economic and political life of Canada.

Article 27
Code of ethical organizing

One major goal of the labour movement is to extend the benefits of collective bargaining to workers who are not yet members of unions. Public attacks by one affiliate on another result in publicity that gravely injures the labour movement. More serious is the fact that jurisdictional disputes, boycotts, and the resulting bad publicity give rise to restrictive laws.

1. Where two or more affiliates seek to organize the same employees, each affiliate campaigns so as to increase the respect of the workers involved for the union movement. No affiliate attacks the motives or character of any competing affiliate, its officers or locals.

2. Affiliates do not, directly or indirectly, issue any propaganda that:

- **a.** alleges or implies that another affiliate is guilty of undemocratic practices, corruption, or any other improper conduct
- **b.** attacks the principles of international, national, provincial or regional unionism
- **c.** attacks the craft or industrial structure of other affiliates, or
- **d.** criticizes the benefits received from or the dues paid to another affiliate.

3. Affiliates do not organize boycotts against products or services produced under the collective agreement of another affiliate.

4. An affiliate having a complaint about a violation of this code will send it to the ranking official of the other affiliate, requesting that the spirit and intent of this code be observed.

5. If the other affiliate does not comply promptly, the complainant may file a complaint with the Congress. After investigating, the Congress will try to obtain compliance. If that fails, the complaint will go to the Canadian Council. The council will report its decision to the parties and act as it thinks appropriate to enforce compliance.

Appendix I
Pledge of Solidarity

In assuming a position on the Canadian Council of the Canadian Labour Congress, I pledge to uphold the following principles:

- Promote the value of solidarity and build the labour movement through increasing union density by organizing new members.
- Recognize that all workers deserve good unions and effective representation and servicing.
- To be guided by Article 24, Code of union citizenship and Article 25, Code of ethics.
- Work to build better relationships between affiliates and affiliate leaders and a more constructive dialogue between affiliates at all levels.
- Agree that raiding is not acceptable and will be dealt with in accordance with Article 4 of the CLC Constitution.
- Agree not to establish or assist an independent organization for the purpose of interfering with the members of a CLC affiliate.
- Recognize there are legitimate reasons why workers may want and may need to change unions; changes in unions should only occur when workers have made the decision to do so and should be done in an orderly manner and without interference from other affiliates.
- Agree that determinations pursuant to the Raiding and Justification Protocol or Article 4 are binding and formally agree to abide by the outcome of the process.

Signed by _____

Date _____

Appendix II
Terms of reference for ombudsperson

In carrying out the duties the Congress assigns, the ombudsperson has the power to:

1. Receive inquiries about the rights of members and advise them on the procedures for the redress of complaints.

2. Receive complaints, investigate them, hold hearings if needed, and issue written reports or findings on the individual cases.

3. Decide if allegations are serious enough to justify a hearing and, if not, to dismiss a complaint.

4. Where the decision favours the complainant, order remedies to redress the injustice.

5. Recommend changes in constitutions that would eliminate the causes of the complaints.

6. Publicize any decision, award, or other findings if orders or recommendations are not acted on and grievances settled within 30 days after the report is submitted.

7. Submit to the Congress before March 31 each year a statistical report of the cases handled during the previous year and their disposition, including any comments and recommendations that may help the Congress set policy for the office of ombudsperson.

8. Recommend for Congress approval:

- procedures for handling correspondence and written records
- procedures for meetings, hearings and inquiries, including the appearance and testimony of individuals
- procedures for obtaining relevant files and other documents
- procedures for reimbursing complainants, defendants and witnesses for travel and other expenses.

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Annex 8

Confédération Générale du Travail

(Inscription au Répertoire départemental de la Seine-Saint-Denis sous le n° 93A0482003/91

STATUTS

adoptés au 51e congrès de la CGT

Marseille, 18 au 22 avril 2016

Préambule

Le syndicalisme est né de la double volonté des salariés de défendre leurs intérêts immédiats et de participer à la transformation de la société.

Depuis sa création, il a joué un rôle déterminant dans la conquête de garanties sociales qui ont contribué à changer la condition humaine.

Fidèle à ses origines, à la charte d'Amiens de 1906, héritière des valeurs humanistes et internationalistes qui ont présidé à sa constitution, considérant la pleine validité des principes d'indépendance, de démocratie, de respect mutuel et de cohésion contenus dans le préambule des statuts de1936 (intégré aux présents statuts), la Confédération Générale du Travail défend les intérêts de tous les salariés sans exclusive, en tous temps et en tous lieux. Elle intervient en conséquence librement sur tous les champs de la vie sociale, elle participe au mouvement de transformation sociale.

Par son analyse, ses propositions et son action, elle agit pour que prévalent dans la société les idéaux de liberté, d'égalité, de justice, de laïcité, de fraternité et de solidarité. Elle se bat pour que ces idéaux se traduisent dans des garanties individuelles et collectives : le droit à la formation, à l'emploi, à la protection sociale, les moyens de vivre dignement au travail, dans la famille et dans la collectivité, la liberté d'opinion et d'expression, d'action syndicale, de grève et d'intervention dans la vie sociale et économique, à l'entreprise comme dans la société.

Elle agit pour une société démocratique, libérée de l'exploitation capitaliste et des autres formes d'exploitation et de domination, contre les discriminations de toutes sortes, le racisme, la xénophobie et toutes les exclusions.

Elle agit pour promouvoir l'égalité entre les femmes et les hommes, les libertés et les droits syndicaux, le plein exercice de la citoyenneté, la défense de l'environnement, pour la paix et le désarmement, pour les droits de l'homme et le rapprochement des peuples.

Les mutations du monde et des sociétés appellent de nouvelles conquêtes sociales garantissant les droits fondamentaux des personnes et le respect des peuples, assurant que les richesses, fruit du travail des hommes, financent le progrès social, le bien être et qu'elles concourent, au travers d'un nouveau type de développement, à la sauvegarde de la planète.

Soumise à la logique du profit, la société actuelle est traversée par la lutte des classes et par de multiples contradictions dont les conséquences conduisent à des inégalités et exclusions majeures, des affrontements d'intérêts, des tensions internationales, des menaces de guerre et des conflits armés. Les salariés ont besoin de se rassembler comme tels pour se défendre, conquérir leur émancipation individuelle et collective et participer à la transformation de la société et du monde.

Ouvert à toutes les diversités, riche des différences d'opinion, le syndicalisme dont l'ambition est d'être solidaire, uni et rassembleur, constitue pour les salariés un moyen essentiel pour relever les enjeux contemporains.

La Confédération Générale du Travail, attachée aux principes fondateurs du syndicalisme confédéré et interprofessionnel, œuvre au rassemblement de tous les salariés dans leur diversité, à l'unité du mouvement syndical national, européen et international.

Les principes d'égalité, de solidarité, d'écoute, de tolérance et d'épanouissement des diversités pour lesquels elle œuvre, animent la vie démocratique en son sein.

Les présents statuts adoptés par les syndicats réunis en congrès, sont le bien commun de tous, admis et respectés comme tel.

Préambule de 1936

Le mouvement syndical, à tous les échelons, s'administre et décide de son action dans l'indépendance absolue à l'égard du patronat, des gouvernements, des partis politiques, des sectes philosophiques ou autres groupements extérieurs.

Il se réserve le droit de répondre favorablement ou négativement aux appels qui lui seraient adressés par d'autres groupements en vue d'une action déterminée. Il se réserve également le droit de prendre l'initiative de ces collaborations momentanées, estimant que sa neutralité à l'égard des partis politiques ne saurait impliquer son indifférence à l'égard des dangers qui menaceraient les libertés publiques comme les réformes en vigueur ou à conquérir.

Les assemblées et Congrès syndicaux statutaires sont seuls qualifiés pour prendre des décisions.

La démocratie syndicale assure à chaque syndiqué la garantie qu'il peut, à l'intérieur du syndicat, défendre librement son point de vue sur toutes les questions intéressant la vie et le développement de l'organisation.

Les syndicats groupant les salariés de toutes opinions, aucun de leurs adhérents ne saurait être inquiété pour la manifestation des opinions qu'il professe en dehors de l'organisation syndicale. La liberté d'opinion et le jeu de la démocratie, prévus et assurés par les principes fondamentaux du syndicalisme, ne sauraient justifier ni tolérer la constitution d'organismes agissant dans les syndicats comme fractions dans le but d'influencer et de fausser le jeu normal de la démocratie dans leur sein.

Les syndicats qui, par leur nature même et leur composition, rassemblent des tra-

vailleurs d'opinions diverses font preuve de l'esprit le plus large pour maintenir leur unité.

Les statuts doivent prévoir les moyens de maintenir leur cohésion, le respect des principes admis par les deux délégations (1) et des chartes votées.

Ils assurent le maintien des syndicats dans leur rôle constant de défense des intérêts ouvriers.

Titre 1 : Principes, constitution, but

Article 1

La Confédération Générale du Travail est ouverte à tous les salariés, femmes et hommes, actifs, privés d'emploi et retraités, quels que soient leurs statuts social et professionnel, leur nationalité, leurs opinions politiques, philosophiques et religieuses.

Son but est de défendre avec eux leurs droits et intérêts professionnels, moraux et matériels, sociaux et économiques, individuels et collectifs.

Prenant en compte l'antagonisme fondamental et les conflits d'intérêts entre salariés et patronat, entre besoins et profits, elle combat l'exploitation capitaliste et toutes les formes d'exploitation du salariat. C'est ce qui fonde son caractère de masse et de classe.

L'action syndicale revêtant des formes diverses pouvant aller jusqu'à la grève décidée par les salariés eux-mêmes, la CGT agit pour que le droit de grève, liberté fondamentale, ne soit pas remis en cause par quelque disposition que ce soit.

Elle agit pour un syndicalisme démocratique, unitaire et indépendant au service des revendications des salariés.

Elle contribue à la construction d'une société solidaire, démocratique, de justice, d'égalité et de liberté qui réponde aux besoins et à l'épanouissement individuel et collectif des hommes et des femmes.

Elle milite en faveur des droits de l'homme et de la paix.

Elle intervient sur les problèmes de société et d'environnement à partir des principes qu'elle affirme et de l'intérêt des salariés.

Elle agit pour ces objectifs en France, en Europe et dans le monde.

Article 2

La CGT rassemble toutes les organisations syndicales adhérant aux présents statuts.

Elle est composée de syndicats, d'unions locales interprofessionnelles, d'unions départementales interprofessionnelles et de fédérations professionnelles.

L'Union générale des Ingénieurs, Cadres et Techniciens (Ugict) est l'organisation spécifique des ingénieurs, cadres et techniciens adhérant à la CGT.

L'Union confédérale des Retraités (UCR) est l'organisation spécifique des retraités adhérant à la CGT.

Le Comité national de Lutte et de Défense des Chômeurs est l'organisation permettant de développer la syndicalisation et l'activité de la CGT parmi les salariés momentanément privés d'emploi.

Article 3

La CGT est constituée par les fédérations et les unions départementales auxquelles les syndicats doivent être adhérents pour être confédérés.

Article 4

La CGT se fonde sur un fonctionnement démocratique. Les syndiqués y sont égaux, libres et responsables.

Ils sont assurés de pouvoir s'exprimer en toute liberté, d'être informés et de se former, de participer à l'ensemble des décisions concernant l'orientation syndicale selon les modalités prévues par les statuts des syndicats et des unions de syndicates auxquelles ils appartiennent et de pouvoir participer à l'exercice des responsabilités syndicales.

Ils ont la responsabilité de se conformer aux principes de la démocratie, de l'indépendance, du respect du pluralisme d'opinion et de solidarité. Ils participent par le versement d'une cotisation au financement de l'activité et de l'action syndicale.

La transparence des débats et des votes, la représentation dans les instances telles que les fixent les présents statuts sont garanties.

La pratique de la démocratie dans l'organisation s'accompagne du même comportement démocratique dans les rapports que la CGT entretient avec tous les salariés.

Article 5

La CGT se fonde sur une conception unitaire. Persuadée que l'intérêt des salariés est de s'unir, elle travaille à les rassembler. Elle se prononce pour l'édification d'une seule organisation syndicale de salariés. Elle agit pour l'unité et pour promouvoir un syndicalisme unifié. Au plan international elle se fonde sur la conception d'un syndicalisme de coopération et d'action, d'échanges et de confrontations d'idées, intransigeant pour la défense des droits de l'Homme, des droits des salariés et des droits syndicaux, ouvert à toutes les recherches et approches syndicales.

Article 6

La CGT se fonde sur l'indépendance de l'organisation à l'égard du patronat, des pouvoirs publics, des gouvernements, organisations politiques, philosophiques, religieuses et autres.

Nul ne peut se servir de son titre de confédéré ou d'une fonction confédérale dans un acte politique ou électoral extérieur à l'organisation.

(1) Il s'agit de deux délégations représentants la CGT et la CGTU qui ont établi la Charte d'unité votée par le Congrès de Toulouse en mars 1936.

Le respect des diversités et du pluralisme d'opinion, la garantie que ses analyses, ses réflexions et ses décisions sont prises en son sein permettent à la CGT d'être libre et maître de son expression et de ses initiatives.

Titre 2 : Droits, devoirs et relations des organisations de la CGT

Le syndicat, base de toute la CGT

Article 7-0

Les dispositions de ce titre sont précisées par l'annexe sur les règles de vie au sein de la CGT adoptée par le congrès confédéral.

L'affiliation d'une organisation à la CGT implique son adhésion aux présents statuts.

Par ailleurs, sont affiliées à la CGT les confédérations des départements d'Outre-Mer signataires de la convention annexée aux présents statuts.

Article 7

Les adhérents de la CGT se regroupent dans des syndicats, organisations de base de la CGT.

Les syndicats définissent eux-mêmes leur mode de constitution et de fonctionnement notamment par la mise en place de sections syndicales dans les formes les plus adaptées.

Celui-ci vise à développer :

- la démocratie syndicale, l'intervention individuelle et collective des adhérents, leur information et leur formation, la syndicalisation ;
- l'information, le débat, la construction avec les salariés des revendications et des moyens de les faire aboutir ;
- la prise en compte des diversités du salariat et la recherche des convergences.

Les syndicats peuvent regrouper les salariés actifs et retraités correspondant à leurs champs d'activité, ainsi que les salariés privés d'emploi.

Les syndiqués retraités, préretraités, pensionnés peuvent décider la création de sections permettant de développer leur activité.

Les syndiqués concernés peuvent décider la création d'organisations leur permettant de conduire l'activité spécifique avec les ingénieurs, cadres, techniciens et agents de maîtrise. Autant que de besoin, des dispositions sont prises pour une meilleure organisation des ouvriers et employés.

Article 8

Les syndicats constituent les fédérations, les unions départementales et les unions locales conformément aux articles 10 à 14 des présents statuts.

Ils définissent et mettent en œuvre les orientations des organisations auxquelles ils adhèrent. Ils en élisent les directions.

Réunis en congrès confédéral, ils décident des orientations générales de la CGT, et en élisent la direction.

Ils ont l'obligation d'acquitter complètement et régulièrement les cotisations conformément à l'annexe financière que stipule l'Article 35 des présents statuts.

Les statuts des syndicats doivent être conformes aux dispositions des présents statuts et être transmis aux fédérations et aux unions départementales affiliantes.

L'affiliation d'un nouveau syndicat à la CGT est acquise sauf opposition de sa fédération ou de son union départementale, relative à l'indépendance, au respect des valeurs républicaines. La création d'un syndicat ne doit pas venir concurrencer une implantation syndicale CGT existante sur le même périmètre.

Au cas où un syndicat envisage le changement de son affiliation fédérale, pour des raisons tenant à des modifications profondes de l'activité ou du statut de l'entreprise ou de l'établissement, celui-ci doit intervenir avec l'accord de la fédération d'origine et de la fédération d'accueil.

Au cas où une restructuration d'entreprise ou d'administration conduit à la présence de plusieurs syndicats CGT sur le même périmètre, ceux–ci doivent réunir les adhérents de la CGT concernés pour qu'ils décident de la façon de travailler ensemble et de la forme d'organisation CGT qui en découle, ceci en lien avec les unions départementales et les fédérations concernées.

Article 9

Pour permettre le regroupement, la défense des intérêts et la participation à la vie syndicale des salariés momentanément privés d'emploi, il est organisé des comités locaux ou autres dispositions adaptées aux besoins.

Les syndiqués privés d'emploi ont des droits identiques à ceux des autres adhérents.

Toutes les organisations de la CGT concourent à la réalisation de ces objectifs.

Les organisations fondamentales de la CGT

Les fédérations

Article 10

Les fédérations nationales sont constituées des syndicats d'un ou plusieurs secteurs d'activité professionnelle.

Le syndicat rayonnant sur des secteurs d'activité relevant de plusieurs fédérations participe à la vie syndicale et acquitte cotisations aux fédérations concernées pour le nombre de syndiqués relevant de chacune d'elles, notamment par l'intermédiaire de ses sections syndicales, conformément à l'annexe financière.

La fédération impulse et coordonne l'activité syndicale et revendicative, la prise en compte des questions liées à sa ou ses branches professionnelles, le développement de la CGT.

Elle prend, en fonction des situations, toutes les initiatives d'action nécessaires.

Sa direction représente et défend les intérêts de ses membres, auprès des pouvoirs publics, des organisations patronales, des associations et autres institutions nationales et internationales.

Toute création, adhésion à la CGT d'une fédération ou transformation du champ professionnel de l'une d'elles ne peut être acceptée qu'après accord du comité confédéral national de la CGT.

Article 11

Les fédérations, sur la base de préoccupations communes ou connexes aux salariés de leurs secteurs d'activités, peuvent constituer entre elles des unions interfédérales, fonctionnant :

- soit comme simples moyens de liaison et de coordination ;
- soit comme structures dotées de leurs statuts propres.

Les unions départementales

Article 12

Les unions départementales sont constituées des syndicats et des sections syndicales d'un même département.

Le syndicat rayonnant sur le territoire de plusieurs unions départementales participe à la vie syndicale et acquitte cotisation aux unions départementales concernées pour le nombre de syndiqués relevant de chacune d'elles, le cas échéant par l'intermédiaire de ses sections syndicales conformément à l'annexe financière.

L'union départementale impulse et coordonne l'activité syndicale et revendicative et le développement de la CGT, tant sur les questions générales que sur celles propres au département.

Elle prend, en fonction des situations, toutes les initiatives d'action au niveau de son département.

En liaison avec les organisations concernées, sa direction représente la CGT auprès des pouvoirs publics, des organisations patronales, des associations et autres institutions du département.

Article 13

L'activité de la CGT dans chaque région est animée par un comité régional. Celui-ci est constitué par les unions départementales de la région, qui en déterminent la composition et en assurent la direction. Les secrétaires généraux des unions départementales ou leurs représentants dûment mandatés font partie du comité régional.

Le comité régional coordonne et impulse l'activité syndicale sur toutes les questions d'intérêt régional. Il prend les décisions utiles à cet effet, et organise la coopération entre les organisations concernées.

Il désigne, en accord avec les unions départementales et les fédérations intéressées, les représentants de la CGT dans les organismes régionaux ; et, avec les unions départementales et la confédération, les représentations européennes concernant la région.

Le comité régional désigne un secrétaire régional dont le rôle est d'animer ses travaux, d'organiser et de coordonner les représentations régionales de la CGT, de faire des propositions pour la mise en œuvre des décisions.

Pour ce faire, le comité régional peut éventuellement mettre en place un secrétariat dont il fixe la composition, les attributions et le fonctionnement.

Le financement des activités régionales est assuré par une cotisation, conformément à l'annexe financière, et par des ressources exceptionnelles.

Les unions locales

Article 14

Les unions locales sont constituées par les syndicats et sections syndicales relevant d'une même zone géographique.

Au sein d'un département, les zones géographiques des unions locales sont définies ou modifiées par le congrès ou le comité général de l'union départementale. Une même union locale peut couvrir des zones géographiques contiguës de plusieurs départements, par décision concertée des unions départementales concernées.

Le syndicat rayonnant sur le territoire de plusieurs unions locales participe à la vie syndicale et acquitte cotisation aux unions locales concernées pour le nombre de syndiqués relevant de chacune d'elles, le cas échéant par l'intermédiaire de ses sections syndicales, conformément à l'annexe financière.

L'union locale impulse et coordonne l'activité de la CGT dans son secteur. Elle est le lieu privilégié où les syndicats et sections syndicales des petites, moyennes et grandes entreprises des secteurs privé, public et nationalisé, peuvent définir et préciser leurs objectifs communs, épauler mutuellement leurs actions, donner toute leur efficacité aux luttes professionnelles et d'ensemble.

Elle développe les solidarités entre tous les salariés, de toutes générations, ayant ou non un emploi, un logement, des droits sociaux. Elle donne au déploiement de la CGT toute l'ampleur nécessaire sur son territoire.

Elle contribue à la création et au développement d'organisations syndicales nouvelles parmi les salariés actifs, retraités et privés d'emploi.

Elle permet l'accueil et l'organisation temporaire des syndiqués isolés.

En liaison avec les syndicats concernés, fédérations et unions départementales veillent en permanence à la construction et aux moyens de fonctionnement, humains et matériels des unions locales.

La confédération

Article 15

La confédération est l'émanation et le bien commun de toutes les organisations qui la composent.

L'action confédérale a pour mission de promouvoir, conformément aux décisions des congrès confédéraux, les analyses et mesures qu'elle propose dans les domaines économiques, sociaux et politiques, notamment celles relatives à la défense, à l'unité et à l'organisation des salariés de tous statuts et de toutes générations.

Par l'intermédiaire de ses organismes de direction tels que définis par les présents statuts, elle exerce son action au plan national et international en :

- organisant l'impulsion, le soutien, la coordination des actions des salariés dans tous les domaines en vue de faire aboutir leurs revendications et aspirations ;
- prenant toutes les initiatives unitaires et de coopération avec les autres organisations syndicales françaises, européennes et internationales ;
- développant la solidarité internationale et la défense des intérêts communs à tous les salariés du monde ;
- représentant la CGT dans tous les organismes nationaux et internationaux où sont en jeu les intérêts des salariés, les questions de libertés, de paix, de démocratie, de coopération ;
- contribuant à la mise en commun des réflexions, expériences, initiatives revendicatives et moyens d'action de toutes les composantes de la CGT ; à leur coopération permanente ;
- favorisant le développement, l'adaptation, la systématisation des efforts de formation des syndiqués et responsables syndicaux et celle des salariés ;
- développant tous les efforts et les moyens d'information, de communication modernes nécessaires ;
- suscitant et soutenant les activités spécifiques des diverses catégories de salariés de tous statuts et de toutes générations.

La CGT, compte tenu du statut administratif particulier des DOM et TOM et en accord avec les centrales de ces pays, les représente auprès des pouvoirs publics français.

Les organisations confédérées particulières

L'Union confédérale des retraités (UCR)

Article 16

L'Union confédérale des retraités a pour objet de rassembler tous les salariés retraités, préretraités, pensionnés, en vue d'assurer la défense et l'amélioration de leurs droits et de leurs intérêts.

Organisation spécifique, elle définit et met en œuvre l'action confédérale parmi ces salariés. Conformément à ses propres statuts, elle dispose dans la CGT des formes d'organisation adaptées à leur diversité professionnelle et à leurs lieux de résidence.

Celles-ci tiennent compte des besoins des populations qu'elle a l'ambition d'organiser et de défendre et répondent à l'exigence du maintien d'une liaison étroite avec les salariés actifs, au niveau des entreprises, localités, départements, branches professionnelles.

L'UCR assure la liaison, la coordination et l'information des organisations CGT de retraités, préretraités et pensionnés, dans le cadre des orientations et actions confédérales.

En particulier :

- en lien avec la confédération, elle représente ses mandants auprès des pouvoirs publics et de tous les organismes les concernant ;
- elle les informe et fait connaître ses positions et propositions ;
- elle publie un journal confédéral spécifique, Vie nouvelle.

Article 17

L'UCR coopère avec toutes les organisations de la CGT afin de favoriser l'expression des besoins et aspirations des retraités, préretraités et pensionnés. Et notamment :

- avec les fédérations pour le développement des unions fédérales de retraités (UFR) ou de tout autre dispositif adapté aux nécessités de l'action et de la syndicalisation ;
- avec les unions départementales et les unions locales pour contribuer à l'activité des unions syndicales de retraités et des unions de sections locales de retraités (USR – USLR).

L'Union générale des ingénieurs, cadres et techniciens CGT

Article 18

L'UGICT-CGT assure la liaison, la coordination et l'information des syndicats et sections syndicales CGT groupant les ingénieurs, cadres, techniciens et agents de maîtrise.

Elle définit et met en œuvre l'action de la CGT parmi ces salariés.

Elle contribue à la construction des convergences et solidarités entre ces salariés et ceux des autres catégories.

Elle impulse leur syndicalisation et le développement de leurs organisations spécifiques au niveau des entreprises, établissements ou services. Pour assurer l'information et l'expression de la CGT en leur direction, l'UGICT-CGT publie un journal confédéral spécifique, Options.

Article 19

L'UGICT-CGT coopère avec toutes les organisations de la CGT pour le déploiement de l'activité revendicative et de la syndicalisation des ingénieurs, cadres, techniciens et agents de maîtrise ; et notamment :

- avec les fédérations pour le développement d'unions fédérales, sous les formes les mieux adaptées,
- avec les unions départementales pour la création et le renforcement de commissions UGICT, appropriées aux besoins départementaux,
- avec les unions locales pour favoriser l'engagement interprofessionnel des syndiqués et organisations UGICT, et leur coordination locale.

Le Comité national de lutte et de défense des chômeurs

Article 20

Le Comité national de lutte et de défense des chômeurs assure la liaison, la coordination et l'information des comités départementaux, locaux et autres organisations de salariés privés d'emploi. Il contribue à définir et mettre en œuvre l'action de la CGT parmi ces salariés.

Il impulse l'activité revendicative, la syndicalisation et le développement des comités en coopération avec toute la CGT.

Relations entre les organisations de la CGT

Article 21

Les relations entre organisations de la CGT sont fondées sur les principes de la démocratie syndicale et du fédéralisme.

Toutes les organisations qui la composent :

- disposent d'une pleine autonomie d'expression, de décision et d'action, dans le respect des présents statuts ;
- recherchent entre elles, en permanence, la coopération, la complémentarité avec les autres composantes de la CGT, la prise en compte des intérêts communs à l'ensemble des salariés.

Article 22

Les coopérations entre organisations de la CGT s'exercent notamment pour contribuer :

- au développement des convergences d'intérêts et des solidarités de luttes ;
- à la création, au développement et à l'activité des syndicats ;
- à l'expression de la CGT et à son implantation dans toutes les entreprises, zones d'activité, catégories où elle n'est pas encore organisée ;
- à la syndicalisation des salariés privés d'emploi ou placés en situation d'isolement ou de précarité.

Article 23

Les syndicats et fédérations concernées prennent les mesures nécessaires pour assurer la coordination de leurs activités dans les entreprises relevant d'un même groupe. Elles le font, si besoin est, en liaison avec la confédération.

Article 24

La pratique de la concertation, le respect des présents statuts et de leur annexe sur les règles de vie, et l'information complète et régulière des syndiqués concernés, sont la base des solutions aux différends et conflits qui peuvent survenir entre des organisations de la CGT.

La commission exécutive confédérale est habilitée à traiter de ces différends et conflits.

Elle propose un processus de règlement après avoir entendu les parties en présence, afin de parvenir à une solution équitable.

Si le conflit entre les organisations repose sur des contradictions entre leurs statuts respectifs, ou entre leurs statuts et ceux de la CGT, seules font foi les dispositions des présents statuts, auxquelles les organisations ont adhéré de par leur affiliation à la CGT.

Concernant les litiges entre des organisations du CCN relatifs aux champs d'affiliation de syndicat, les organisations concernées peuvent saisir la commission Affiliation élue par le CCN. La commission Affiliation tente de rapprocher les parties. Elle peut préconiser une solution si nécessaire.

En cas de désaccord persistant, les parties peuvent faire appel devant le CCN.

Jusqu'au règlement du différend ou du conflit le CCN prend toute mesure conservatoire qu'impose le fonctionnement des organisations concernées.

Article 25

En cas de manquement grave ou d'actes contraires aux présents statuts, le CCN, sur proposition de la commission exécutive confédérale, peut décider de l'exclusion d'une organisation confédérée.

Celle-ci devra préalablement être entendue. Elle pourra faire appel de la décision devant le congrès confédéral.

Le comité confédéral national décide si l'exclusion prend effet immédiatement. En cas d'appel auprès du congrès confédéral, l'appel a un effet suspensif.

En cas d'exclusion avec un effet suspensif, le comité confédéral national assortit sa décision de mesures d'applications immédiates dans les domaines visés au paragraphe suivant.

L'exclusion emporte l'interdiction de conserver et d'utiliser le sigle CGT, l'interdiction de disposer des locaux, des biens, des archives et de la liste des adhérents.

Dans les deux cas, la commission exécutive confédérale prend toutes dispositions pour régler les problèmes consécutifs à l'exclusion. Elle met en œuvre, par ailleurs, les mesures nécessaires pour que les syndicats et sections syndicales adhérents à l'organisation exclue, ou les syndiqués s'il s'agit d'un syndicat, puissent retrouver leur place dans une organisation confédérée.

Titre 3 : Vie et activité confédérales

Congrès et organismes de direction (CCN, CE, BC)

Article 26

La direction de la confédération est exercée démocratiquement par les syndicats confédérés à qui elle appartient au travers :

- du congrès confédéral ;
- du comité confédéral national ;
- de la commission exécutive confédérale ;
- du bureau confédéral.

Article 27 : Le congrès

Article 27-1

Le congrès confédéral, instance souveraine de la CGT, se réunit en session ordinaire tous les trois ans.

Article 27-2

Il est convoqué en session ordinaire par le CCN qui en établit l'ordre du jour.

Les documents soumis à la réflexion et au vote du congrès sont adressés aux syndicats au moins trois mois avant l'ouverture des travaux du congrès.

Les amendements à ces documents doivent être transmis par les syndicats, sections syndicales et comités de salariés privés d'emploi qui précisent s'ils ont ou non été adoptés.

Un congrès peut être convoqué en session extraordinaire par le CCN qui en fixe l'ordre du jour. La majorité des deux tiers des voix est alors requise. Dans ce cas, les règles concernant les délais de présentation des documents de réflexions soumis aux votes des syndicats, ne sont pas applicables, à la différence des autres règles statutaires (votes, mandatements…).

Le congrès réuni en séance extraordinaire ne peut délibérer que sur les questions portées à son ordre du jour.

Article 27-3

Le congrès se prononce sur :

- le rapport d'activité ;
- le document d'orientation ;
- le rapport financier ;
- et éventuellement sur tout document soumis à son ordre du jour comme les modifications statutaires.

Il élit la commission exécutive confédérale et la commission financière de contrôle.

Article 27-4

Le congrès confédéral est constitué par les représentants mandatés des syndicats ayant rempli leurs obligations envers la CGT.

Le CCN, la commission exécutive et la commission financière de contrôle assistent au congrès avec voix consultative.

Dès sa première séance, le congrès élit son bureau qui dirige ses travaux.

Article 27-5

Le nombre de délégués est fixé par le CCN dans une limite compatible avec les conditions matérielles des assises confédérales et les exigences d'une libre et sérieuse discussion de l'ordre du jour du congrès.

La représentation des syndicats de chaque fédération et de chaque union départementale est fonction de son nombre d'adhérents actifs d'une part, retraités d'autre part. Cette représentation est calculée à partir du règlement du FNI par les syndicats à Cogetise, sur les trois exercices précédant le congrès conformément aux dispositions de l'annexe financière.

L'UCR organise la représentation des sections syndicales interprofessionnelles de retraités.

La désignation démocratique de délégués directs représentant un syndicat ou de délégués représentant plusieurs syndicats fait l'objet d'une coopération active entre les fédérations et les unions départementales.

Cette coopération permet d'assurer :

- la participation de délégués, de chaque département, de toutes les catégories sociales et professionnelles ;
- la participation de délégués assumant des responsabilités dans les unions locales.

Article 27-6

Chaque syndicat représenté au congrès a droit à un nombre de voix calculé sur la base des cotisations réglées à Cogetise au cours des trois exercices précédant le congrès, conformément aux dispositions de l'annexe financière.

Le nombre de voix est calculé sur la base d'une voix pour dix cotisations mensuelles par an.

Le CCN prend les dispositions nécessaires pour une représentation équitable des salariés retraités et privés d'emploi.

Concernant les syndicats créés depuis le congrès précédent, le nombre de voix est déterminé dans les mêmes conditions, au prorata de l'ancienneté de leur affiliation

Article 27-7

Toutes les opérations concernant les votes sont placées sous le contrôle et la responsabilité de la « commission mandatement et votes » élue par le congrès.

Le congrès peut valablement délibérer lorsque 50 % des mandats, plus un, sont représentés.

Les votes sont acquis à la majorité simple, sauf dispositions contraires des présents statuts.

Chaque délégué vote au nom et conformément au choix du (des) syndicat(s), qui l'a (l'ont) mandaté.

Il peut en fonction du mandat des syndicats émettre des votes différenciés.

À l'issue du congrès, chaque délégué et organisation de la CGT peuvent prendre connaissance des votes émis.

Article 27-8

Le compte rendu in extenso du congrès est publié sous la responsabilité de la direction confédérale.

Article 28

Le comité confédéral national

Il est l'instance souveraine entre deux congrès.

Il est constitué des secrétaires généraux des fédérations et des unions départementales ou de leurs représentants. Ils sont dûment mandatés par ces organisations. Aucun membre de la commission exécutive confédérale et de la commission financière de contrôle ne peut être porteur d'un mandat délibératif.

Il se réunit au moins trois fois par an.

Il est convoqué par la commission exécutive qui établit son ordre du jour sur proposition du bureau confédéral.

Il peut être convoqué à la demande du tiers de ses membres sur un ordre du jour précis.

Participent au CCN, avec voix consultative :

- les membres de la commission exécutive confédérale et de la commission financière de contrôle ;
- un représentant de l'UGICT, de l'UCR, du Comité national de lutte et de défense des chômeurs ;
- un représentant de chaque comité régional et des unions interfédérales décrites à l'Article 11 ;
- un représentant d'Indecosa ;
- un représentant de l'organisme créé pour animer l'activité de la CGT en direction des jeunes ;
- un représentant du Comité interrégional des confédérations des pays d'Outre-Mer (CIRCPOM).

Représentatif de la CGT, s'exprimant sur mandat des organisations qui le composent, le CCN délibère des grands problèmes qui intéressent la CGT dans le cadre des orientations définies par le congrès.

Il contrôle l'activité de la direction confédérale, assurée par la commission exécutive confédérale et le bureau confédéral.

Il entend le rapport annuel présenté par la CFC.

Il fixe à la majorité simple en début de chaque session, ses méthodes de travail.

Les décisions du CCN sont, en règle générale, prises à la majorité simple à main levée ou par appel des organisations à la demande d'un seul de ses membres.

Seules les organisations présentes au moment du scrutin votent.

La majorité des deux tiers des voix représentées est requise pour :

- procéder à toute reconsidération de l'orientation décidée par le congrès qui, dans ce cas, entraîne la convocation immédiate d'un congrès extraordinaire ;
- pourvoir en cas de vacance aux modifications qui s'avéreraient nécessaires dans la composition de la commission exécutive confédérale et du bureau confédéral ;
- décider des affiliations et désaffiliations internationales de la CGT ;
- établir et modifier l'annexe financière.

Lorsque la majorité des deux tiers est requise ou à la demande du quart des organisations ayant voix délibératives, les votes s'effectuent sur la base suivante : chaque organisation a une voix plus une voix supplémentaire par tranche de 2 000 adhérents.

Le nombre d'adhérents est calculé sur le nombre de cotisations payées dans l'année qui précède la réunion du CCN sur la base de un adhérent par dix cotisations payées.

Article 29

La commission exécutive confédérale

Elle est élue par le congrès. Le nombre minimum et maximum de ses membres est déterminé par le CCN avant le congrès.

Elle assure la direction de la CGT et la conduite de l'action confédérale dans le cadre des orientations du congrès, des présents statuts et sous le contrôle du CCN. Elle examine et vote le budget annuel de la confédération soumis par le bureau confédéral.

Elle vote l'approbation des comptes de la confédération dans le cadre des obligations légales de certification et de publication des comptes des organisations syndicales.

Elle se réunit au moins une fois par mois sur convocation du bureau confédéral ou à la demande du tiers de ses membres.

La commission exécutive et le bureau confédéral ont tout pouvoir pour mettre en place les commissions, organismes, centres d'études et de formation, associa-

tions de nature à répondre aux besoins de l'action confédérale.

Ils en déterminent les compétences et les moyens de fonctionnement.

Les organisations de la CGT sont tenues informées des travaux et votes de la commission exécutive.

Les fédérations et unions départementales, l'UGICT et l'UCR, le Comité national de lutte et de défense des chômeurs présentent les candidatures à la commission exécutive confédérale avec l'avis des syndicats concernés par ces candidatures.

Ils donnent leur opinion au CCN sur toutes les candidatures, qu'ils ont ou non retenues, afin de lui permettre d'établir la liste des candidatures à publier.

Avant publication, le CCN entend l'opinion de la commission exécutive sur les enseignements de son mandat, sur les objectifs et critères à retenir pour l'élection de la nouvelle commission exécutive confédérale. Dans le cas où le CCN proposerait une ou plusieurs candidatures non retenues, en fonction de ce qu'il juge utile pour la direction confédérale, sa décision devrait être prise à la majorité des deux tiers des voix représentées conformément aux dispositions de l'Article 28.

La liste des candidatures est publiée par ordre alphabétique trois mois avant le congrès, accompagnée des mêmes éléments objectifs de connaissance pour chacune de ces candidatures.

Le CCN se tenant pendant le congrès arrête la liste des candidatures qu'il propose.

Le congrès a la possibilité de se prononcer sur l'ensemble des candidatures parvenues dans les délais statutaires.

Les votes à la commission exécutive ont lieu à la majorité simple.

Article 30

Le bureau confédéral

Les membres du bureau confédéral dont le nombre est fixé par le CCN sont choisis dans la commission exécutive et proposés par elle. Ils sont élus par le CCN qui désigne parmi eux un(e) secrétaire général(e) et un administrateur.

Nul ne peut être élu membre du bureau confédéral s'il ne peut justifier de trois années de présence ininterrompue dans l'organisation syndicale.

Les membres du bureau confédéral sont rééligibles. Ils sont révocables par le CCN.

Le bureau confédéral répartit les responsabilités en son sein et organise le travail de la confédération.

Il soumet ses propositions d'organisation à la commission exécutive.

Il organise la représentation de la CGT dans toutes les institutions et activités relevant de sa responsabilité.

Sur proposition de l'administrateur, il procède à l'arrêté des comptes de la confédération qui seront soumis à l'approbation de la commission exécutive dans le cadre des procédures comptables légales.

Les membres du bureau confédéral ne peuvent être élus à un mandat national électif même non rétribué sans être considérés comme démissionnaires du bureau confédéral.

Organisme de contrôle et d'évaluation

Article 31

La commission financière de contrôle est un organisme de contrôle et d'évaluation de l'application des orientations du congrès en matière financière.

Elle rend compte de ce contrôle à la commission exécutive, au CCN et à l'occasion de chaque congrès.

Elle se soucie de l'état des effectifs et de la rentrée régulière des cotisations et prend toutes dispositions à cet effet.

Elle vérifie que les dépenses sont conformes aux décisions de la commission exécutive prises lors du vote des budgets.

Elle est compétente pour formuler toute suggestion et remarque sur la gestion et sur la politique financière de la confédération.

Ses membres sont choisis en dehors de la CE et font l'objet de candidatures distinctes proposées dans les mêmes conditions que pour la commission exécutive. Le nombre, impair, des membres de la CFC est fixé par le CCN avant le congrès.

Ses membres participent aux travaux de la CE mais ne prennent pas part aux votes.

La commission financière de contrôle se réunit au minimum quatre fois par an et nomme en son sein un président chargé de la convoquer et d'animer son travail.

Communication – information

Article 32

L'information constitue un des aspects essentiels des principes de vie démocratique de la CGT.

La commission exécutive et le bureau confédéral éditent tout matériel ou publication ayant pour but de fournir une information plus large ou particulière aux organisations, syndiqués et salariés.

Le bureau confédéral édite une publication portant comme titre Le Peuple avec sous-titre Organe officiel de la Confédération générale du travail.

Elle a pour objet de porter à la connaissance des organisations les orientations, décisions et réflexions de la direction confédérale. À cet effet, elle rend notamment compte des travaux et décisions du CCN et des congrès.

Chaque syndicat en reçoit gratuitement un exemplaire. Sa diffusion est plus largement assurée par voie d'abonnement.

Chaque syndiqué reçoit une publication portant le titre Ensemble, éditée par la commission exécutive confédérale. Son financement est assuré par un prélèvement sur les cotisations conformément à l'annexe financière.

La commission exécutive et le bureau confédéral éditent d'autres publications comme La Nouvelle Vie ouvrière.

Leur diffusion est placée sous leur responsabilité et celle des organisations de la CGT.

Information et défense des consommateurs

Article 33

Indecosa-CGT (INformation et DEfense des COnsommateurs SAlariés) est l'organisation des consommateurs salariés créée par la CGT.

Tout adhérent de la CGT en est membre de droit sauf s'il exprime un avis contraire.

La cotisation annuelle est partie intégrante du FNI suivant les dispositions contenues dans l'annexe financière.

Financement

Article 34

La cotisation syndicale versée régulièrement par chaque syndiqué – et sa ventilation à chacune des organisations qui constituent la CGT – matérialise son appartenance à la CGT et constitue un élément essentiel du financement de l'organisation.

Elle assure l'indépendance de toute l'organisation. Elle donne les moyens d'une activité syndicale de qualité et permet d'en assurer le développement.

Cette cotisation est égale à 1 % du salaire net, toutes primes comprises, ou de sa pension ou retraite nette (régime de base + complémentaire).

Article 35

Les matériels servant de support à la collecte des cotisations sont édités par la confédération. Une annexe financière fixe les modalités d'application des articles 34 à 36. Elle est adoptée et modifiable par le CCN.

Article 36

Le Fonds national interprofessionnel organise la solidarité financière entre les organisations de la CGT ; il a pour vocation fondamentale de contribuer à développer l'action, l'implantation, le renforcement et le redéploiement de la CGT au service d'une activité syndicale de qualité et en fonction des réalités et exigences.

Il est également sollicité pour :

- corriger les inégalités de moyens entre les organisations et surmonter leurs difficultés ;
- répondre à des besoins d'intérêt commun.

La gestion de ce fonds est assurée par une commission élue par le CCN et placée sous la responsabilité du bureau confédéral.

Le CCN et la CE sont régulièrement informés et consultés quant à l'activité et la gestion de ce fonds.

Article 37

La CGT prend toute initiative utile pour dégager des ressources financières destinées au développement de ses activités et de la solidarité entre les salariés sur le plan national ou international.

La CGT peut recevoir des subventions, dons et legs et tous produits conformes à son objet.

Dispositions particulières

Article 38

La confédération agit en justice devant toutes les juridictions tant nationales qu'internationales pour la défense des intérêts collectifs visés aussi bien par le code du travail que par le préambule et le titre 1 des présents statuts.

En fonction de son but et de sa mission, la confédération agit en justice :

- soit en tant que partie à titre principal ;
- soit au soutien d'une action concernant une de ses organisations confédérées, une personne physique ou une personne morale à but non lucratif (en intervention ou par constitution de partie civile) ;
- soit en substitution lorsqu'il lui apparaît que l'intérêt collectif est en cause et après avoir informé l'organisation confédérée directement concernée.

Le secrétaire général représente la confédération en justice.

Chaque membre de la commission exécutive confédérale est habilité à représenter la confédération en justice, sur mandat du bureau confédéral.

Le membre du bureau confédéral exerçant les fonctions d'administrateur représente la confédération dans tous les actes de la vie civile et devant les juridictions compétentes pour ses besoins propres.

Article 39

La confédération a pour titre Confédération générale du travail, en abrégé CGT.

Elle a une durée illimitée.

Son siège est fixé à Montreuil : 263 rue de Paris, 93516 Montreuil Cedex. Il pourra être transféré par décision du CCN.

Article 40

Le sigle CGT est le bien commun de toutes les organisations affiliées.

Aucune organisation, aucune personne ne peut se réclamer de son appartenance à la CGT, ne peut utiliser le sigle CGT ou le conserver, si elle ne remplit pas les conditions prescrites par les présents statuts et pour des fins autres que celles prévues par ceux-ci.

À l'exception de la confédération telle que visée à l'Article 15, le sigle CGT seul ne peut permettre d'identifier un syndicat ou une union de syndicats.

Chaque organisation confédérée décide de ses statuts dans le respect des présents statuts et de sa dénomination ; elle a, en fonction des règles légales en vigueur, sa personnalité juridique propre.

Article 41

Les présents statuts ne peuvent être modifiés que par un congrès ayant inscrit cette

question à son ordre du jour, sur proposition du CCN.

Les statuts ne peuvent être modifiés qu'à la majorité des deux tiers des mandats représentés avec un quorum des deux tiers des adhérents.

Article 42

Adoptés par le 51e congrès confédéral, les présents statuts entrent en vigueur dès leur adoption.

Ils annulent les précédents statuts et se substituent à eux.

Article 43

La confédération ne peut être dissoute que par un congrès spécialement convoqué à cet effet. Cette dissolution doit être adoptée à la majorité des trois quarts des mandats avec un quorum des quatre cinquièmes des adhérents.

Le congrès décide de la dévolution des biens et des archives.

Convention de coopération

fixant les rapports entre

la CGT de France d'une part et les CGT des départements d'Outre-Mer signataires dénommées « Confédérations des Pays d'Outre-Mers (CPOM) »

Préambule

Considérant :

- les termes suivants de la « Déclaration Commune » signée à Paris le 10 novembre 1969 **lors du 37e congrès de la CGT** entre **la CGT**, **la CGTG, la CGTM, la CGTR et l'UTG** : *«les rapports entre les cinq centrales doivent se renforcer et se développer, dans le respect absolu de l'indépendance de chacune»*;

- le principe présidant jusque-là à nos relations, traduisant d'abord la continuité des droits de la représentation et de la représentativité par la CGT pour les travailleurs domiens sur le plan national et dans l'hexagone ; ensuite que dans les territoires ultramarins ceux sont les organisations des territoires concernés qui ont mandat de la CGT pour assurer la présence de l'organisation et la défense des salariés ; et enfin l'agrégation des résultats électoraux obtenus par les CPOM et la CGT ;

- que les lois du 20 aout 2008 et du 5 juillet 2010 (sur la représentativité dans la fonction publique) 2010 nous imposent d'autres normes et modifient notamment les règles de la représentativité, et que celles ci nous obligent à redéfinir les modalités de nos liens historiques ;

- que nous nous devons d'améliorer la qualité de nos relations notamment quant à la représentation et à l'offre de formation ; et particulièrement dans les fonctions publiques (État, hospitalière et territoriale).

Pour ces raisons, les Confédérations signataires s'engagent à :

- mettre en œuvre les principes de solidarité qu'elles partagent et qui se fondent sur une histoire commune de la classe ouvrière ;

- poursuivre le renforcement de leurs actions de coopération ;

- fixer le cadre de leurs communautés d'intérêts dans une « déclaration commune » actualisée ;

- formaliser par cette convention de coopération, le resserrement des rapports entre elles et leurs organisations en précisant la nature de leurs engagements réciproques. Conclue au plan interprofessionnel, cette convention constitue la référence des déclinaisons professionnelles qui la prolongeront.

Afin de renforcer le développement de la solidarité entre les salariés de France et ceux de Guadeloupe, Guyane, Martinique, Mayotte et Réunion, elles décident :

Article 01 : Affiliation

Les Confédérations signataires conviennent de l'impérieuse nécessité de maintenir leurs liens de coopération, par une affiliation directe des CPOM à la Confédération Générale du Travail (CGT) telle que stipulée dans la loi n° 2008-789 du 20 août 2008 portant rénovation de la démocratie sociale et réforme du temps de travail.

La CGT n'accepte aucune affiliation directe de syndicat, fédération, union, chambre syndicale, ou toute structure basée dans un Pays d'Outre-Mer autre que les Confédérations signataires.

Toute Confédération affiliée à la CGT peut se désaffilier à tout moment.

Les signataires s'engagent à tout mettre en œuvre pour que la représentativité des CPOM soit reconnue sur leurs territoires respectifs.

Article 02 : Indépendance

Cette affiliation des CPOM à la CGT est basée sur le strict respect de l'indépendance politique et organisationnelle de celles - ci, qui ne saurait être remise en cause.

Les Confédérations affiliées disposent d'une pleine autonomie de décision et d'action, ainsi que de la capacité de s'associer ou de s'affilier à toute organisation internationale ou régionale de leurs choix.

Article 03 : Champ de syndicalisation

Le champ de syndicalisation de chaque confédération est circonscrit au territoire de son pays respectif.

En conséquence, l'adhésion des salariés résidents s'effectue à l'une ou l'autre des Confédérations selon le lieu d'exercice de leur activité professionnelle.

Article 04 : Prérogatives

Les Confédérations cosignataires reconnaissent la manifestation différenciée, de l'exploitation capitaliste sur leurs territoires, et des conditions dans lesquelles s'expriment les aspirations et luttes de leurs mandants. Aussi elles:

- déterminent à partir de leurs propres réalités, selon les règles statutaires et les orientations qu'elles se fixent et dans le respect des principes du mouvement cégétiste, leurs politiques, leurs programmes et leurs actions ;
- conservent toutes leurs prérogatives concernant les organisations qui leur sont affiliées.
- renoncent à s'ingérer dans le fonctionnement de l'une ou l'autre d'entre elles
- détiennent l'exclusivité du prélèvement et de la collecte des cotisations de leurs membres.

Article 05 : Représentation

Il est expressément convenu que :

- face aux pouvoirs publics, entreprises publiques ou privées, représentants du patronat ou organismes économiques et sociaux ; la CGT assure au niveau national la représentation des salariés des Pays d'Outre-Mer ;
- qu'à l'échelle des territoires domiens, les CPOM assurent face aux pouvoirs publics, aux entreprises publiques et privées, représentants du patronat ou organismes économiques et sociaux, les mandats impartis à la CGT dans le cadre de sa représentativité nationale.

Préalablement à toute décision ou action d'un signataire ayant des implications sur les salariés et/ou organisation d'un autre territoire, chaque fois que de besoin, aura lieu une concertation.

Les cosignataires conviennent de :

- la participation de représentants désignés par les CPOM aux délégations nationales sur tout sujet concernant en propre ces pays ;
- l'association des représentants désignés par les CPOM à la préparation, à tous les stades (groupe de travail, commission etc..) des processus de négociation des dossiers et projets concernant les Pays d'Outre-Mer, la France ou l'Europe ;
- la coopération entre leurs délégations respectives siégeant dans les organismes nationaux et leurs déclinaisons locales (type CESER), afin d'établir une plus grande cohérence ;
- l'attribution de mandats nationaux/internationaux (conseils, instituts, commissions, observatoires, organisations etc..) aux Confédérations des Pays d'Outre-Mer ;
- la continuité de la représentation de la CGT, au niveau régional, départemental ou local, par les CPOM qui, désignent et/ou arrêtent les candidats ou listes de candidatures pour toute instance ou organisme agissant dans leurs pays respectifs.

Article 06 : Comité inter-régional des CPOM

Les CPOM conviennent de la création d'un Comité Inter Régional (CIRCPOM), afin d'harmoniser les relations convenues entre elles et avec la CGT.

Garant de la mise en œuvre et du suivi des principes politiques présidant aux relations entre la CGT et les organisations qui le composent, le CIRCPOM a pour mission :

- de définir les règles de fonctionnement et de suivi de la coopération, en s'adaptant à l'évolution et aux besoins des organisations des Pays d'Outre-Mer ;
- d'aborder toutes questions notamment transversales relatives à la situation des populations laborieuses de ces territoires ;
- de désigner ses représentants, qui siégeront auprès du Comité confédéral national de la CGT, avec voix consultative.

Article 07 : Comité Syndical Inter Liaison (CSIL)

Les cosignataires conviennent de créer un Comité Syndical Inter Liaison (CSIL) en vue :

- de favoriser les échanges et faciliter le développement de l'action revendicative entre les branches professionnelles organisées sur leurs différents territoires ;
- d'établir les règles de fonctionnement de la coopération entre les fédérations, syndicats, chambres syndicales, unions de la CGT et des CPOM ;
- de faciliter la participation des fédérations syndicales, syndicats, chambres syndicales ou unions syndicales des pays d'Outre-Mer à l'étude et à l'élaboration des dossiers revendicatifs communs ;
- de confier à ces Confédérations l'examen des projets de textes spécifiques en vue de leur adaptation à leurs pays respectifs.

Article 08 : Élections

Afin que les suffrages obtenus par les CPOM soient agrégés aux résultats de la CGT au niveau national lors des élections professionnelles de tous niveaux, les CPOM s'engagent à apposer le sigle « CGT » si nécessaire en toutes lettres contiguement aux leurs, sur le matériel électoral.

Pour toutes les élections professionnelles, institutionnelles, ou autres, se déroulant dans un Pays d'Outre-Mer, la présentation des candidats relève exclusivement de la Confédération concernée.

Article 9 : Statuts

Afin de prévenir toute incohérence juridique, les statuts des différentes confédérations sont mis en conformité lors de leurs prochains congrès. En l'attente de ceux-ci, leurs organes délibératifs prennent les dispositions transitoires nécessaires.

Article 10 : Formation syndicale

La CGT veille à l'égalité de traitement et d'accès à la formation syndicale dans le cadre des moyens impartis à celle-ci au plan national.

Eu égard aux coûts de déplacements, elle s'engage à permettre l'accès des militants des CPOM aux formations syndicales de caractère national (générales ou spécialisées).

Chaque confédération exerce les prérogatives reconnues aux organisations syndicales, dans le domaine de la formation syndicale, sous sa responsabilité, dans son pays.

Article 11 : Moyens financiers

Dans le cadre de la loi du 5 mars 2014, les mêmes principes de répartition des ressources attribuées au financement du syndicalisme seront appliqués aux organisations de la CGT et aux Confédérations affiliées.

Article 12 : Signature - Révision - Modification - Dénonciation

Toute organisation syndicale des POM participant au mouvement cgtiste peut signer à tout moment la présente convention.

Cette convention est établie pour une durée indéterminée. Elle sera révisée tri annuellement à la date anniversaire de la première signature.

À tout moment une des organisations signataires pourra proposer aux autres la modification de l'un des articles. À cette occasion, les organisations signataires se réuniront à l'initiative de l'organisation la plus diligente, dans les 45 (quarante cinq) jours suivant la réception de la proposition de modification, afin de l'analyser, et prendre toute décision relative à la suite à donner.

Mai 2014

Règles de vie

Annexe adoptée par le 50e Congrès - Toulouse, 18- 22 mars 2013

Préambule

Notre ambition de faire vivre un syndicalisme confédéré efficace et transformateur nécessite des mises en commun à tous les niveaux des organisations et implique une qualité de relations et de prise en compte par les uns et les autres, des problèmes et propositions des uns et des autres.

Pour cela des textes importants existent :

Les chartes

- La charte de la Vie Syndicale, résolution adoptée au 47e congrès (mars 2003) ;
- La charte Égalité Femmes/Hommes adoptée par le CCN (31 mai 2007) ;
- La charte de l'élu et mandaté de la CGT (mai 2008) ;
- Les « recommandations de la CGT pour désigner les délégués syndicaux » (novembre 2006).

Les présentes règles de vie s'appuient sur les principes et dispositions contenus dans ces textes.

Ces règles traitent des références ou principes communs en termes de « droits » et de « devoirs » qui relèvent de l'organisation, du syndiqué, du militant, du responsable CGT. En cela, ces règles de vies constituent le règlement interne de la CGT.

Elles s'organisent autour de cinq thèmes :

1. la vie syndicale ;
2. les coopérations entre organisations, professionnelles et interprofessionnelles, le fédéralisme, le respect des statuts ;
3. les directions syndicales ;
4. les mandats et désignation ;
5. l'exercice du mandat, règles de vie et moyens financiers.

Ces thèmes sont traversés par deux principes fondamentaux : la démocratie et le fédéralisme.

I. La vie syndicale

À l'inverse d'un syndicalisme institutionnel, la CGT développe un syndicalisme de syndiqués auteurs, décideurs et acteurs.

Cela suppose de placer le syndiqué au centre de la vie syndicale et définir ses droits et devoirs.

L'adhésion à la CGT est un acte volontaire. En adhérant, chaque syndiqué acquiert le droit de participer à la vie démocratique et collective des organisations auxquelles il devient affilié.

Ces dernières doivent tout mettre en œuvre pour lui donner la possibilité d'être auteur, décideur et acteur des orientations, de l'action et de la vie de la CGT, condition incontournable pour défendre ses droits et transformer sa vie au travail, et hors du travail.

La dimension confédérée de son adhésion à la CGT lui ouvre le droit de disposer des informations produites par les organisations auxquelles il est affilié.

Le syndiqué exerce ses droits dans le respect des statuts et des règles de vie de la CGT.

Il a l'obligation d'acquitter ses cotisations mensuelles, conformément aux statuts.

Les droits ouverts par l'adhésion à la CGT sont :

- l'accueil du syndiqué. Chaque nouveau syndiqué à droit à une remise systématique d'un livret d'accueil ;
- la formation syndicale.

L'organisation CGT doit :

- créer les conditions d'une formation d'accueil dans les meilleurs délais pour que tout nouvel adhérent à la CGT ait les connaissances et les savoir-faire nécessaires pour participer à la vie syndicale et s'approprie les outils mis à sa disposition : professionnels, interprofessionnels et spécifiques ;
- assurer à chaque adhérent, tout au long de sa vie syndicale, l'accès à une formation syndicale générale ;
- accompagner dès le début du mandat toute prise de responsabilité d'une formation spécifique ;
- créer les conditions d'accès des militants à la formation syndicale.
- mettre à jour le Cogitiel pour une circulation des informations quels que soient les changements de situation qui interviennent (mobilité géographique, changement d'emploi, privé d'emploi, retraite…).

L'information syndicale nationale interprofessionnelle

La cotisation à la CGT ouvre le droit et l'accès à l'information syndicale à travers le journal de la CGT « Ensemble » diffusé à tous les syndiqués, auquel s'ajoute « Options » diffusé aux affiliés de l'Ugict-CGT.

Les adhérents doivent être informés de la possibilité de s'abonner à « La NVO », journal des élus et mandatés, et à « Vie Nouvelle », journal de l'Union confédérale des retraités.

Le droit à une vie syndicale collective organisée.

Le syndiqué a droit à participer au congrès de son syndicat, qui doit être organisé au moins tous les trois ans, et à une assemblée des syndiqués au moins une fois par an.

Les syndicats CGT doivent créer les conditions d'offrir les formes d'organisation permettant une vie collective syndicale effective (syndicat de site, de zone, section syndicale…).

Ces formes d'organisation tenant compte des problématiques professionnelles, territoriales et spécifiques doivent être décidées démocratiquement par les syndiqués dans le cadre des règles d'affiliation de la CGT.

Les organisations doivent créer les conditions pour que les syndiqués du dispositif national d'adhésion par Internet soient rapidement accueillis par un syndicat.

Le pouvoir d'intervention dans la CGT

Le syndiqué participe pleinement au débat et décisions qui concernent son organisation, son programme revendicatif, sa direction, la définition des mandats.

Le syndiqué à pouvoir de désignation des candidats CGT lors des élections professionnelles correspondant à son collège.

Dès lors que les statuts et règles de vie de la CGT sont respectés, les différences d'approches du syndiqué en termes d'orientation, ou de conception ne peuvent donner lieu à des pratiques d'exclusion.

La prise en compte de sa spécificité participe à élaborer la cohérence de l'activité de la CGT.

L'expression de la diversité des syndiqués doit être intégrée dans la vie démocratique et revendicative du syndicat.

Ses rapports aux autres salariés (démocratie citoyenne)

La CGT veut conjuguer démocratie syndicale et consultation des salariés. Les propositions de la CGT, à chaque étape, doivent être élaborées par les syndiqués et mises en débat parmi les salariés, avec la volonté de rendre compte, de dialoguer, de mobiliser et de renforcer les liens entre salariés et syndicats CGT.

II. Les coopérations entre organisations

2.1 - Assurer la cohérence des décisions dans la CGT

Le CCN est le lieu de décisions communes sur le plan national, qui impliquent l'engagement de toutes les organisations qui le composent.

Les décisions sont prises dans le cadre des orientations du congrès de la CGT, qui est le congrès de ses syndicats.

Il revient donc à toutes les organisations de la CGT de placer ces orientations au cœur de leurs propres pratiques et de leurs propres décisions.

Ainsi, la mise en œuvre des orientations de la CGT, constituent les éléments d'un cadre de cohérence décidé en commun, à partir duquel se développent des initiatives et des actions au sein de chaque profession et de chaque territoire.

Les instances interprofessionnelles de la CGT, unions départementales, unions locales… sont les lieux privilégiés pour s'informer mutuellement, construire ensemble les plans de travail pour confédéraliser les batailles revendicatives, organiser le déploiement solidaire vers tous les salariés.

2.2- La dimension interprofessionnelle de la CGT

Celle-ci ne peut exister que par une mise en commun des droits, des moyens et des énergies militantes existant au sein de chaque syndicat.

Tous les syndicats de la CGT doivent concourir en permanence à cette dimension interprofessionnelle :

- au sein de leur propre activité revendicative ;
- en constituant et en participant à la vie des structures interprofessionnelles dans chaque territoire en veillant à ce que celles-ci disposent des moyens nécessaires à leur fonctionnement ;
- en contribuant à l'émergence de revendications interprofessionnelles dans les territoires ;
- en participant au déploiement et au renforcement de la CGT dans les secteurs professionnels ou géographiques où elle n'est pas ou insuffisamment implantée.

Les fédérations et les unions départementales doivent en créer les conditions.

De même, les structures territoriales union départementales et unions locales doivent également contribuer au lien indispensable entre les syndicats, les sections syndicales et leur fédération.

2.3- La représentativité de la CGT : l'œuvre de tous

Compte tenu des règles de représentativité syndicale en vigueur, la représentativité de la CGT sur le plan interprofessionnel et dans chaque branche résulte du score obtenu par les listes CGT lors de chaque élection professionnelle, au sein des entreprises, des établissements privés et publics et lors de la consultation des salariés des TPE.

Toutes les organisations de la CGT doivent donc s'impliquer solidairement pour gagner la meilleure audience de la CGT au-delà de sa propre entreprise ou établissement.

Chaque organisation qui représente la CGT lors d'une élection professionnelle est tenue de veiller à la transmission des résultats par l'employeur auprès des autorités compétentes. Les organisations de la CGT du champ territorial et professionnel devront également disposer de ces résultats.

III. Les directions syndicales

Les directions syndicales ont pour première responsabilité le renforcement de la CGT, sa vie démocratique avec les syndiqués et l'impulsion de sa démarche revendicative, à partir des décisions et des orientations décidées en congrès.

Elles doivent œuvrer à la représentativité de la diversité du salariat et des syndiqués en adéquation avec les principes de la CGT.

Cette représentativité implique une représentation femmes-hommes à l'image des salariés présents dans le périmètre de l'organisation.

Elles doivent favoriser le plus largement possible la prise de responsabilité des adhérents, encourager les jeunes syndiqués à occuper toute leur place, du syndicat à la confédération.

Elles veillent à la rotation dans les responsabilités syndicales.

Elles combattent et condamnent, au sein de l'organisation, toute attitude raciste ou prise de position, xénophobe, homophobe, transphobe et intolérante.

Elles veillent à entretenir un climat de fraternité et de respect au sein de l'organisation.

Elles sont garantes de la désignation démocratique des mandatés et des candidats qui représentent la CGT lors d'élections ou de désignations.

Les directions syndicales doivent rendre compte de leur mandat lors des congrès ou assemblées générales qu'elles doivent convoquer régulièrement, conformément aux statuts de leur organisation.

Avec les commissions financières de contrôle. Elles prennent les dispositions nécessaires à une politique et à une gestion financière rigoureuse et transparente.

Elles veillent à sécuriser l'exercice des responsabilités syndicales du point de vue juridique.

IV. Les mandats

Le processus démocratique de désignation

4.1 Toute adhérente, tout adhérent a le droit de se proposer à tout mandat de représentation de la CGT relevant de son champ de syndicalisation (2), de même qu'à toute liste de candidats présentés par la CGT à une élection de représentativité, professionnelle ou interprofessionnelle, relevant de son champ de syndicalisation (3).

4.2 La désignation d'un mandaté ou d'un candidat à une élection de représentativité appartient aux syndiqués organisés au sein du périmètre du mandat ou de l'instance élue. Conformément au principe de démocratie syndicale, ces syndiqués sont informés des candidatures et consultés en vue de la désignation.

La consultation est réalisée par le ou les syndicats concernés, soit au niveau du syndicat, soit au niveau d'une ou plusieurs sections du syndicat. Les modalités de la consultation privilégient la réunion de l'assemblée des syndiqués ; en cas d'obstacles géographiques ou matériels justifiés, d'autres moyens d'assurer la consultation peuvent être mis en œuvre par le syndicat. Le résultat de la consultation est consigné dans un relevé de décision. Lorsque le mandat ou l'instance élue concerne un collège, la consultation porte sur les syndiqués de ce collège.

4.3 Lorsque plusieurs syndicats sont concernés par la désignation d'un mandaté ou l'établissement d'une liste électorale, la coordination du processus est organisée en coopération par la ou les fédérations et la ou les unions départementales auxquelles ces syndicats sont affiliés.

4.4 La désignation des mandatés et l'établissement des listes électorales relevant d'une branche professionnelle ou d'un groupe sont organisés par la fédération concernée, ou conjointement par les fédérations concernées s'il y en a plusieurs.

Les unions départementales sont informées du processus et peuvent formuler des avis.

4.5 La désignation des mandatés interprofessionnels sur un territoire et l'établissement des listes électorales à caractère interprofessionnel sur un territoire sont organisés par les unions locales, les unions départementales les comités régionaux concernés ou conjointement par les unions territoriales s'il y en a plusieurs. Les fédérations sont informées du processus et peuvent formuler des avis.

4.6 Le caractère démocratique du processus d'attribution des mandats ou de constitution des listes électorales passe par la préoccupation incontournable à assurer l'accès des femmes syndiquées afin de viser à la parité, ou à tout le moins une place des femmes dans les instances équivalente à celle qu'elles occupent parmi le salariat concerné.

V. Les mandats : exercice, conditions et moyens

5.1 L'exercice d'un mandat ou d'une fonction élue implique à la fois la responsabilité de celle ou celui qui l'exerce et de l'organisation de la CGT qui l'a désigné. La démarche syndicale et l'image de la CGT sont pour l'essentiel perçues à travers l'activité de ses représentants. Le renforcement de la CGT en nombre d'adhérents, condition déterminante de la construction des rapports de force, repose sur la qualité de cette perception. La représentativité de la CGT au niveau des entreprises, des professions, des territoires et de la nation découle de l'audience qu'elle a auprès des salariés. C'est à partir de ces considérations que se construisent les droits et devoirs respectifs du mandaté ou élu et de l'organisation.

5.2 La formation syndicale générale et spécifique à leur mandat est à la fois un droit des élus et mandatés et un besoin

(2) Mandats :
- d'entreprise : représentant de la section syndicale, délégué syndical, délégué syndical central, représentant syndical au CE, délégué de groupe…
- de branche : représentant dans les commissions paritaires ou groupes de suivi de branche, institutions paritaires de branche…
- interprofessionnels : conseiller du salarié, conseil économique et social régional, Copire…

(3) Fonctions élues d'entreprise : DP, CE, DUP, CHSCT de branche : interprofessionnelles : conseiller prud'homal.

pour la qualité de l'exercice du mandat. Les conditions réciproques doivent être créées pour assurer cette formation, impliquant notamment l'intervention coordonnée des organisations auprès de l'employeur de l'élu ou mandaté de même que les efforts de réalisation des stages appropriés par la CGT.

5.3 L'exercice d'un mandat ou d'une fonction élue doit répondre aux besoins de démocratie. Les réunions d'organismes doivent faire l'objet de comptes rendus auprès de l'organisation qui a attribué le mandat (ou des organisations s'il y en a plusieurs). Les positions de la CGT qui y sont exprimées doivent être débattues dans l'organisation. Des comptes rendus périodiques de mandat doivent être organisés auprès des syndiqués, voire des salariés quand il s'agit de fonctions élues. L'organisation qui attribue les mandats doit organiser cette démocratie dans l'exercice des mandats et des fonctions élues.

5.4 Chaque élu et mandaté s'engage à participer au renforcement de la syndicalisation, élément indispensable au rapport de force et à l'efficacité.

5.5 L'organisation qui attribue un mandat doit veiller à la mise en œuvre des moyens pour qu'il puisse s'exercer dans de bonnes conditions. Elle doit tout particulièrement veiller à la non-discrimination du mandaté ou de l'élu et intervenir pour la reconnaissance salariale du militant ou de la militante tout au long de son mandat.

Lorsqu'une indemnisation des mandatés doit être effectuée par l'organisation, celle-ci doit être construite à partir de critères fondés sur un double principe : l'absence de pertes de revenus personnels du militant et la transparence vis-à-vis des syndiqués. L'organisation a la responsabilité de prendre des décisions compatibles avec ses ressources.

Quand cela existe les dotations, indemnités et autres émoluments financiers liés à la responsabilité devront être versés à l'organisation.

L'organisation doit organiser le renouvellement des mandats en assurant une anticipation. Cette politique de cadres doit viser le non-cumul et la bonne répartition des mandats sur l'ensemble des syndiqués, la limitation de la durée des mandats et fonctions élues, le renouvellement générationnel des mandatés et élus.

Les conditions de réintégration ou de reclassement des militantes et militants en fin de mandat doivent faire l'objet d'une politique construite par l'organisation, si nécessaire en coopération au sein de la CGT. Elles doivent avoir été discutées avec les intéressés en amont de leur désignation.

L'organisation doit défendre l'intérêt de ses militants élus et mandatés en matière de d'évolution de carrière et de reconnaissance de leur qualification tout au long de leur mandat, permettant notamment l'engagement des jeunes.

Annexe financière aux statuts confédéraux

adoptée au 48e Congrès

Préambule

La présente annexe financière répond à l'Article 35 des statuts de la CGT et fixe les modalités d'application des Articles 34 à 36, dans le cadre du nouveau système de répartition des cotisations adopté par les 47e et 48e congrès confédéraux.

Article A

Dispositif général

Chaque syndicat encaisse sur son compte bancaire les cotisations des syndiqués.

Il en conserve un pourcentage conformément aux décisions de congrès ou comité auxquels il a été mandaté : congrès confédéral, congrès ou comité général de sa fédération, de son union départementale.

Il reverse le pourcentage complémentaire à un organisme CGT de répartition des cotisations, mis en place et fonctionnant selon les dispositions de l'Article B.

Cet organisme reverse à chaque organisation bénéficiaire la part qui lui revient, selon les dispositions de l'Article B.

Il met en permanence à la disposition des syndicats et des organisations les états des reversements effectués, afin de leur garantir la transparence et leur permettre d'assurer leurs responsabilités en matière de vie syndicale.

Article B

Le système CGT de répartition des reversements de cotisations

Constitution

En s'affiliant à la CGT, les syndicats participent au système CGT de répartition des cotisations qu'ils reversent. Ce système est nommé « CoGéTise ».

But

Son but exclusif est de recevoir les versements des syndicats et d'assurer leur répartition aux organisations bénéficiaires conformément aux décisions prises au congrès confédéral et aux congrès, comités nationaux ou généraux des fédérations et unions départementales, selon les dispositions adoptées dans cette annexe financière.

Il effectue mensuellement les reversements aux organisations, la date d'échéance étant arrêtée par le comité de gestion de l'organisme.

Toutes les cotisations reçues sont obligatoirement et intégralement reversées dès l'échéance mensuelle qui suit leur encaissement.

Il met à la disposition des organisations les états des versements effectués par les syndicats lors des exercices antérieurs et lors de l'exercice en cours. Cet état inclut au jour le jour les versements du mois en attente d'être reversés.

Administration

Le système de répartition est géré par un comité de gestion de vingt membres, dont un président. Celui-ci est constitué par le congrès confédéral. Outre l'administrateur et le président de la commission financière élus par le congrès, il comprend dix-huit autres membres élus par le congrès : six représentants de syndicats, deux d'unions locales, quatre de fédérations, quatre d'unions départementales, un de l'Ugict et un de l'Ucr. Le comité effectue un rapport annuel d'activités qu'il transmet aux organisations du Ccn ainsi

qu'un rapport à chaque congrès confédéral.

Pendant la première année, période de mise en œuvre, le Comité émettra des rapports intermédiaires de suivi, qui seront portés à la connaissance des syndicats par Le Peuple. De même, les syndicats pourront saisir le Comité de certaines difficultés auxquelles ils sont confrontés.

Fonctionnement

Via les fédérations et les unions départementales, l'organisme enregistre tous les syndicats de la CGT ainsi qu'éventuellement les autorisations de prélèvement des montants qu'ils déclarent.

Il met à leur disposition les outils nécessaires pour déclarer et effectuer les reversements (imprimés, site Internet, interface avec le CoGiTiel).

Les frais d'investissement et de fonctionnement de l'organisme sont prélevés sur les éventuels produits financiers de son compte. Toute opération spéculative est prohibée. S'ils sont insuffisants, le complément est prélevé sur le champ interprofessionnel national.

Article C

Le syndicat

Par décision du Congrès confédéral :

- sur la première cotisation de l'année de chaque syndiqué, le syndicat conserve une part de 33 % et reverse les 67 % restants, qui servent à financer le Fonds national interprofessionnel prévu à l'Article 36 des Statuts, ainsi que Solidarité Vie syndicale, Indécosa et l'Avenir Social ;

- sur les autres cotisations mensuelles, chaque syndicat conserve un pourcentage de 33 %, éventuellement aug-

menté ou diminué des modulations adoptées en congrès ou comité fédéral et/ou départemental, tel que le prévoient les Articles D et E.

Il reverse les 67 % restants, respectivement diminués ou augmentés des modulations professionnelle et / ou départementale.

Cette quote-part finance les organisations des champs professionnel, interprofessionnel territorial, interprofessionnel national, ainsi que la presse confédérale comprise dans la cotisation.

L'effet des deux modulations professionnelle et territoriale garantit au syndicat un pourcentage d'au moins 25 %. Aucune limite supérieure au pourcentage du syndicat n'est fixée.

Modalités

Chaque syndicat a la responsabilité de calculer le montant des reversements à effectuer. Il remplit régulièrement une déclaration des sommes à reverser et l'adresse à l'organisme CGT de répartition des reversements. Il a pour cela le choix entre trois moyens :

- le « module syndicat » du CoGiTiel ;
- l'accès sécurisé au site Internet de l'organisme ;
- l'envoi par la poste d'un bordereau rempli à la main.

Dans cette déclaration : il déclare les nombres et les montants des cotisations Fni et des cotisations mensuelles reçues des syndiqués, pour chaque catégorie de syndiqués que compte le syndicat (actifs généraux, actifs affiliés à l'Ugict, retraités et pensions de réversion).

Selon les pourcentages et modulations adoptés aux congrès confédéraux, congrès ou comité fédéral et départemental, il calcule et déclare les reversements correspondant aux Fni d'une part, aux cotisations mensuelles d'autre part, ainsi que le total des deux.

Il reverse à l'organisme le montant total déclaré, à son choix :

- soit par autorisation de prélèvement, donnée sur son ordre.

Chaque reversement et chaque bordereau concernent un seul département et une seule profession. Ainsi :

- un syndicat rayonnant sur une fédération et une union locale remplit un seul bordereau ;
- un syndicat multiprofessionnel doit effectuer autant de déclarations qu'il compte de fédérations représentées parmi ses syndiqués ;
- un syndicat national ou régional doit effectuer autant de reversements qu'il compte d'unions départementales représentées parmi ses syndiqués.

Il peut toutefois décider que les reversements sont effectués à l'organisme par ses sections départementales ou régionales.

Dans ce cas, la répartition entre la section et le syndicat national du pourcentage conservé par le syndicat est une affaire interne à celui-ci.

S'il n'est pas encore utilisateur du Cogitiel, un syndicat départemental (ou une section départementale d'un syndicat national) doit donner à l'organisme le nombre des syndiqués par union locale pour lui permettre d'effectuer les reversements à chacune d'elles.

Article D

Le champ professionnel

Les organisations professionnelles bénéficiaires d'un reversement sont définies par le congrès fédéral, ou à défaut par un comité national ou une assemblée où tous les syndicats de la profession sont représentés.

Les syndicats y adoptent les pourcentages attribués à chaque organisation bénéficiaire ainsi qu'une éventuelle modulation professionnelle, de sorte que la somme des pourcentages soit de 29 % plus ou moins la modulation, conformément à la décision du 48e Congrès confédéral.

Si la modulation diminue le pourcentage du champ professionnel, elle augmente d'autant celui des syndicats de la fédération.

Si la modulation augmente le pourcentage du champ professionnel, elle diminue d'autant celui des syndicats de la fédération.

Cette diminution est limitée à 4 %.

Pour permettre le financement d'une union fédérale d'ingénieurs, cadres, techniciens, une répartition spécifique des pourcentages sur les cotisations des syndiqués actifs affiliés à l'Ugict peut être adoptée.

De même, pour financer une union fédérale de retraités, une répartition spécifique des reversements des cotisations des retraités peut être adoptée.

Pour financer leurs éventuelles structures professionnelles territoriales, les syndicats d'une fédération peuvent décider soit de leur affecter un pourcentage, soit d'instaurer un pourcentage « mutualisé » pour l'ensemble de ces structures.

Pour financer d'éventuelles unions interfédérales, les fédérations affiliées à l'union se concertent pour proposer un pourcentage commun à leurs syndicats diminuant d'autant celui du champ professionnel.

Pour tenir compte de certaines spécificités territoriales ou professionnelles, un congrès fédéral ou une autre instance statutaire entre deux congrès peut regrouper des syndicats dans un ou quelques champs assortis d'une répartition spécifique.

Chaque fédération informe l'organisme national de reversements prévu à l'Article B des dispositions prises au niveau de son champ (organisations bénéficiaires, pourcentages attribués, modulation éventuelle).

Article E

Le champ interprofessionnel territorial

Les organisations interprofessionnelles bénéficiaires d'un reversement sont définies par le congrès départemental, ou à

défaut par le Conseil général départemental où tous les syndicats du département sont représentés. Les syndicats y adoptent les pourcentages attribués à chaque organisation bénéficiaire et éventuellement une modulation territoriale, de sorte que la somme des pourcentages soit égale à 25 %, plus ou moins la modulation, conformément à la décision du 48e Congrès confédéral.

Si la modulation diminue le pourcentage du champ interprofessionnel, elle augmente d'autant celui des syndicats du département.

Si la modulation augmente le pourcentage du champ interprofessionnel,elle diminue d'autant celui des syndicats du département. Cette diminution est limitée à 4 %.

Les syndicats de chaque union départementale doivent déterminer le mode de financement des unions locales. Après concertation entre l'union départementale et les unions locales, ils peuvent :

- soit décider de leur affecter un pourcentage sur les cotisations des syndiqués de leur territoire ;

- soit instaurer un financement mutualisé à partir d'un pourcentage sur les cotisations de l'ensemble des syndiqués du département.

Il leur appartient alors de définir et mettre en place le système de mutualisation, totale ou partielle, entre toutes ou certaines unions locales.

Pour permettre le financement d'unions de retraités, une répartition spécifique des pourcentages sur les cotisations des syndiqués retraités peut être adoptée. De même pour financer une commission départementale d'ingénieurs, cadres, techniciens, une répartition spécifique des reversements des cotisations des Ict peut être adoptée.

Pour financer les comités régionaux, les unions départementales de la région se concertent pour proposer un pourcentage commun à leurs syndicats.

Chaque union départementale informe l'organisme national de reversements prévu à l'Article B des dispositions prises au niveau de son champ (organisations bénéficiaires, pourcentages attribués, modulation éventuelle).

Article F

Champ interprofessionnel national

Il comprend pour tous les syndiqués la confédération, à laquelle s'ajoute l'Ugict pour les syndiqués actifs ingénieurs,cadres et techniciens, ainsi que l'Ucr pour les syndiqués retraités.

Le pourcentage du champ interprofessionnel national (somme des pourcentages revenant aux organisations de ce champ) est égal à 10 %.

La répartition aux différentes organisations du champ est adoptée par le Ccn, après avis des instances de ces organisations.

Article G

Presse confédérale comprise dans la cotisation

Elle bénéficie d'un reversement de 3 % des cotisations mensuelles.

Tous les syndiqués reçoivent une publication confédérale mensuelle, réalisée par *la Vie Ouvrière*. Les fédérations,unions départementales ou régionales qui le souhaitent peuvent éditer un supplément destiné aux syndiqués de leur champ. Les syndiqués reçoivent cette publication s'ils sont à jour de leur cotisation.

Les syndicats reçoivent le nombre d'exemplaires correspondant au nombre de cotisations reversées et les transmettent aux syndiqués.S'ils utilisent le CoGiTiel et communiquent les adresses des syndiqués ainsi que le nombre de cotisations payées, l'envoi de ces exemplaires doit se faire directement à leur domicile.

Les syndiqués actifs affiliés à l'Ugict reçoivent également Options, selon une périodicité distincte. La fabrication et l'envoi de cette publication spécifique sont financés par un prélèvement de 6 % des montants reversés par les syndicats au titre des syndiqués affiliés à l'Ugict, la répartition aux organisations étant effectuée sur les 94 % restants de ces montants.Tous les syndiqués sont invités à s'abonner, en sus de leur cotisation à l'hebdomadaire NVO, afin d'avoir une information plus régulière sur l'actualité sociale.

De la même façon, les syndiqués retraités seront incités à s'abonner à Vie Nouvelle, périodique réalisé par l'UCR.

Maquette : département Information et Communication de la CGT
Marie-Thérèse Grollier 11/05/2016
Imprimé par nos soins

Annex 9

GHANA TRADES UNION CONGRESS

9TH QUADRENNIAL DELEGATES CONGRESS

11-16 AUGUST 2012

Kwame Nkrumah University of Science and Technology (KNUST)

Kumasi

Theme Document

Organising for Empowerment, Employment Security and Increased Productivity

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FOREWORD

Organising has been the main strategy that has sustained the trade union movement all these years. The effectiveness of collective bargaining, which is the heart of the trade union work, depends on the ability of the unions to organise. Similarly, the effectiveness of collective action or strikes depends on the unions' ability to mobilize workers for such actions.

However, recent trends in the labour market are undermining unions' ability to organize. The growing informal economy and the introduction of new forms of employment are making it more difficult for unions to sustain the interest of existing members and to recruit new members. This is the greatest challenge facing unions today.

The theme for this Congress **"Organising for Empowerment, Employment Security and Increased Productivity"** was, therefore, chosen to highlight this challenge and to call upon unions to rise up to the challenge.

This **Theme Document** has been prepared to serve as reference document to guide discussions and debates during and after the Congress. It has been written in a very simple language which makes it very easy to read. I urge all delegates to find the time to read it.

We thank the following comrades for their contributions to the Theme Document:

- Anthony Yaw Baah ((Deputy Secretary General, TUC);
- Kwabena Nyarko Otoo (Director, Labour Research & Policy Institute, TUC);
- Prince Asafu-Adjaye (Researcher, Labour Research & Policy Institute, TUC);
- Mary Torgbe (Researcher, Labour Research & Policy Institute, TUC); and
- Freda Frimpong (Youth Desk Officer, TUC).

KOFI ASAMOAH
SECRETARY GENERAL
ACCRA, AUGUST 2012

1.0 INTRODUCTION

Organising is the key to the survival and growth of the trade union movement. In fact, organizing is the essence of unionism. The cliché that unions must either organize or die is even more relevant now. The oversized informal economy, the changing forms of employment in the formal sector, and the challenges workers face in their effort to exercise their right to associate freely, impact negatively on the ability of unions to organize. The low and declining union membership in Ghana is the result of these and other factors including the lack of financial and material resources for mass organization.

One important feature of strong trade unions is their ability to first, sustain the interest of the existing members in the movement and, second, to recruit new members. High unionization rate/union density strengthen unions not only in collective bargaining but also it enhances their ability to use collective action/strikes effectively as a strategy towards the achievement of their goals (i.e., to protect the interest of their members). Unions can only claim the legitimacy to represent workers only if the majority of the workforce across the major sectors of the economy is unionized and covered by collective agreements. Unions which represent a large proportion of the workforce also gain the respect and credibility in the eyes of employers and the government. And, of course, unions can only improve their finances if they increase their membership dues which remain the most important source of funds for unions.

The theme for this Quadrennial Delegates Congress was, therefore, chosen to highlight the need for all unions to make organizing their number one priority in the coming quadrennial by sustaining the interests of the existing members and organizing new members into their fold. In addition to the advantages of

organizing mentioned above, there are clear links between organizing on the one hand and empowerment, employment security and increased productivity on the other hand.

First, let's examine the relationship between organizing and empowerment. To be empowered means to have more influence. Empowerment also means strength, vigour, and might. The labour movement can influence national policies and decisions at the workplace only if it is strong. Since unions derive their strength from their membership, it goes without saying that unions can be empowered only through organizing. Across the globe unions that are powerful are the ones which have large membership across all sectors of the economy, across occupations, across gender and across all age cohorts.

The relationship between organizing and employment security is even more straightforward. Employment security means workers are able to keep their jobs for as long as they wish without the threat of being fired. In this era of globalization and precarious work, it is only strong unions that can guarantee employment security for their members. Flowing from the positive relationship between organizing and empowerment, it is logical to conclude that only empowered unions can protect the jobs and incomes of their members. In fact, one of the characteristics of a weak union is that its members can lose their jobs without any resistance whatsoever from the union.

What is productivity? And, what is the relationship between organizing and increased productivity?

Productivity is often misconceived to mean *labour productivity*. Labour is very important but it is only one of the several factors that go into the production of

goods and services. Capital, energy, raw materials and other inputs are equally important in production. It is, therefore, more appropriate to conceptualize productivity as the effective and efficient use of all inputs including labour, capital, land, materials, energy, information and time, among other factors. Some even misconceive productivity to mean high output without making any reference to the inputs required in the production process. But productivity is not only about high output. It is also about the use of inputs in the production process. Productivity is, therefore, appropriately defined as the relationship between the quantity and quality of what is produced (output) and the amount of resources, human or material (inputs) used in the production process (Prokopenko, 1987). Put differently, productivity is a measure of output from a production process or service system per unit of input.

Generally speaking productivity improvement means doing the right things more efficiently and more effectively. As Prokopenko (*op. cit*.) put it, "productivity improvement entails not just doing things better but, more importantly, doing the right things better." Improvement in productivity does not necessarily mean using more resources but it may mean using existing resources in a more creative way to increase output levels.

Trade unions are interested in increased productivity or productivity improvement because it is an effective way by which they can achieve their ultimate goal of enhancing the living standards of their members and their families. High productivity brings high output and net wealth creation. Studies by the World Bank, based on manufacturing data from Ghana and Zimbabwe, have shown higher productivity in unionized firms compared to non-unionised firms when other basic firm characteristics such as size of workforce, sector/industry in which

the firms operate, their location and locality, as well as capital/labour ratio are controlled for. The reason for higher productivity in unionized firms, compared to non-unionised firms, can be attributed to the positive union effects on salaries, benefits, employment and income security as well as their ability to enforce international labour standards in unionized enterprises or organisations. Workers in unionized firms are, therefore, more likely to feel motivated compared to those in non-unionised enterprises or organisations. Additionally, studies have found that workers in unionized firms are more likely to receive training more regularly compared to workers in non-unionised workplaces. A trained and motivated workforce is more likely to achieve higher productivity and higher growth. Since organized or unionized workers are more likely to receive training and feel motivated it is logical to conclude that organized or unionized workers are likely to achieve higher productivity.

It is important to note that productivity improvement and the net wealth creation associated with it do not automatically lead to improved living standards for workers and their families. In many of the countries where improved productivity has led to high economic growth and increased net wealth creation, there has been rising income inequality. In other words, the gains from improved productivity are often not equitably shared among those who generated the gains. For increased productivity to benefit workers the gains from productivity have to be fairly distributed. In a situation where a few people at the top are awarded a disproportionately large share of the net wealth while workers are allocated small fraction of the gains, improved productivity will not translate into improved living standard for workers and their families.

This is where the empowerment of unions is needed. We have already established the positive relationship between organising and empowerment. We can infer from the foregoing that it is only through organising that unions can be empowered because that is the only means by which they can reverse the decline in union membership and reclaim the union movement's legitimacy to represent workers. Once unions are empowered they can achieve employment and income security as well as improved working conditions for their members. Job security, higher wages, and access to benefits as well as better conditions of service are important motivating factors which can lead to increased productivity.

The theme for the Congress: ***Organising for Empowerment, Employment Security and Increased Productivity*** cannot be more appropriate.

2.0 THE STATE OF THE UNION MOVEMENT IN GHANA

Like many other countries around the globe, union membership has been declining. In 1999, the union density (as measured by the proportion of formal sector workers who were employed in the unionised sector) was estimated at 50 percent, as shown by the fourth Ghana Living Standard Survey (GLSS IV, 1998/99). By 2006, the union density had declined to 37 percent, according to the fifth Ghana Living Standard Survey data.

The membership of the unions that constitute the Ghana Trades Union Congress (TUC) has declined consistently since the 1980s due mainly to the mass redundancies that were implemented as part of the IMF/World Bank-sponsored Structural Adjustment policies. The membership of the affiliate unions of the TUC is estimated to have declined from over 600,000 in the mid-1980s to about half a

million presently (including members in the informal economy). This is a significant loss by any standard. The membership of other labour organisations outside the TUC family is currently estimated at around 300,000. This means out of an estimated formal sector workforce of 1.2 million about to-third is unionised. This represents just about seven percent of the total labour force in Ghana which is estimated at 12 million.

As noted above, the large size of the workforce trapped in informal employment makes it extremely difficult for the unions to expand their membership especially when the formal segment of the economy keeps shrinking. Attempts at organising in the informal economy began effectively in the early 1990s with the adoption of a policy on the informal economy at the 1992 TUC Congress. As part of the efforts to achieve the objectives of the policy, the TUC established a desk that is responsible for supporting national unions in their efforts to organise workers in the informal economy. Since then nine informal economy groups have been granted associate member status by the TUC. This is quite significant but the membership of these nine associations constitute less than one percent of the over 10 million informal economy workers in Ghana.

The declining membership has had negative effects on the finances of the unions. As union density declines and unions become financially weaker, labour right abuses surge. The rampant abuse of labour rights has serious implication for the relevance, legitimacy and credibility of the entire union movement. The large decent work deficits we are witnessing in Ghana can be cured by organising workers in both the formal and informal sectors.

The declining share of the public sector in total employment explains the decreasing membership of unions to a very large extent since the public sector has

always been the source of a large proportion of the union membership. The large scale public sector retrenchment that took place in the 1980s and 90s has been a major cause of membership loss in the unions. The implementation of the policy of net hiring freeze in the public sector in recent times has effectively ended its role as the lead source of new trade union members. Besides, a significant proportion of the public sector workforce has been barred by law from forming or joining unions. These include the Police Service, the Immigration Service, the Fire Service, the Prison Service and the Army. This class of workers work under very difficult conditions. They have very little say about their conditions of work. Yet, there is nothing inherent in their work that should keep them outside the trade union movement. Organising these classes of workers will help to address the challenges they face with respect to their salaries and conditions of service.

As we can deduce from the foregoing, the only reliable source of membership for the unions is the informal economy. This is the reality and unions must rise up to the challenge if they want to survive and grow.

3.0 TRADE UNION STRATEGIES

The core mandate of trade unions is to promote and protect the rights and socio-economic interests of workers. Unions have sought to achieve these objectives using four main strategies namely (1) organising, (2) collective bargaining, (3) collective action, and (4) alliance building with other social actors.

3.1 Organising

Organising or mass mobilisation of workers is the fulcrum around which all union activities revolve. Workers' struggles for a just and fair society have, at all times, been pursued through organising. Unions fully recognise that challenges that

confront workers cannot be dealt with individually. Expanding trade union membership to all the sectors and building and maintaining a united labour front are the major challenges facing the union movement today.

3.2 Collective Bargaining

Collective bargaining is at the heart of trade unionism and industrial relations, generally. Collective bargaining rests on four fundamental principles. First is the principle of *collectivism* as opposed to i*ndividualism* - that together we can achieve what we cannot achieve as individuals. It is based on the adage that "Together we stand, divided we fall". The second principle is *cooperation* as opposed to *competition*. The third is *solidarity* as opposed to '*survival of the fittest'*. The fourth principle underlying collective bargaining is *economic and social justice* and *fairness or equity*.

Collective bargaining remains the most important service that unions provide for their members in the formal sector. Unions have used the collective bargaining process to negotiate standards that govern employment and labour relations for their members. Collective bargaining is one of the three main pillars of industrial relations and it remains at the centre of industrial relations. The other pillars are conflict prevention and conflict resolution both of which are addressed within the collective bargaining framework. Collective bargaining becomes necessary when individual action fails or is likely to fail in fulfilling the expectations of workers. As noted earlier the effectiveness of collective bargaining depends on the ability of unions to organize.

3.3 Collective Action/Industrial Action

Collective bargaining has become the main tool by which unions deal with employers and attempt to address the concerns of their members. Nevertheless, unions have occasionally resorted to collective or industrial action to back their demands when collective bargaining fails to yield the desired results. Such actions often take the form of demonstrations and strikes. Every bargaining round faces the threat of a strike reflecting the ability of workers and their organisations to impose cost on employers through the withdrawal of their services. It is one of the most important and enduring tools available to trade unions.

Again collective action, by nature, is effective not only when the majority of the workforce is organized but also when they are organized under one umbrella. The industrial relations laws in Ghana, as in many other countries, have sought to limit the space for the use of strikes by unions. Many services have been declared "essential service" by law. This notwithstanding, if all workers are under one strong, independent trade union centre, they can always use strikes or the threat of strikes to achieve a lot for their members.

3.4 Alliance Building

Unions have always found it necessary to intervene in national policies and decisions. Such interventions are aimed at influencing and changing government policies and making sure they are in favour of workers and their families. There are other like-minded institutions and organisations in civil society with which the trade union movement can form alliance as a strategy for achieving its ultimate goal of protecting the interests of workers. There have been situations where unions have successfully formed strong alliance even with political parties and governments. A case in point is the Siamese twin relationship between TUC and

Kwame Nkrumah's Convention Peoples Party (CPP) in the 1960s. TUC gained a lot from this strong alliance with Osagyefo Kwame Nkrumah and his party. But, at the same time, TUC lost its independence as a trade union movement. It is for this and other reasons that the TUC introduced a non-partisan clause in its Constitution. The Congress of South African Trade Unions (COSATU) has formed a very strong alliance with the ruling African National Congress (ANC) and the South African Communist Party (SACP). COSATU is a very strong member of this tripartite alliance. This relationship enables COSATU to influence social, economic and labour market policies in South Africa.

Unions must, however, assess their own strength before they enter into such alliances. TUC lost its independence in its alliance with CPP because the party was much stronger at the time. COSATU is a well respected member of the tripartite alliance because it is very strong in terms of membership and in terms of the spread of its members across the South African economy. Unions can gain such strength only from large numbers.

Clearly, it is very hard to overstate the importance of organising or mass mobilisation. Collective bargaining, which is the main tool for unions, cannot be effective without organising. Similarly, collective action or strike, which is used occasionally to back the demands for improved salaries and working conditions, cannot be successful if union coverage is low. Unions cannot enter into any serious alliance with strong partners if the unions are weak. If unions want to survive the capitalist onslaught and continue to grow they must organise.

4. STRATEGIES FOR ORGANISING

There are two broad strategies unions usually adopt in organising. First, they try to sustain the interest of the existing members through various activities and welfare schemes. This may be described as a '*Bird-in-Hand' Strategy*. Second, unions undertake membership recruitment drives to unionise workers (new members). This may be termed *Mobilisation Strategy*. The changing realities in the labour market in Ghana, especially the declining formal sector and rapid expansion of the informal economy, have very serious implications for the effectiveness of these strategies. Let's examine these strategies further.

4.1 Sustaining the Interests of Existing Members (The 'Bird-in-Hand' Strategy)

The world of work is changing in ways that require new strategies to sustain the interest of the existing union members in the movement. Trade union members in all the sectors are becoming more sophisticated in their expectations and demands. A new class of well-educated and highly skilled workers has entered the union movement. Members are persistently demanding value for their money. They are demanding accountability and transparency in the running of the affairs of the unions. They are calling for participation and inclusiveness. Union leaders can no longer dictate to the members and they cannot ignore their demands.

At the same time, the changing face of the labour market is threatening the job and income security of existing members. Employers are replacing permanent workers with casual and fixed-term workers, in some cases, with very little regard for the law. Obviously, these practices have negative implications for trade unions in terms of membership and influence on national and workplace issues.

Unions would have to adopt new strategies to fight these changing forms of employment and to preserve the security of tenure of their members. Unions need to be innovative in their approach in order to retain the interest of existing members. These challenges have been worsened by the introduction of trade union pluralism which has resulted in the emergence of multiple unions particularly at the enterprise level.

The unity of purpose and the strength derived from large membership and solidarity that have been the guiding principles of working class struggles over the years seem to be waning. Instead of relying on their traditional source of strength (unity and solidarity) unions are brutally competing for membership with one another in the ever-shrinking formal sector.

To remain true to the mandate of protecting and defending the interests of members and the working class, it is important that unions and unionists resurrect the principles that have historically underpinned union work. The class divisions and the systematic impoverishment of the working class and the masses that gave birth to trade unions remain with us and have become even more pronounced. And just as in the past, we require collective organization and collective action to confront these challenges. We should do this because we know that individually we are incapable of defending our interests. Splintering divides the union front and undermines the struggle for social and distributive justice.

Sustaining the interests of members will also require delivering to them the traditional service of collective bargaining in a more effective manner. It also requires broadening the scope and the conception of collective bargaining by introducing issues and clauses in collective agreements that are of great interests to workers.

There is also the need to look at what has been achieved over the years through collective bargaining. This will help the unions to tell their story as they market themselves to the working public. Unions should undertake regular membership surveys to determine the true state of the unions. The surveys will also bring out the views of existing members about the union movement.

Informal workers also need some form of collective bargaining. They need to negotiate/bargain with government and city authorities over taxes and space, among others. The bargaining process must specially cater for the interests of identifiable vulnerable groups within the labour market such as young workers, women, senior and managerial staff and those with disability.

4.1.1 Sustaining the Interest of the Union Members through Welfare Schemes

Beyond collective bargaining unions can do a lot to make life decent for workers and their families. It is important that member unions of the Ghana TUC explore new areas where they can be of service to their membership. This has become necessary for two reasons. First, members of the unions are increasingly raising questions about how their dues are being used by unions. Second, as we work to strengthen unions and collective bargaining we will also be approaching the limit of collective bargaining. In fact, unions are now losing clauses in collective agreements at a faster rate than they are able to add to them. New union members take the previous gains for granted. This shows that we are fast approaching the limit.

Unions must, therefore, find new ways of servicing their members in order to justify their relevance and usefulness. The socio-economic situation in Ghana

poses serious challenges for the working class. Workers have only their unions to turn to for assistance in time of need and in circumstances such as natural disasters, layoffs, prolonged illness or disability. The onus lies on unions to justify why their members should continue to stay in the unions.

Non-bargaining benefits must be tailored to the needs and interests of the members. The 'Union Plus' Services of the AFL-CIO of the United States is a shining example of how unions can service their members beyond collective bargaining. The 'Union Plus' Service is designed by the AFL-CIO to provide consumer benefits and discounts to members and retirees of participating labour unions.

Already, some of the member unions of the Ghana TUC have made significant in-roads in this direction. The Development and Social Services Fund (DSSF) of the Public Service Workers' Union, the Bisa-Macarthy Education Fund and the Workers' Support Scheme of the Ghana Mineworkers Union, TEWU Welfare Fund, PUWU Mutual Fund and others are good examples of local initiatives. These schemes have to be supported and replicated in the other unions.

The following are some of the services unions can provide for their members:

Mortgage

It is extremely difficult for ordinary workers to own houses in Ghana. Unions can liaise with the various real estate developers to put up affordable housing units for their members with flexible terms of payments. Unions must acquire lands for such purposes and arrange for special Mortgage Assistance.

Counseling

Unions can offer free counseling on pension and taxation for their members.

Mutual Health Insurance

Unions can have their own mutual health schemes under the NHIS to ensure good health care for union members and their families.

Legal Services

Unions can engage legal experts to secure improvements to the law in addition to providing legal support services to individual union members and their families. These services will be particularly useful for young workers and women who suffer exploitation in the labour market.

Transport Services

Unions can consider the provision of transport services to their members at a discount especially those in the cities and in large towns.

Recreational Activities

Unions can organize recreational activities on a regular basis for their members. In addition to sustaining their interest in the union, such activities have added advantage of promoting healthy life styles among union members.

4.1.2 Sustaining the interest Young Workers

The labour market in Ghana has a higher proportion of young workers. About two-thirds of the working-age population is between the ages of 15 and 35 years, according to the latest Ghana Living Standard Survey (GLSS V, 2006). Many of these young workers start working too early in their live with low level of skill

and very limited human capital. Consequently, many of them find their way into the informal economy. Those who manage to enter the formal sector, where unions normally operate, are often better educated. They tend to have completely differently outlook and attitudes. They crave for participation and involvement. Whether they are in the formal or informal economy, these young workers represent an important part of the future of trade unions. The labour movement will not have any great future if it fails to tap into this pool of young workers. The benefits from the energy of young workers and their ideas are worth taping into.

These young and skilled workers have to be recruited and absorbed into union structures and activities. Unions are expected to adjust their agenda and their constitutions to reflect the aspirations, the needs and passions of young workers.

Currently, young people form just a tiny fraction of the trade union membership. Their voice is barely heard and their concerns are often the least important on the agenda of the unions because they are underrepresented in decision-making structures. Young workers need the collective strength of unions. But they need unions that are adaptable to the ever-changing global environment. Young people tend to be apathetic towards institutions and organizations that do not embrace their potentials and passions.

Young people certainly need trade unions. Due to high youth unemployment in the country, they are the ones most often exploited and forced to take insecure employment. They must have confidence that trade unions are there to ensure their employability, their rights at work and other benefits. There will be the need to have special campaigns that will seek to address the exploitation of young workers in the labour market, particularly regarding their trade union rights.

In the coming quadrennial there will be the need to identify and groom some young workers through deliberate trade union education such as the Global Labour University Programmes (GLU), Labour Policy Studies, Diploma in Labour Studies and Certificate in Labour Studies. Let's develop these programmes as avenues for trade union leadership training.

4.1.3 Sustaining the interest of Women in the trade union movement

Women's participation in the labour market is growing in Ghana. This has been made possible by the rising numbers of women with higher level education. As unions struggle to increase membership, women workers cannot be ignored. They become central to the process of union membership renewal and the re-building of unions. However, studies have shown that unions are only partially meeting women's demand for union representation and participation. Unions, particularly those in Africa, continue to reflect and perpetuate the patriarchy that pervades African societies. Women, like the youth, continue to face discrimination and marginalization not only in the larger labour market but also in the unions.

Over the years, some progress has been made in Ghana and in the trade union movement towards gender equity particularly women's representation in leadership structures. This notwithstanding a lot more needs to be done to improve women's participation in the trade union movement. The women's structures need to be revamped and better integrated into the decision-making processes. Women need to be supported in a special way to climb up the leadership structures of the unions beyond the positions that have been reserved for women**.** There is need to

re-orient unions to view gender equality and women's empowerment as strategic investments for their relevance and survival.

Organising women workers in Ghana must be based on the understanding that women workers face greater degrees of insecurity at the work place compared to their male counterparts. Also, women have greater reproductive roles that can impede their participation in union activities. It is important that women are encouraged and supported to participate actively and effectively not only in trade union activities but more importantly to be adequately represented in the trade union leadership at all levels local, district, regional and national.

Unions are expected to commit more resources to gender-mainstreaming and equality at all levels including the regional and district women structures. Building a strong core of women activists including retirees as role models and mentors for other women, especially the young ones, must be encouraged. Unions must not only be encouraged to enhance the negotiation skills of women but more importantly they should be encouraged to include women negotiators on their negotiation teams at all levels.

4.2 Recruiting New Members

4.2.1 Organising Workers in the Informal Economy

The rapid informalisation of the labour market has forced the majority of the Ghanaian labour force into the informal economy. Nearly 90 percent of the Ghanaian workforce is working in the informal economy. This group of workers faces a number of challenges for which they need trade union interventions. Decent

work deficit is most pronounced in the sector. The sector is marked by low incomes. The majority of workers there are living below the poverty line. Workers in the sector work under very poor conditions and the coverage of social protection is very low.

In order to attract informal economy workers to the unions, unions have to prove to them that they are capable of addressing the many challenges facing them in that sector. Unions must campaign for laws, regulations and a national policy that ensure decent working conditions in the informal economy. Unions need to adopt policies and to review their constitutions to integrate the various categories of informal economy workers including the self-employed and the paid workers in the sector.

Unions have to develop recruitment plans with quarterly and annual targets and should be willing to commit human, time, material and financial resources to membership recruitment. This exercise must be subjected to rigorous monitoring and evaluation by the TUC. This means that the department responsible for organizing must be strengthened in terms of human, material and financial resources to support affiliates in their organizing efforts.

4.2.2 Organising workers in new forms of employment in the formal sector

As has been noted earlier, the world of work keeps changing. Jobs for life are no longer the norm. New forms of employment are emerging on daily basis. Contract and fixed-term employment are replacing permanent jobs. New entrants to the labour market are relatively young and some are highly skilled. Women's participation in the labour market is also increasing.

At the same time reforms of labour legislations have ended the 'close-shop' arrangements which allowed unions to recruit new members with much less difficulty. Now, unions have to recruit new members by convincing the young and relatively more skilled workers and the well-educated women entering the labour market about the need for them to join the trade union movement. This task has been complicated by globalisation with its underlying neo-liberal ideology underpinned by the free market principle. The implementation of the neo-liberal reforms has come with massive decline in the share of formal sector employment where unions have predominantly operated. Outsourcing, sub-contracting, part-time work, informalisation and casualisation of employment have become the norm. These developments have pushed the workforce into sectors where recruitment of new members has become more difficult.

Unions must pursue an aggressive membership recruitment drive. This is possible only if unions recruit, train and motivate recruitment officers/organizers to do the job. It is a struggle for the survival and relevance which deserves more attention from the unions. Unions and the services they provide must be attractive to all classes of workers – young workers, women, professional staff, and senior staff.

4.2.3 Organizing Workers in the Quasi Security Agencies

It is generally accepted that trade union rights are human rights. However, the labour laws in Ghana prevent certain groups of workers from forming or joining trade unions of their choice. These groups include personnel in the Police Service, Fire Service, Prison Service, Immigration Service and the Army including the

civilian staff who work in these agencies. This is against the basic human rights of this group of workers.

These workers perform their duties under very difficult conditions. They receive low salaries and live under poor conditions with their families. Yet the law does not allow them to have a say in the determination of their conditions of work. There is nothing special about their work that should make their membership of trade unions a taboo. In some countries these classes of workers are unionized. The unions in South Africa are currently making efforts towards the unionization of even the military. Organising these classes of workers will not only help to address the challenges they face but more importantly it will help shore up the membership of the unions, particularly unions that organize workers in the public sector.

4.2.4 Building One Working Class Movement

It is worth mentioning once again that the trade union movement has been built on the core principles of unity and solidarity. Trade union pluralism has now become a threat to these core principles.

Currently, unionised workers in Ghana can be grouped into five: (1) Members of the Ghana Trades Union Congress (2) Members of the Ghana Federation of Labour (3) Non-affiliated Industrial/National Unions (i.e., national unions with no affiliation to any trade union centre) (4) Sector-based Unions, and (5) Enterprise-based unions.

The TUC has 18 affiliated national unions (Group 1). GFL has 9 affiliated unions (Group 2). There are six non-affiliated national/industrial unions (Group 3), 14 sector-based non-affiliated unions (Group 4), and 25 enterprise-based unions. That

means we have 55 unions operating in Ghana presently with a total membership of less than one million. (The list of unions in the five groups is shown in the Box below).

The onslaught against trade union unity and solidarity in Ghana intensified as the phenomenon of enterprise-based unions gained momentum. This trend will not abate naturally. Some employers are actively encouraging the formation of enterprise-based unions and using them as a tool to break the labour front. But, from what we have witnessed in the past few years in Ghana, it is clear that enterprise-based unions pose a grave danger to the rights of workers. Enterprise unionism is against the principles of unity and solidarity on which the trade union movement was built. All the working people of Ghana must belong to one working class movement.

BOX 1: UNIONS IN GHANA

Group 1: Members of the Ghana Trades Union Congress

1. *Public Services Workers' Union (PSWU)*
2. *Public Utility Workers' Union (PUWU)*
3. *Health Services Workers' Union (HSWU)*
4. *Communication Workers' Union (CWU)*
5. *Timber and Woodworkers' Union (TWU)*
6. *General Agricultural Workers' Union (GAWU)*
7. *General Transport, Petroleum and Chemical Workers' Union (GTPCWU)*
8. *Teachers and Educational Workers' Union (TEWU)*
9. *National Union of Seamen (NUS)*
10. *Maritime and Dockworkers' Union (MDU)*
11. *Ghana Mineworkers' Union (GMWU)*
12. *Local Government Workers' Union (LGWU)*
13. *Railway Workers' Union (RWU)*
14. *Railway Enginemen's Union (REU)*
15. *Union of Industry, Commerce and Finance Workers (UNICOF)*
16. *Construction and Building Material Workers' Union (CBMWU)*
17. *Federation of University Senior Staff Association of Ghana (FUSSAG)*
18. *Ghana Private Road Transport Union (GPRTU)*

Group 2: Members of Ghana Federation of Labour

1. *Textile, Garment and Leather Employees' Union. (TEGLEU)*
2. *Food And Allied Workers' Union (FAWU)*
3. *General Manufacturing And Metal Workers' Union (GEMM)*
4. *Union Of Private Security Personnel (UPSP)*
5. *National Union of Teamster And General Workers (NUTEG)*
6. *Finance And Business Services Union (FBSEU)*
7. *Private School Teachers and Educational Workers' Union of Ghana (PRISTEG)*
8. *Media Of Printing Industry Workers' Union (MEDIANET)*
9. *ICT and General Services Employees Union*

Group 3: Non- Affiliated National Unions

1. *Industrial and Commercial Workers' Union (ICU)*
2. *Construction and Allied Workers' Union (CAWU)*
3. *Union of Industrial Workers (UNI)*
4. *National Union of Harbour Employees (NUHEM)*
5. *Union of Private Security Employees, Ghana (UPSEG)*
6. *United Industrial and General Services Workers of Ghana (UNIGS)*

Group 4: Sector-Based Unions

A. Unions With Bargaining Certificate

1. *Ghana National Association of Teachers (GNAT)*
2. *Judicial Service Staff Association of Ghana (JUSAG)*
3. *Senior Staff Association of Ghana Post Company Ltd.*
4. *Ghana Registered Nurses Association (GRNA)*
5. *Central University Teachers Association*
6. *Association Of Environmental Health Assistants Ghana (ASHEHAG)*
7. *Inspection and Control Services Enterprise Based Union*
8. *Polytechnic Administrators Association of Ghana (PAAG)*
9. *Civil and Local Government Staff Association of Ghana (CLOSSAG)*

B. **Unions without Bargaining Certificate**

1. *Ghana Medical Association (GMA)*
2. *National Association of Graduate Teachers (NAGRAT)*
3. *Polytechnic Teachers Association of Ghana (POTAG)*
4. *Government and Hospitality Pharmacists Association*
5. *Coalition of Concerned Teachers, Ghana.*

Group 5: Enterprise Based Unions (With Collective Bargaining Certificate)

A. Unions with Bargaining Certificate

1. *Blue Skies Staff Association*
2. *Meridian Port Services Enterprise – Based Union*
3. *Carl Tiedman Stevedoring Enterprise- Based Union*
4. *Scancom Local Staff Association*
5. *Senior Staff Association of Ghana International School*
6. *Senior Management Staff of GBC*

7. *UT Financial Services Staff Association*

B. Enterprise-Based Unions without Collective Bargaining Certificate

1. *Bank Of Ghana Senior Staff Association (BOGSSA)*
2. *Liberty And Integrity Trade Union*
3. *Senior Staff Association of Ghana Telecom Company Ltd.*
4. *Bogoso Gold Enterprise- Based Union*
5. *Commission on Human Rights and Administrative Justice Staff Association. (CHRAJSA)*
6. *Mol Staff Association*
7. *Church World Service Local Staff Association*
8. *Senior Staff Association of Electricity Company of Ghana Ltd.*
9. *Council for Scientific and Industrial Research Senior Staff Association*
10. *Association of District Mutual Health Insurance Staff , Ghana*
11. *Pro-credit Workers Local Union*
12. *Senior National Organized Workers of Liebherr-Mining Ghana Ltd (SNOW)*
13. *General Organization of on-Going Development Workers(GOODWU)*
14. *GNPC Senior Staff Association*
15. *Sic Senior Staff Association*
16. *Shell Senior and Supervisory Staff Association.*
17. *Hydro – Electric Thermal And Allied Workers Union (Ghana)*
18. *Research Staff Association of the Council for Scientific and Industrial Research*

***Source*: Labour Department, MESW.**

***Note*: Labour Department puts Groups 4 and 5 and Enterprise-based Unions.**

4.3 Promoting Internal Democracy as an Organising Strategy

The strength of every organisation lies in its members. The principles of unity, solidarity, democracy and independence are the bedrock of trade unionism. We cannot deny the fact that there is internal democracy deficit in the trade union movement. Unions pride themselves of their democratic credentials but the practices in some unions seriously undermine our collective claim to democracy.

Concerns are increasingly being raised by union members about transparency and accountability. These may be perceptions but, as is often the case, perceptions can be more powerful and even more damaging than the reality. Unions have to pay attention to these concerns.

In an era of trade union pluralism, undemocratic tendencies can have negative consequences for trade union unity. The rising tide of enterprise unions may be partly explained by the way unions are perceived by some workers. Retaining existing members and attracting new members will depend on the ability of unions not only to give voice and space to their members but also on their willingness to demonstrate accountability and transparency in the management of the unions' resources. That will be the surest way to make the unions attractive to both existing and new members.

Unions must be bold enough to evaluate their performance on a regular basis to ensure commitment to highest standards of service for union members. This can be achieved through regular membership satisfaction surveys. Information is critical for workers' empowerment. Union leaders must, therefore, improve their methods of information sharing with their members. These measures will surely strengthen the trade union movement.

5. CONCLUSION

The trade union movement was formed with one goal – to protect the interest of the working class. The main strategies unions have adopted to achieve their aim include organizing, collective bargaining, collective action, and alliance building with like-minded social actors. These strategies worked effectively in the past because unions were guided by the core principles of unity, solidarity and democracy. These core principles are, however, being undermined as unions brutally compete for members in the ever-shrinking formal sector.

In this paper, we have established a positive relationship between organizing on the one hand and empowerment, employment security and increased productivity on the other hand. Our conclusion is that unions can be empowered through organizing. Unions can achieve employment security for their members and enhance productivity if they are well organized. There is no other way.

Unions must, therefore, prioritize organizing. That means unions should adopt strategies to sustain the interest of the existing members in the movement and to attract and retain new members. This can be achieved through the introduction of welfare services targeting young workers, women and workers in the informal economy. Above all, unions in Ghana should work towards bringing all workers under one strong, independent and democratic working class movement to give meaning to the core principles of unity and solidarity that have been the guiding principles of trade unionism across the globe all these years.

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Annex 10

Acuerdos del XI Congreso Confederal de la Confederación Nacional del Trabajo,
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ACUERDOS DEL XI CONGRESO CONFEDERAL
ZARAGOZA, 2015

Principios, Tácticas y Finalidades

Normativa Orgánica y Estatutos

Acción Sindical

Acción Social

Patrimonio

Comunicación

AIT e Internacionalismo

CNT

XI

CONGRESO

ZARAGOZA

DICIEMBRE

2015

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ACCIÓN SINDICAL

PRINCIPIOS, TÁCTICAS Y FINALIDADES

1. ANARCOSINDICALISMO: DEFINICIÓN Y PRÁCTICA

Entendemos el anarcosindicalismo como la síntesis de la teoría y práctica del anarquismo actuando sobre y en todo tipo de asociacionismo obrero que confluye en un sindicato. Se trata en rigor de una síntesis del anarquismo y el sindicalismo revolucionario para impulsar el cambio de sociedad actual desde el mundo del trabajo. El anarquismo ha sido la fuente de inspiración del sindicalismo revolucionario nacido en Francia en el siglo XIX, por lo que se le puede decir, según hace actualmente la A.I.T., como sinónimo de anarcosindicalismo.

Es preciso establecer una diferenciación en los contenidos esenciales que caracterizan la acción del sindicalismo revolucionario que propugna y practica el anarcosindicalismo y el que propugnan ciertos grupos y sectores bastante alejados del movimiento libertario, a pesar de que emplean, desvirtuando su contenido, la frase de «sindicalismo revolucionario». No entendemos por sindicalismo revolucionario más que aquel movimiento que, surgido de entre las clases explotadas y oprimidas, aspira a la destrucción del sistema establecido para, por medio de una acción directa y antiautoritaria, desmontar los mecanismos de dominación poniendo todos los medios de producción al servicio de la clase trabajadora, los cuales tomarán en cualquier circunstancia las decisiones que crean convenientes sin conocer ningún otro tipo de mediación, imposición o poder que no sea el dimanado de la propia clase trabajadora.

Ahondando en lo anterior, ratificamos los acuerdos adoptados por el Congreso Constitutivo de la Asociación Internacional de Trabajadores celebrado en Berlín en diciembre de 1922 y modificados en el IV Congreso de Madrid de 1931 y en el V Congreso de París de 1935.

1.1. Principios y finalidades

El anarcosindicalismo es en realidad, desde el punto de vista de los principios, una visión determinada del mundo que se corresponde con la filosofía antiautoritaria y emancipadora del anarquismo y por ello exterioriza su oposición a toda explotación tanto económica como política y a toda alienación religiosa siendo su objetivo fundamental y prioritario el de propagar esas ideas al mundo del trabajo por medio del sindicato. Actúa en el campo sindical, porque donde realmente la persona siente la explotación es en el campo de lo económico, donde la lucha de clases se da con más claridad y es asumida por la mayoría de la clase trabajadora. Hay que pen-

sar, y la historia lo viene demostrando, que las revueltas e intentos revolucionarios se quedan en nada si en los países donde se dan no existe una organización sindical revolucionaria.

Hay que resaltar que esta actitud de oposición a toda explotación no puede calificarse de mera ideología o producto de laboratorio, sino que responde a una constante del ser humano a lo largo de la historia, en su lucha sin tregua contra todo tipo de opresión. Esa lucha constituye la reivindicación del derecho a ser y a disponer libremente del propio destino, junto al deseo solidario de que todas las personas, de un modo colectivo, alcancemos ese derecho. No habrá verdadera libertad mientras una sola persona permanezca sometida a otros semejantes. El mérito del pensamiento libertario reside tan solo en el esclarecimiento de este hecho ante la conciencia de la persona.

Frente al mundo de opresión constante y en múltiples sentidos que padecemos, los y las anarquistas oponen su rebelión. Su visión parte de una ruptura total con los valores políticos, económicos y culturales establecidos por las clases dominantes a través de la historia. Para el anarcosindicalismo la evolución histórica, si tiene un sentido, debe culminar en una ética de la responsabilidad personal e intransferible, opuesta de modo radical a la constante histórica de dominación. Esta ruptura supone el que el anarcosindicalismo contraponga a los valores de la sociedad establecida sus propios valores. Mediante éstos la clase trabajadora se convierte en agente soberano y activo de la transformación social. Para llevar a cabo esta transformación en profundidad, el anarcosindicalismo se materializa en la forma organizativa concreta que denominamos C.N.T. (Confederación Nacional del Trabajo).

1.2. Anticapitalismo

El anarcosindicalismo se opone de modo radical al sistema establecido por el capitalismo liberal o por el capitalismo de Estado en todas sus variantes. El capitalismo, independientemente de sus transformaciones presentes o futuras, representa la explotación económica derivada de la propiedad privada de los medios de producción y la subsiguiente capitalización de estos por unas pocas y unos pocos, sin importar que las y los explotadores se representen individualmente o de modo anónimo o colectivo. El capitalismo de Estado, por su parte, se apropia de la propiedad en beneficio de un sector privilegiado integrado en el Estado. Tanto en uno como en otro sistema, la persona trabajadora no es dueña de su trabajo ni de sus decisiones. En una parte se aduce la necesidad de la economía (dominada por las y los grandes propietarios financieros amparados por el Estado), en la otra se sacrifica a la clase trabajadora en nombre de un falso «bien común» impuesto por el Estado. Ambos sistemas desarrollan sus instituciones (medios de represión) a través de la clase gobernante: leyes, organismos de justicia, cárceles, policía, ejército, etc., para dominar a las y los gobernados e imponer la cultura propia del sistema.

1.3. Antiestatismo

Según lo antes expuesto, resulta evidente que una de las finalidades del anarcosindicalismo es la destrucción del Estado, realidad político-jurídica que sostiene y sacraliza por medio de sus diversos estamentos y leyes -parlamentos, senados, constituciones, organismos arbitradores, cuerpos policiales y represivos de todas clases y, en último lugar, el ejército- las formas económicas

de explotación. Es obvio que el Estado constituye la representación de la clase dominante, sosteniendo, en el caso de la llamada sociedad occidental en que vivimos, la propiedad privada de los medios de producción y la economía de mercado. Esto conlleva la tradicional minoría de edad de las ciudadanas y los ciudadanos y el mantenimiento del actual sistema por medio de la represión y del terrorismo institucionalizado. Frente a ello, el anarcosindicalismo opone al Estado la libre federación de comunas autónomas libertarias.

1.4. Antimilitarismo e internacionalismo

Estas dos definiciones, conexas entre sí, forman parte de las convicciones profundas de la C.N.T., y se relacionan con la necesidad de superar los Estados nacionales y las amenazadoras concentraciones de poder que representan. Al mismo tiempo, ello nos lleva a la necesidad de articular una actividad en el plano internacional junto con las organizaciones afines del anarcosindicalismo de otros países al objeto de mantener mancomunadamente una lucha en este frente.

1.5. Antisexismo

El anarcosindicalismo, en su lucha por alcanzar una sociedad libre, justa e igualitaria, tiene entre sus finalidades la destrucción del patriarcado y el fin del sexismo y de cualquier discriminación por razón de sexo u orientación sexual. No deben existir jerarquías entre las personas en función de su sexo, y rechazamos con firmeza cualquier imposición social o cultural de una conducta o rol según se nazca. Cada persona ha de desarrollar su personalidad en plenitud sin importar su sexo o sexualidad, huyendo de los convencionalismos que nos fijan un camino a seguir o una manera de ser «femenina» o «masculina».

No nos olvidamos de que el sexismo y las formas de dominación propias del patriarcado siguen muy vigentes y aunque no sean tan explícitas como antaño, ello no quiere decir que hayan desaparecido. Es más, sus manifestaciones son cada vez más sutiles y en ello reside su peligro y su capacidad alienante. El sexismo está muy presente en nuestra sociedad y va calando en las personas desde la más tierna infancia, por ello a menudo su presencia pasa desapercibida. Es por ello que debemos incidir en la educación y los valores que nos transmitimos de unas personas a otras, buscando siempre ir a la raíz de los problemas.

Las y los anarcosindicalistas luchamos por una sociedad en la que cualquier forma de autoridad sea abolida. Queremos que todas las personas, independientemente de nuestro sexo, podamos vivir, desarrollarnos y relacionarnos en pie de igualdad y de libertad.

1.6. Otras formas de poder

Consecuentes con la idea de que la teología está en la raíz de todo gobierno político, el anarcosindicalismo se manifiesta contrario a todas las religiones e iglesias, así como a las formas filosóficas e ideológicas que se opongan al desarrollo crítico de la persona y que actúan en la práctica como sistemas de dominación política, ideológica, emocional y/o económica.

La C.N.T. se opone a la superstición, la religión, la pseudociencia y otras formas de irracionalidad. La C.N.T. se declara, pues, a favor del pensamiento crítico, basado en criterios y métodos racionales, en el escrutinio público, en el conocimiento público revisable y en el análisis riguroso de la realidad social, que hace de la razón y la experiencia las fuentes del conocimiento humano y, por tanto, sirve de base para entender el mundo y proponer las formas de cambiarlo para llegar a nuestras finalidades. Igualmente la C.N.T. hace suya y respeta la máxima libertad de conciencia, por la que cada persona puede construir su propia visión del mundo y de sí misma, siempre y cuando ello no implique pretensiones de dominación ideológica, política, emocional o económica. Pero en ningún caso la C.N.T. será utilizada para fomentar, legitimar o extender ninguna visión del mundo que no esté de acuerdo con sus principios.

La culminación de las luchas transformadoras contra el capitalismo y el Estado constituyen la finalidad esencial del anarcosindicalismo y, por tanto, de la C.N.T. Aquellos dos frentes fundamentales de lucha contienen todos los demás frentes posibles. Por ello la C.N.T. prestará suma atención y apoyará la acción contra las realidades derivadas de la actuación corruptora del Estado y del productivismo capitalista, la cual atenta contra la naturaleza y degrada, afectando con ello al equilibrio de la misma persona en su entorno. Por ejemplo, la lucha ciudadana y otras se deben realizar en base a la militancia, deseable y voluntaria, de las y los cenetistas a través de las organizaciones de barrio.

1.7. El federalismo

Por ser la federación la base de la sociedad futura, la C.N.T. proclama el federalismo como el nexo de articulación libre y solidaria, sin autoritarismo ni coacción, de todos los grupos económicos y de relación humana general, que cumplirán en la nueva convivencia las funciones básicas de la vida social en todos sus aspectos. El federalismo constituye hoy también el principio esencial que rige las actividades de la C.N.T. en el plano estructural y en el del funcionamiento interno de la misma, garantizando de este modo la libertad y la igualdad decisoria de las personas y los sindicatos integrados en la organización. Dada su estructura no jerárquica y sus contenidos federalistas, la C.N.T. rechaza cualquier tipo de función dirigente, así como el liderazgo o la jefatura carismática.

El federalismo de C.N.T. no es una descentralización de un poder central en diferentes poderes a más bajo nivel. Quiere decir lo anterior, en uno de sus aspectos, que tomamos postura decidida contra todo tipo de centralismo.

Afirmamos por ello que en su organización y funcionamiento interno la C.N.T. prefigura el tipo de sociedad a que aspiramos, dado que el futuro, para realizarse, debe estar contenido ya como germen en el presente.

1.8. Solidaridad y apoyo mutuo

En la construcción de la nueva sociedad y en la lucha diaria en defensa de los intereses propios de la clase trabajadora, ambos conceptos son el aglutinante de la acción colectiva en la persecución del bien común de toda la sociedad.

1.9. Las tácticas: la acción directa

Estos son los procedimientos o medios que la C.N.T. pone en práctica cotidianamente para reafirmar los principios que la animan y crear las condiciones que facilitarán en su día el logro de las finalidades. En este punto la C.N.T. y el Anarcosindicalismo se juegan toda su credibilidad ante la clase trabajadora, y por ende las posibilidades ulteriores de un crecimiento que permita extenderse a todos los sectores como alternativa revolucionaria decisiva. Afirmamos que el problema de los fines y los medios constituye hoy el punto clave con el que se enfrenta, genéricamente hablando, el socialismo. Dentro de este campo solo ganarán la credibilidad final del pueblo aquellos sectores que presenten una coherencia total entre los fines propuestos y los medios puestos en juego para lograrlos. Esto quiere decir que los medios o tácticas o prácticas utilizadas nunca deberán entrar en contradicción con los principios y finalidades, so pena de invalidar éstos últimos por completo. El testimonio histórico es claro: las personas que trataron de hacer compatible el logro de la sociedad sin Estado y sin Clases con la conquista revolucionaria del poder político y la creación de un Estado provisional o transitorio derivaron finalmente hacia el Estado totalitario que hoy oprime a estos pueblos y silencia y tortura a las y los disidentes. Por otra parte, las personas que, reclamándose de iguales principios y fines, pusieron toda su confianza en la conquista de ese mismo poder político mediante el voto popular, acabaron siendo absorbidas por la democracia burguesa, de la que se constituyeron en fieles administradoras. De este modo las aspiraciones revolucionarias de la clase trabajadora han sufrido un evidente revés. La clase trabajadora ha perdido en gran parte sus objetivos como consecuencia de las manipulaciones de partidos y sindicatos que, en la mayoría de los casos, apuntan a un reformismo corporativista, que lleva a la perduración indefinida de sistema de explotación que padecemos.

La C.N.T., el anarcosindicalismo, lucha para, por una parte, no ser asimilada por el sistema y, por otra, obtener nuevas vías de penetración que permitan acercarnos a la revolución y al tipo de sociedad futura a la que aspiramos.

La C.N.T. debe conseguir a través de sus tácticas, entiéndase sus medios o prácticas, acercarse cada día más a los fines propuestos por lenta que esta aproximación pueda parecer. Para ello debemos evitar el tipo de contradicciones sufridas por otras organizaciones llamadas revolucionarias, si queremos preservar nuestra identidad. El anarcosindicalismo, sin embargo, precisa hoy de una evolución imaginativa y combativa, si pretendemos enfrentarnos a la fuerte oposición que ejerce en la actualidad el sistema en todos los órdenes de nuestra vida, tanto en el aspecto laboral como social y cultural. Sin este esfuerzo, en todos y cada uno de los puntos en que somos explotadas y explotados, oprimidas y oprimidos, nuestras pretensiones revolucionarias quedarán inevitablemente ahogadas. Nuestras tácticas o medios se resumen en lo que llamamos acción directa. Esta deriva naturalmente de los análisis realizados al definir los principios y finalidades y las nociones de anticapitalismo, antiestatismo y federalismo. En realidad, la acción directa, que a ojos de la observadora u observador superficial puede parecer como acción violenta y desnuda, es otra cosa muy distinta, aunque asuma o pueda asumir, llegado el momento, la violencia revolucionaria. Se trata de una metodología que resume la visión global del mundo que profesan los y las anarcosindicalistas y en la que se funden armoniosamente los plantea-

mientos teóricos con la acción práctica encaminada a realizarlos, sin fracturas ni contradicciones.

La acción directa es la única asumible por nuestra militancia y viene prefigurada en todas las aspiraciones enunciadas. La visión antiautoritaria de la historia, la nueva ética de la responsabilidad personal e intransferible, el carácter soberano que adscribimos a la persona humana para determinar su destino, nos llevan a rechazar cualquier forma de mediación o de renuncia de la libertad y de la iniciativa individual y colectiva en segundos o terceros, no importa quiénes sean, dejando en sus manos TODO el poder de decisión. ESTA RENUNCIA ES EL HECHO CLAVE, la pendiente por la que se deslizan hacia su ruina las diversas escuelas del socialismo que exigen la dependencia de la ciudadana y el ciudadano. Pero queremos dejar bien sentado que la acción directa no presupone la acción individual y aislada de las personas, sino la actuación colectiva y solidaria de toda la clase trabajadora para resolver sus problemas en el momento histórico que vivimos, frente a las personas que detentan el poder o sus intermediarias o intermediarios. Y será esa colectividad de la clase trabajadora la encargada en todo momento de arbitrar los medios para aplicar esa acción directa del modo que el conjunto o asamblea considere más oportuno en cada caso, siempre que no se vaya contra la esencia misma de la C.N.T. La defensa de la clase trabajadora es un derecho y un deber ineludible para lo cual pueden utilizarse métodos variados y que van desde el label, censura sindical, trabajo lento, boicot... hasta la huelga de solidaridad y la huelga general revolucionaria.

Esta acción directa, en definitiva, nos lleva a rechazar parlamentos, elecciones parlamentarias y referendos, instituciones todas que son la clave de la intermediación. En el terreno económico reivindicativo, y por las mismas razones, rechazamos todo tipo de entidades arbitrales entre el capital y el trabajo, como jurados mixtos, comisiones de arbitraje, etc., manifestándonos a favor de la confrontación libre y directa del capital y el trabajo. Es por todo lo dicho, en suma, por lo que rechazamos el Estado en todas sus formas.

2. CONCEPTO CONFEDERAL DEL COMUNISMO LIBERTARIO

Introducción

Partimos de considerar el presente trabajo como algo no dogmático, ni monolítico, y mucho menos definitivo. En principio el V Congreso se identificó con las líneas generales del dictamen sobre Comunismo Libertario (ver Actas Congreso de Zaragoza) elaborado en 1936. Debe tomarse el presente trabajo como indicaciones para un debate en los sindicatos que permita un enriquecimiento del futuro plan de sociedad comunista libertaria.

2.1. Declaración preliminar

Desaparecido el sistema actual impuesto desaparecerán también la irracional acumulación capitalista y los privilegios derivados de la misma. La sociedad procederá a una distribución iguali-

taria de los bienes producidos por todos, según el principio: de cada una según sus fuerzas, a cada cual según sus necesidades. Los elevados índices de productividad obtenidos gracias a la moderna tecnología permiten prever un nivel de vida para cubrir el anterior objetivo. Si la sociedad actual puede subsistir y progresar, a pesar del enorme parasitismo, como hemos evidenciado en otros puntos del orden del día, ello nos permite afirmar que, sin merma de la productividad (aunque sería preciso una reconversión y estudio detallado en cada caso) podría crearse la riqueza necesaria para garantizar una vida confortable para todas las personas. Por supuesto que desaparecerían las escandalosas superfluidades que constituyen el lujo de las explotadoras y los explotadores, pero por el contrario cobraría un impulso y florecimiento extraordinario todos los aspectos económicos, sociales y culturales de la vida social, ahora si merecedora en verdad de este calificativo. Desaparecería asimismo la irracionalidad del consumismo productivista y con esto la patética sociedad del despilfarro. Como ha dicho un autor libertario, el consumo dirigiría en todos los casos a la producción, no viceversa como es hoy el caso.

2.2. Líneas generales de la construcción comunista libertaria

Por supuesto que no pretendemos configurar desde hoy el porvenir, sino prefigurarlo, como hemos afirmado con anterioridad. Lo contrario sería una pretensión autoritaria además de un absurdo. La responsabilidad de decidirlo corresponderá por entero a las generaciones presentes en el memorable tránsito.

Sin embargo consideramos de gran importancia la previsión de determinadas líneas generales o ideas-fuerza sobre las que andamiar la nueva sociedad. Téngase presente que la ausencia de estas ideas-fuerza bien cimentadas en todas las grandes revoluciones históricas hizo posible que el carácter libertario primigenio de las mismas fuese finalmente capitalizado de forma autoritaria. De manera que el diseño de las grandes líneas generales puede ser útil para los futuros constructores, quienes las ampliarán de acuerdo con sus criterios y los valores y circunstancias del momento.

Los criterios prácticos sobre la construcción del comunismo libertario son muy diversos y han cambiado en el tiempo. El dictamen del Congreso de Zaragoza subraya el papel decisivo de la comuna como marco o asiento de todas las actividades humanas básicas, incluidas las económicas.

Es incuestionable a nuestro juicio, que la comuna es el marco donde se cumplen todas las funciones vitales de la sociedad, si bien creemos que deben situarse en una relación armónica las realidades de orden económico y productivo y aquellas otras de relación humana general dada la esencialidad misma de ambas. Es por esta razón que aludimos a la federación económica y a la federación política como situadas en un nivel de complementariedad, aunque la primera se verifique en el ámbito de la segunda.

2.3. El campo económico-productivo: la industria

Los elementos constitutivos de este campo serían: las unidades productivas de base (fábricas, talleres, minas, etc.), los consejos locales de economía que asumirían la función de coordinar la

economía en el nivel local, las federaciones de industria a nivel regional, nacional e internacional si fuese necesario.

No hay duda que, efectuado el cambio revolucionario y abolida la propiedad privada y el Estado, el principio de autoridad y, por consiguiente, las clases que dividen a las personas en explotadas y explotadoras como se dice en la ponencia del Congreso de Zaragoza los trabajadores y las trabajadoras se incautarán de las unidades productivas de base, y procederán a hacer balance de maquinarias y materias primas y de cuantos datos estadísticos interesen a los consejos locales de economía.

A partir de este momento, los centros de producción crearán sus consejos técnico-administrativos, nombrados en asamblea general y procederán a reestructurarse de acuerdo con las necesidades de cada grupo y posteriormente con las necesidades locales de cada industria. De estas necesidades la clase trabajadora deduciría las decisiones a tomar desde el punto de vista estructural, decidiendo en cada caso el tipo y dimensión de la unidad productiva procediéndose con criterios racionales que superen las estructuras inoperantes por reducidas, como ya se hiciera en Barcelona durante el proceso revolucionario y también en otros sectores de la España revolucionaria. De igual modo procedería corregir la gigantesca concentración industrial de nuestros días, descentralizándose los grandes conglomerados para adaptarlos a las conveniencias reales y a las posibilidades del entorno, con ayuda de los adelantos tecnológicos.

A niveles regionales y nacional, la federación de industria cumpliría las funciones de coordinación correspondiente a sus niveles, resolviendo los desajustes dentro del ramo y el aprovisionamiento de materias primas. La planificación industrial por ramas se llevaría a cabo en los congresos a los diferentes niveles y se tendrían en cuenta tanto los datos estadísticos de la industria como los suministrados por los consejos de economía regionales o nacional en relación con el estado general económico y las exigencias de éste.

Algunas industrias, como enseñanza, transporte, construcción, gastronomía y otras, escaparían probablemente a la planeación económica en aquellos aspectos relativos a los ámbitos locales o comunales, por afectar ya no sólo a la clase trabajadora, sino esencialmente a las ciudadanas y los ciudadanos como tales. Lo más probable es que cada comuna o municipio tendrá ideas propias sobre la organización de determinados servicios como el transporte, la enseñanza y otros. En cuanto a la construcción, en este caso, urbanismo, es de prever que las comunas tendrían buen cuidado en elegir el tipo de construcciones o viviendas adecuados al respectivo ámbito geográfico, al carácter del paisaje o al temperamento artístico y creativo de cada comuna. En todos estos casos decidiría la propia comuna, recurriendo a los medios técnicos del propio organismo local de la construcción. Esto ofrecería la posibilidad de una menor centralización de este ramo y de otros, que sólo tendrían que resolver en ámbitos geográficos superiores el problema de las materias primas. Repetimos que todas estas líneas generales tienen sólo un valor indicativo.

2.4. La agricultura

Cuanto se ha dicho para las federaciones de industria cabe afirmarlo para las federaciones del campesinado, que se articularían a partir de las unidades colectivizadas de base en federaciones

comarcales y regionales. Aquí convendría proceder a una diversificación del campo agrícola como en el caso de la industria, según las especialidades de la agricultura, que podrían articularse por separado en grandes grupos productivos. Cabe pensar en una federación nacional de cereales, otra de legumbres, de tubérculos, del vino y la sidra, de los productos lácteos y sus derivados, de las materias grasas y de la carne. Otro tanto se puede decir de las actividades pesqueras. Acaso fuera conveniente unir por fin estas federaciones nacionales campesinas especializadas en federaciones generales de la agricultura en los ámbitos regionales, constituyendo una confederación general (o nacional) agrícola con articulación final. Estas federaciones regionales, así como la confederación general estarán representadas en los consejos locales, regionales y nacionales (o general) de economía, donde revertirían las necesidades de asistencia técnica, herramientas y maquinarias diversas, abonos y productos químicos etc. Se tendrán también en cuenta las circunstancias dadas en la revolución española 1936-39. Por supuesto que en todas las modalidades de cultivo se suprimiría cualquier forma de explotación del trabajo ajeno.

2.5. Las comunas

Como hemos dicho en otro lugar la comuna es el ámbito en el que se desarrollarán todas las actividades humanas esenciales, tanto las económicas productivas, ya descritas, como las de relación humana general. Por ello es el eje en que se insertará la vida de la nueva sociedad.

Lo mismo que la nueva estructuración económico-productiva tendrá como base a la clase trabajadora y a las unidades productivas de base la nueva estructuración de las relaciones humanas generales tendrá como base primordial la persona y el núcleo social primario asentado en el barrio o distrito y por extensión la comuna local (o municipio libre). La comuna será la unidad básica de la convivencia ciudadana y la entidad geosocial sobre la cual se estructurará la gran federación política que debe sustituir al Estado. Las comunas serán autónomas y se federarán comarcal, regional o nacionalmente (o en el espacio ibérico) para que se cumplan los fines de solidaridad y complementariedad política y económica previstos en la sociedad comunista libertaria.

La unión libre y voluntaria que empieza en la persona soberana, emancipada de toda alienación, culmina en la Confederación Ibérica de Comunas Autónomas Libertarias (C.I.C.A.L.). En los congresos de la Confederación se tomarán, dentro de la más amplia libertad, las más importantes decisiones relativas a la vida e intereses del conjunto de comunas que compongan la Confederación.

Por supuesto que las decisiones correspondientes a cuestiones locales o regionales se tomarán en estos ámbitos puesto que partimos del concepto básico de autonomía. Bien entendido que autonomía en el federalismo supone mutua solidaridad y apoyo mutuo dentro de los intereses comunes.

Ante una extensión posible de la revolución fuera de los límites de la Península Ibérica, cabe imaginar la estructuración de una Confederación Internacional de Comunas Autónomas Libertarias, formación que implicaría naturalmente la desaparición de las grandes concentraciones de poder que representan hoy todos los estados.

2.6. La comuna autónoma

Esta entendería en la gestión de los problemas que afectan a la vida y convivencia de la colectividad. Cuestiones tales como la sanidad, el urbanismo, la vivienda, la enseñanza la cultura, el ocio, los transportes locales, la demografía y las estadísticas, la distribución y el consumo estarían a cargo de los organismos especializados creados por la comuna y que se desenvolverían bajo la supervisión de la misma. En los diversos barrios y distritos, las ciudadanas y los ciudadanos tomarán decisiones y ellas constituirán la voluntad decisoria sobre todos los problemas de la vida ciudadana.

Los problemas de carácter comarcal o regional se resolverán del mismo modo en cada ámbito, articulando las decisiones de abajo a arriba. Las correspondientes a niveles más elevados (nacional o ibérico) seguirán la misma modalidad, refiriéndose, como ya hemos apuntado a todas las cuestiones, de diversa importancia y trascendencia relativa al conjunto de la sociedad. Finalmente, del mismo modo federalista la voz de la C.I.C.A.L. se dejaría oír en el concierto de la confederación internacional, si ésta existiese. Toda actividad de carácter social en el área de la comuna tendrá punto de convergencia en la misma.

2.7. De los organismos técnicos

Como ya se ha sugerido, las comunas crearían en su seno tantos organismos especializados como necesidades reales existan. A este nivel local la comuna, tras llevar a cabo un inventario general de todos los bienes ahora comunes se hace cargo de la administración de los mismos y de aquellas funciones productivas relacionadas con la vida local, en el sentido indicado cuando nos referimos a los aspectos económico-productivos. Estos estarán como tales presentes por medio de un organismo especializado en el seno de la comuna. Este organismo no será otro que el del Consejo Local de Economía.

A niveles regionales, los Consejos Regionales de Economía estarán representados en las respectivas Federaciones Regionales de Comunas y por fin en el ámbito nacional o ibérico, el Consejo Nacional o Ibérico de Economía estará representado en la Confederación Ibérica de Comunas Autónomas Libertarias. De este modo se fundirán armoniosamente las actividades económico-productivas con las de relación humana.

Caben aquí algunas consideraciones importantes en cuanto a la complementariedad sindical. La Comuna representará por su propia naturaleza el carácter íntegro de las personas en todos sus aspectos. Sería misión de la comuna ordenar estadísticamente el consumo y la distribución por medio de sus lazos demográficos. Por tanto, y en última instancia el consumo deberá orientar la producción, puesto que sólo deberán producirse aquellos productos que sean necesarios para la subsistencia y el bienestar de la comunidad.

Esto quiere decir que los servicios estadísticos de la comuna significarán un factor de racionalidad económica. Del mismo modo, las aspiraciones cambiantes de la sociedad viva, reflejadas en los acuerdos de las comunas a todos los niveles, serán otros tantos factores orientados a la racionalidad económica, a servir los fines integrales de la persona, y a facilitar los cambios necesarios en el concierto general de la vida social. Pensamos que el complejo mundo de las relaciones económico-productivas y el de las relaciones humanas generales podrían ser influidas y controladas

de principio a fin por la persona a través del canal de la comunicación ciudadana de las Comunas Libres articuladas de abajo a arriba y a todos los niveles.

2.8. La producción y el consumo

Aunque sean de esperar verdaderos prodigios por parte de la tecnología actual, la sociedad comunista libertaria no podrá todavía aplicar, de entrada, la fórmula kropotkiniana de la «toma del montón» y probablemente serán necesarios controles sociales en cuanto a la distribución y el consumo y éste deberá estar condicionado por las posibilidades reales de la producción.

Otra cuestión a resolver será la del medio o signo de cambio destinado a obtener los productos necesarios para cubrir las necesidades de todas las personas; el medio propuesto por el Congreso de Zaragoza fue la «carta del productor», extendida por los comités o consejos de fábrica o de cultivo a los productores, facilitando a su vez los consejos comunales, cartas de consumo a las y los integrantes de la población pasiva. Desarrollando esta misma iniciativa, surgió la idea de un signo de cambio que no podría capitalizarse, dado que no tendría el menor sentido en un sistema en que no existiría la propiedad privada ni explotación posible del trabajo ajeno. Serán las comunas quienes repartan los bonos de adquisición. Este signo de cambio tendría como fin esencial regular la distribución de los productos.

2.9. Otros problemas de la sociedad comunista libertaria

Trazadas las líneas generales de cómo entendemos hoy la futura sociedad comunista libertaria, consideramos ocioso entrar hoy, a tan distante perspectiva, en pormenores sobre otros aspectos de la vida social, como puede ser la pedagogía, las relaciones sexuales, el problema religioso, y una multitud de prácticas que florecerán espontáneamente en las comunidades libertarias y que apenas podemos imaginar hoy.

Queda la cuestión de desmitificar la revolución y hay que entenderla como una tremenda fractura que pondrá a prueba la voluntad y la inteligencia de las revolucionarias y los revolucionarios que pongan los cimientos de la nueva sociedad. Esta no sería de la noche a la mañana algo idílico.

Habrá dificultades de todo tipo pero no insalvables, dado que la creatividad y el impulso revolucionario serán las grandes herramientas que arrumbarán el viejo mundo y sienten las bases de otro completamente nuevo. Entre las dificultades estará la necesidad de defender por las armas la revolución como ya previeron los compañeros y las compañeras de 1936.

La militancia de 1936 venteaba los acontecimientos revolucionarios, nosotros y nosotras hoy debemos ir creando sin pausa las condiciones objetivas para el cambio expresadas claramente en el dictamen de Zaragoza de 1936.

PALABRAS FINALES

Queremos evitar aquí la impresión de un relato anticipatorio pero de cualquier modo es necesario que tomemos conciencia en este congreso de los problemas que sin duda se presentarán en el umbral mismo del tránsito revolucionario. En 1936, al advenimiento del golpe fascista, la CNT se enfrentó a los acontecimientos de Julio con los acuerdos recientes del Congreso de Zaragoza y se vio desbordada desde las primeras jornadas. El motivo fundamental fue que no teníamos previsto el problema de la correlación de fuerzas en presencia. Ello se debió a que la CNT salió de Zaragoza entendiéndose a sí misma como única fuerza revolucionaria. Este hecho volverá a darse en cualquier otra situación de tránsito. No deseamos ofrecer hoy soluciones hechas, que no existen y que por tal razón serían ilusorias. El tránsito de la nueva sociedad por otra parte, y como ya hemos dicho, aparece lejano y el mero acercamiento al mismo exigirá de nuestra organización, de nuestra militancia y de todo el movimiento libertario, un trabajo gigantesco y continuado. No obstante sobre todo porque la finalidad es absolutamente necesaria para mantener vivos y operantes los principios y las tácticas, este terna deberá irse perfilando en los futuros congresos de la organización.

NORMATIVA ORGÁNICA Y ESTATUTOS

TÍTULO I.- DENOMINACIÓN Y ESTRUCTURA

Art. 1.- La Confederación Nacional del Trabajo (C.N.T.) es una organización sindical revolucionaria, es decir, que lucha en pro de la revolución social. Su carácter es anarcosindicalista, es decir anarquista por sus principios, tácticas y finalidades y sindicalista por su forma de organización estructurada en sindicatos. La CNT se define como una organización de clase, autónoma, autogestionaria, federalista, internacionalista y feminista.

Art. 2. Constituyen esta Confederación los Sindicatos de Oficios Varios, los Sindicatos Únicos de Ramo de las localidades comprendidas en su ámbito territorial, sea cual sea su importancia, los cuales se federan entre sí, según lo expresado en esta normativa orgánica. Los sindicatos federados en la CNT son plenamente autónomos en su funcionamiento interno y responsables en su ámbito de la aplicación, tanto de sus propios acuerdos como de los emanados en los diferentes ámbitos de la Confederación, a cualquier efecto jurídico o legal.

Art. 3. Las Federaciones de Ramo se constituirán con la federación de los sindicatos cuyo ámbito funcional sea el mismo o, en su defecto, con las secciones de ramo de los Sindicatos de Oficios Varios.

Art. 4. La CNT está adherida a la Asociación Internacional de Trabajadores (A.I.T.), constituyendo una Sección de la misma.

TÍTULO II. OBJETIVOS

Art. 5.- Los objetivos de la Confederación Nacional del Trabajo son:

A) Desarrollar entre la clase trabajadora el espíritu de asociación, independientemente de su sexo o género, raza, nacionalidad, creencias políticas, filosóficas o religiosas.

B) Difundir y fomentar entre la clase trabajadora la cultura y acción libertarias, con el objetivo por un lado, de elevar su condición moral y material en la sociedad presente, y por otro, asumir los medios de producción y consumo en forma autogestionada, implantando el co-

munismo libertario.

C) Practicar y fomentar el apoyo mutuo y la solidaridad entre los trabajadores y las trabajadoras, tanto en caso de huelga como en cualquier otra circunstancia.

D) Mantener relaciones con todas aquellas organizaciones obreras afines a la CNT por sus principios, tácticas y finalidades, ya sean nacionales o internacionales, para la común inteligencia que conduzca a la emancipación total de la clase trabajadora.

E) Representar, defender y promocionar los intereses económicos, sociales, profesionales y culturales de su afiliación, así como programar las acciones necesarias para conseguir las mejoras sociales y económicas, tanto para su afiliación como para la clase trabajadora en general.

F) La consecución de la igualdad real y efectiva entre mujeres y hombres. Para ello, la CNT adopta una perspectiva de género en su actuación, particularmente en la acción sindical.

Art. 6.- Para la consecución de estos propósitos, la Confederación utilizará siempre la Acción Directa, sin delegar las luchas económicas y sociales en institución mediadora alguna despojando así la lucha obrera de toda injerencia política o religiosa. La CNT rechaza la participación en las elecciones sindicales, como reproducción del sistema representativo burgués en el mundo del trabajo asalariado, y negación de la acción directa y participativa de la clase trabajadora. La CNT rechaza los Comités de Empresa por definirse como órganos decisorios, reconocidos jurídicamente por la legislación estatal, sobre el conjunto de la clase trabajadora; y por sus características de privilegios. Estos Comités entran en contradicción con los principios de la Acción Directa y del Asamblearismo, a los que pretenden sustituir y mediar, reproduciendo un sindicalismo de servicios que ha promovido la desmovilización y la desarticulación de la conflictividad laboral en nuestro país. La CNT rechaza las subvenciones sindicales del Estado y afirma la autogestión y financiación del Sindicato como expresión de su independencia, autonomía y libertad.

TÍTULO III. ÁMBITO TERRITORIAL Y FUNCIONAL

Art. 7.- El ámbito territorial de la CNT es el que actualmente comprende el territorio español, estando integrada por todos los sindicatos existentes en el citado ámbito. La CNT es una Confederación en la que los Sindicatos de una misma localidad, comarca o provincia, se federan entre sí para constituir las Federaciones Locales, Comarcales o Provinciales, respectivamente. La Federación de estas entidades constituye las Confederaciones Regionales, siendo la CNT la Federación de éstas últimas. Asimismo, pertenecen a la CNT aquellas agrupaciones constituidas fuera del territorio español por miembros de la CNT tras el final de la Guerra Civil Española. La Federación de estas agrupaciones constituye la Confederación del Exilio o Regional del Exterior.

Art. 8.- El ámbito funcional de la CNT es el de todos los trabajadores y trabajadoras manuales o intelectuales, en activo, en paro o que hayan cesado en su actividad, estudiantes, así como traba-

jadores y trabajadoras autónomas que no tengan personal asalariado a su cargo, independientemente de sus creencias políticas, religiosas o filosóficas.

TÍTULO IV.- DOMICILIO

Art. 9.- La CNT fija su domicilio actualmente en la sede del Secretariado Permanente que salga elegido en este Congreso, sin perjuicio de que se pueda acordar en cualquier comicio orgánico el cambio del mismo.

TÍTULO V.-AFILIACIÓN

Art. 10. A los sindicatos que forman la CNT se puede afiliar toda persona por el simple hecho de ser trabajadora, independientemente de sus creencias políticas, religiosas o filosóficas. Se entiende por persona trabajadora la que es asalariada, autónoma sin personal asalariado o profesional liberal, en activo o en paro, es decir, toda aquella que no es ni patrona ni explotadora.

Art. 11. No se podrán afiliar a los sindicatos que forman la CNT los miembros de las Fuerzas Armadas, de las Fuerzas de seguridad del estado, de cuerpos de policía privada, cuerpos carcelarios y represivos, y en general todo aquel que desarrolla tareas represivas. Tampoco podrán afiliarse las personas que estén afiliadas a cualquier otro sindicato o que hayan sido expulsadas de cualquier sindicato de la CNT.

Art. 12. Las personas que se afilien a CNT lo harán a través del sindicato único de su ramo que exista en su localidad de trabajo. En caso de que no existiese el sindicato de ese ramo en el que se encuadre su profesión, se afiliarán al Sindicato de Oficios Varios de su localidad de trabajo. En caso de no haber CNT en la localidad de trabajo se afiliará en su localidad de residencia, y en caso de tampoco existir ésta, lo hará en el sindicato de la Federación Local de CNT más cercana a su localidad de residencia. Los comités locales, y en su caso el Comité Regional, serán los encargados de la correcta adscripción de la afiliación en función de los sindicatos que se puedan ir creando o desapareciendo.

Art. 13. 1. La afiliación debe solicitarse al Comité del Sindicato. La aceptación de la afiliación se producirá una vez que abone la primera cuota y se haya informado a la asamblea del sindicato de su afiliación.

2. En aquellos casos en los que pudiera existir alguna incidencia que afectara a la aceptación de la afiliación (dudas sobre las inhabilitaciones del art. 10, incongruencia con el art. 12, etc.), dicha aceptación de la afiliación se tratará como punto en la siguiente asamblea del sindicato que tenga lugar tras la solicitud de afiliación, debiendo ser el acuerdo de la asamblea del sindicato coherente con esta normativa orgánica.

3. La persona afiliada tendrá voz y voto en las asambleas desde que su afiliación sea aceptada por el sindicato, sin que haya ningún período de carencia.

Art. 14. Las personas afiliadas a CNT y que lo estén a la vez en partidos políticos o sectas religiosas no podrán ostentar cargos orgánicos. Tampoco podrán hacerlo quienes a su vez desempeñen cargos en cualquier otra organización a la que estén afiliadas al mismo tiempo.

Art. 15. Son derechos de la afiliación:

a) Recibir información de todo lo que afecte al funcionamiento de la organización.

b) Tener asesoramiento y, en su caso, el apoyo y solidaridad de su sindicato en todo lo relacionado con su actividad laboral y sindical.

c) Participar en las asambleas de su sección sindical y de su sindicato.

d) Elegir y ser elegido o elegida para representar u ocupar los distintos cargos de gestión de la Organización, con la salvedad hecha en el art. 14.

e) Cualquier otro derecho que se deduzca del articulado de esta normativa.

Art. 16. Son deberes de la afiliación:

a) Respetar los acuerdos que haya adoptado la Organización a través de sus comicios en sus distintos ámbitos, extremando dicho respeto cuando se trate de la difusión pública de esos acuerdos.

b) Contribuir al mantenimiento económico de la Organización estando al corriente de pago de la cuota sindical acordada en cada momento.

c) Contribuir, en la medida de sus posibilidades, al fortalecimiento y desarrollo de la Organización.

d) Prestar el apoyo y solidaridad necesarios a compañeros y compañeras que lo requieran.

e) Cualquier otro deber que se deduzca del articulado de esta normativa.

Art. 17. La afiliación a un sindicato de la CNT se perderá por:

a) Petición voluntaria de la persona interesada.

b) Por la expulsión de la Organización, por alguna de las razones establecidas en el artículo 166.

c) De forma automática, por no abonar la cuota durante 6 meses consecutivos sin tener causa justificada para ello. Para que la persona que perdió la condición de afiliada por este motivo pueda volver a afiliarse, será necesario que abone al menos esas 6 cuotas no pagadas.

TÍTULO VI.- DE LA ESTRUCTURA ORGÁNICA

CAPÍTULO I. De la constitución y federación de nuevos sindicatos

Art. 18. Cuando en una localidad no exista la CNT, las personas interesadas en crearla procederán de la siguiente manera:

1. Comunicarán al Sindicato de Oficios Varios de CNT más cercano a su localidad la intención de crear un Núcleo confederal y se afiliarán a ese sindicato.

2. El núcleo confederal recién creado deberá permanecer como tal durante un período mínimo de un año para poder constituirse como Sindicato de Oficios Varios.

3. El núcleo confederal deberá contar con un mínimo de 15 miembros, al menos durante los seis meses consecutivos previos a su solicitud de constitución como Sindicato de Oficios Varios.

4. Para constituir el nuevo Sindicato de Oficios Varios, el Núcleo Confederal lo comunicará al Secretariado Permanente del Comité Regional, solicitando su federación a la CNT. Esta solicitud deberá contener:

a) Propuesta de constitución del Sindicato de Oficios Varios y de su federación a la CNT.

b) Compromiso de aceptación de los principios, tácticas y finalidades de la CNT, así como los acuerdos de sus Congresos y Plenos.

c) Informe del Sindicato de Oficios Varios al que pertenece el Núcleo Confederal certificando que se cumplen las condiciones establecidas en los apartados 2 y 3 de este artículo.

d) Informe del Núcleo Confederal acerca de la actividad desarrollada desde su creación.

e) El comité del sindicato estará formado, al menos, por los siguientes cargos: Secretaría General, Organización, Tesorería y Acción Sindical.

Art. 18. El SP del CR incluirá como punto en el orden del día de la siguiente Plenaria Regional el ingreso del nuevo sindicato. La Plenaria valorará si los estatutos presentados se ajustan a esta normativa orgánica y a los principios, tácticas y finalidades de la CNT y al resto de condiciones establecidas en el artículo 17. En caso de que la Plenaria pusiera reparos al ingreso, el SP del CR dará cuenta de ellos a los solicitantes, que deberán subsanarlos antes de la próxima plenaria. Una vez subsanados, el Comité Regional incluirá la cuestión como punto de Pleno Regional de Sindicatos para la toma de acuerdos sobre la aceptación o no de la nueva federación.

Art. 20. El Pleno Regional tomará los acuerdos vinculantes sobre la federación del nuevo sindicato, suponiendo su rechazo la no posibilidad de solicitar de nuevo el ingreso hasta que el Comité Regional considere que han cambiado las circunstancias que originaron su desestimación, y en todo caso, después de transcurrir un año de que se tratara en el Pleno correspondiente. Los miembros de estos Sindicatos podrán permanecer afiliados y afiliadas al Sindicato más cercano

y/o ejercer la actividad sindical mediante un Núcleo Confederal constituido.

Art. 21. La aprobación por parte del Pleno Regional del ingreso del nuevo sindicato de Oficios Varios supone su federación a la CNT y la afiliación de todos sus miembros. En el plazo de 6 meses el Sindicato deberá tener el correspondiente CIF.

Art. 22. Para la constitución de un sindicato de ramo, cuando en una localidad exista tan solo Sindicato de Oficios Varios, se procederá de la siguiente forma:

a) La iniciativa deberá partir de al menos una Sección Sindical del ramo que se trate. Para ello deberá remitir al Comité del SOV una Propuesta de constitución del Sindicato de Ramo y de su federación a la CNT, así como un listado con el nombre, apellidos y firma de al menos 50 cotizantes del SOV que pertenezcan a ese ramo.

b) El Comité del SOV tratará la propuesta de constitución en Plenaria convocada al efecto. Esta Plenaria resolverá también las posibles dudas que surjan en cuanto a la adscripción de la afiliación al ramo que les corresponda, teniendo en cuenta lo establecido en esta normativa. Esta Plenaria decidirá en el sentido siguiente:

1. Si se cumplen las condiciones establecidas en el subpunto a) anterior, la Plenaria aceptará la solicitud y convocará un Pleno Fundacional del Sindicato de Ramo, al que estará llamada toda la afiliación del SOV perteneciente a ese ramo.

2. En caso de que la Plenaria deniegue la solicitud, se incluirá un punto en el orden del día de la siguiente Asamblea del SOV que se celebre. Esta Asamblea decidirá en última instancia sobre el tema. La decisión de esta Asamblea deberá ser coherente con esta normativa orgánica y con los principios, tácticas y finalidades de la CNT.

c) El Pleno Fundacional del sindicato de ramo será abierto por el Comité del SOV. En su orden del día figurarán los siguientes puntos:

a. Elección de mesa

b. Elección de comisión revisora de credenciales.

c. Constitución o no del sindicato de ramo.

d. En caso de ser aprobada su constitución, elección del Secretariado del comité del sindicato.

d) En el caso de que el sindicato de ramo quede constituido, el comité del SOV procederá a dar de baja a todas las personas afiliadas que correspondan al ramo del sindicato creado, cuyo comité automáticamente los dará de alta. El SOV nunca podrá quedar con menos de 15 cotizantes.

e) El sindicato de ramo tendrá un plazo de un mes desde su constitución, para elaborar sus Estatutos y enviarlos al comité del SOV, que una vez los reciba y tramite, convocará una Asamblea del mismo que decidirá sobre la aprobación o no de esos estatutos.

f) Para tomar esta decisión, la Asamblea valorará si los estatutos presentados se ajustan a esta normativa orgánica y a los principios, tácticas y finalidades de la CNT.

g) En caso de que se aprueben los estatutos presentados por el sindicato de ramo, en esa

misma Asamblea se procederá a la elección de los cargos de la FL.

h) La aprobación de los estatutos del sindicato de ramo suponen su federación a la CNT.

i) En caso de que no se aprueben, se hará una relación con las modificaciones que se hayan aprobado y que el sindicato de ramo tendrá que incluir en sus estatutos, volviendo al apartado f) de este mismo artículo.

Art. 23. Cuando en una localidad exista Federación Local, para la constitución y federación de un sindicato de ramo se procederá de la forma indicada en el artículo anterior, sustituyendo "SOV" por "FL", "Comité del SOV" por "Comité Local", "Plenaria del SOV" por "Plenaria Local" y "Asamblea del Sindicato" por "Pleno Local".

Art. 24. Los comités del SOV, de la FL en su caso, o del CR, deberán comunicar al Comité Confederal, a través del cauce orgánico, la creación o desaparición de los sindicatos dentro de su ámbito.

Art. 25. Los sindicatos tendrán voz y voto en los comicios de la organización desde su ingreso, sin que exista periodo de carencia o de cotización previa alguno, excepto para el caso de los congresos, en los que sólo tendrán voto los sindicatos que formen parte de la organización, al menos, desde un año antes de su celebración. Hasta que no hayan transcurrido seis meses desde su ingreso, los sindicatos tendrán un voto, independientemente de su número de afiliados y afiliadas.

CAPÍTULO II. De los Sindicatos y las Secciones Sindicales

Sección 1.º. De los Sindicatos

Art. 26. El Sindicato de Ramo.

a) Al Sindicato de Ramo se afiliarán todas las personas que trabajen en un mismo ramo de la producción dentro del ámbito territorial de ese sindicato. Las personas en situación de paro se afiliarán al Sindicato de Ramo que les corresponda según la última ocupación laboral mantenida.

b) Para que exista un Sindicato de ramo en una Federación Local será necesario un mínimo de 50 cotizantes.

c) La definición y número de ramos que se reconocen por CNT se establecen en el Capítulo VI de esta normativa. En cada Federación Local de CNT sólo podrá haber un Sindicato de Ramo por cada uno de los ramos que se establecen en el citado capítulo.

d) Dentro del Sindicato de Ramo están todas las secciones sindicales de la CNT en las diferentes empresas de ese ramo.

e) El contenido y desarrollo de la acción sindical de su ámbito se acuerda en la asamblea del Sindicato de Ramo. Para la concreción práctica de esa acción sindical en cada una de las empresas, la correspondiente sección sindical tiene autonomía.

f) Todos los Sindicatos de Ramo de la CNT deberán tener CIF en el plazo de 6 meses.

Art. 27. El sindicato de Oficios Varios.

a) En todas las Federaciones locales de CNT habrá un sindicato de Oficios Varios. En él se encuadran todas las personas afiliadas que no pertenezcan a ningún sindicato de ramo, bien porque no haya suficientes cotizantes para constituir el sindicato de ramo, bien porque el ramo al que pertenezca no figure en la relación de ramos que en ese momento tenga aprobada la organización.

b) En una Federación Local de CNT no podrá constituirse un Sindicato de Ramo si no existe un Sindicato de Oficios Varios.

c) Aquellos personas en paro que no hayan desarrollado nunca ninguna actividad profesional, se afiliarán al Sindicato de Oficios Varios de su localidad de residencia.

d) Para constituir un sindicato de Oficios Varios hace falta un mínimo de 15 cotizantes.

e) Dentro del SOV están las secciones sindicales de la CNT de aquellas empresas de cuyo ramo no hay suficiente afiliación para constituir el sindicato de ramo.

f) El contenido y desarrollo de la acción sindical de su ámbito se acuerda en la asamblea del Sindicato de Oficios Varios. Para la concreción práctica de esa acción sindical en cada una de las empresas, la correspondiente sección sindical tiene autonomía.

g) Aquellas secciones sindicales que estén encuadradas en un SOV y pertenezcan a un mismo ramo o, siendo de ramos diferentes, pertenezcan a la misma empresa, deberán coordinarse con los siguientes objetivos:

a. Concreción y desarrollo en su ramo de la acción sindical acordada en la asamblea del sindicato.

b. Elaboración de propuestas de trabajo en su ramo que propondrán a la asamblea del sindicato.

c. Tratamiento de todas aquellas cuestiones transversales que afecten a las Secciones Sindicales que siendo de la misma empresa, pertenecen a ramos de la producción diferentes.

h) En aquellas localidades en que no exista Sindicato de Oficios Varios y tampoco haya número suficiente de afiliados y afiliadas para constituirlo, se podrán constituir Núcleos Confederales, cuyos miembros se afiliarán, relacionarán y cotizarán al Sindicato que les corresponda según el artículo 11. Los Núcleos Confederales son transitorios y tienen como finalidad la creación de la CNT en la localidad. No tendrán ni voz ni voto en los comicios orgánicos.

Art. 28. La desfederación de un sindicato se puede producir por las siguientes razones:

a) Por disolución.

b) Por no alcanzar el mínimo de cotizantes exigido durante 6 meses consecutivos.

c) Porque la asamblea del sindicato decida abandonar la CNT.

d) Por acuerdo de Pleno Local, en los casos en que exista Federación Local, o de un Pleno Regional en caso de que no exista, según los motivos establecidos en el artículo 167.

Art. 29. En caso de que un sindicato no alcance el número mínimo de cotizantes durante el pe-

riodo señalado en el artículo anterior, el SP de la FL o del CR, según corresponda, lo comunicará al sindicato en cuestión y éste lo tratará en su asamblea acatando la desfederación o solicitando su intención de continuar constituido como sindicato, lo que sólo podrá hacer en caso de que se encuentre en una de las dos circunstancias siguientes:

1. Tener afiliados o afiliadas exentas de pago por dificultades económicas.

2. Tener una falta de cotización coyuntural y temporal, que podrá tener una duración máxima de 6 meses.

a) El sindicato que solicite la excepción, deberá exponer y justificar las circunstancias excepcionales de cotización que alegue para solicitar seguir siendo sindicato. Esta solicitud será tratada en el siguiente Pleno Local o Regional que se convoque, según corresponda, en el que el sindicato solicitante tendrá voz y voto y deberá aportar toda la información y documentación que le requieran el resto de sindicatos acerca de su situación. El citado Pleno Local o Regional, según corresponda, tendrá la última palabra sobre la cuestión, pudiendo permitir la excepción sólo en aquellos casos en que quede acreditado el carácter coyuntural de la situación. Transcurrido el tiempo fijado para la excepción, si persiste la falta de cotización, el Comité correspondiente notificará al sindicato su desfederación, informando de ello en la siguiente Plenaria que se convoque.

b) En el caso de los Sindicatos de Oficios Varios que acepten su desfederación por no alcanzar el número mínimo de cotizantes o por haber superado el plazo de 6 meses indicado en el apartado anterior sin conseguir el número mínimo de cotizantes, deberán comunicar su intención de constituirse como Núcleo Confederal al SP del CR, que procederá a comunicarlo a toda la organización.

c) Los sindicatos de Oficios Varios que a la entrada en vigor de esta Normativa Orgánica no alcancen el número mínimo de cotizantes que se establece en la misma, tendrán un plazo de 6 meses para conseguirlos. En los casos en que no sea así, se aplicará lo establecido en este mismo artículo.

Art. 30. Cuando un sindicato haya dejado de cotizar por un período inferior a los 6 meses consecutivos, no habiendo solicitado la exención de cotización o habiéndosele denegado ésta por el Pleno correspondiente, y vuelva a cotizar, estas nuevas cotizaciones se computarán a partir del primer mes no cotizado.

Art. 31. Mientras dure la exención de cotizar, el sindicato no tendrá voto en los comicios.

Art. 32. 1.- La disolución de un sindicato se acordará en una asamblea de éste. En ella deberá decidirse sobre el destino de los bienes propiedad del sindicato.

2.- Aquellos bienes que no pertenecieran al sindicato sino a la CNT, pasarán a la Federación Local a la que corresponda, en caso de que exista, y en caso contrario a la Confederación Regional a la que pertenezca el sindicato disuelto. Igual destino tendrán los bienes del sindicato cuyo destino no hubiera sido decidido. El mismo proceso se seguirá para los bienes que sean propiedad de la CNT en los casos de desfederación de sindicatos. Quedan específicamente excluidos los locales de patrimonio confederal, que en caso de desfederación o disolución del sindicato que los ocupa, y dado su carácter confederal, pasarán a ser gestionados directamente por

el Secretariado Permanente del CC, incluso cuando exista un núcleo confederal. El SPCC podrá delegar o no la gestión diaria en la Federación Local o Regional de no existir a la que el sindicato pertenecía, o en el sindicato más cercano. El SPCC deberá contar en todo momento con las llaves, documentación y libre acceso y disposición de los locales usados por sindicatos disueltos o desfederados.

3.- La continuidad en el uso, o en su defecto la posible venta de un local confederal cedido en su momento para el uso de un sindicato, deberá ser incluida y acordada en un pleno confederal, en el caso de que este se disuelva y se conforme como núcleo confederal.

Sección 2.º. De las Secciones Sindicales

Art. 33. Las Secciones Sindicales.

a) Las secciones sindicales son el conjunto de la afiliación de CNT en una misma empresa o grupo de empresas. No se exige mínimo alguno de afiliación para su constitución.

b) Se podrán constituir secciones sindicales en cualquiera de los ámbitos de la estructura empresarial. En concreto, a nivel de centro de trabajo, empresa y grupo de empresas, de forma exclusiva o simultánea.

c) Cada sección sindical dependerá por el organismo sindical de la CNT que corresponda con su ámbito. Según el siguiente esquema:

1. Sección sindical de centro de trabajo o de empresa cuyo ámbito corresponda con el de un sindicato de ramo o, en su defecto, de oficios varios de ámbito local o provincial constituido dentro de CNT. La constituirá el sindicato de ramo u oficios varios local o provincial correspondiente. En el caso de que la empresa tenga actividad en varios ramos, habiendo constituidos en su ámbito sindicatos de ramo, la sección sindical se constituirá por parte del Comité de la Federación Local o Provincial. La comunicación de la constitución la realizará el SP correspondiente a través de su SG o, en su defecto, de la Secretaría de Acción Sindical.

2. Sección sindical de empresa cuyo ámbito supere el ámbito de los sindicatos a los que pertenece su afiliación, teniendo la empresa un ámbito provincial, autonómico o estatal. La constituirá el Comité Provincial, Regional, o Confederal de no existir Federación Sectorial en ese ámbito y sector, en cuyo caso corresponderá a esta su constitución. La comunicación de la constitución a la empresa y a la administración laboral la realizará el SP correspondiente a través de su SG o, en su defecto, de la Secretaría de Acción Sindical en representación del Comité correspondiente.

3. Sección sindical de grupo de empresas cuyo ámbito supere el ámbito de los sindicatos a los que pertenece su afiliación, de ámbito provincial, autonómico o estatal. La constituirá el Comité Provincial, Regional, o Confederal de no existir Federación Sectorial en ese ámbito y sector, en cuyo caso corresponderá a esta su constitución. La comunicación de la constitución la realizará el SP correspondiente a través de su SG o, en su defecto, de la Secretaría de Acción Sindical en representación del comité correspondiente.

d) La sección sindical de empresa, en cualquiera de los ámbitos, coordinará y representará ante la empresa a las secciones sindicales de centro de trabajo que pudieran constituirse en las materias que excedan las propias del centro de trabajo, y que contarán, en su caso, con su

propio delegado o delegada, que formará parte del comité de la sección sindical de empresa.

e) La sección sindical de grupo de empresa, en cualquiera de los ámbitos, coordinará y representará ante la empresa a las secciones sindicales de empresa que pudieran constituirse en las materias que excedan las propias de cada empresa, que contarán, en su caso, con su propio delegado o delegada, que formará parte del comité de la sección sindical de empresa.

f) Las secciones sindicales decidirán todo lo relacionado con la acción sindical en su empresa mediante la Asamblea o Pleno de la sección sindical. Corresponderá a la sección sindical determinar si las decisiones se toman en Asamblea de toda la afiliación, o si por el tamaño y el ámbito de la misma esta deberá realizarse en un pleno mediante delegaciones de las respectivas secciones de centro de trabajo o empresa. En tal caso, las delegaciones trasladarán las resoluciones que sobre el orden del día hayan tomado en sus respectivas asambleas, y acudirán con tantos votos como afiliados tengan. En ese caso, el sistema de toma de decisiones elegido deberá reflejarse en los estatutos de la sección sindical correspondiente. La línea sindical general a seguir por las secciones sindicales en cualquiera de sus ámbitos corresponde siempre a la Asamblea del Sindicato o a los plenos respectivos en los ámbitos superiores que coincidan con el ámbito de la sección sindical. La Sección Sindical traslada esa línea sindical a su ámbito empresarial concreto. Cada sección sindical tiene autonomía, dentro de estos acuerdos generales, para establecer las acciones concretas a realizar, la publicidad y material a editar, la forma de trabajo, etc. En aquellas decisiones de especial trascendencia como pueden ser huelgas, conflictos colectivos, EREs y ERTEs, negociaciones y convenios, etc., aunque gozan de plena autonomía para desarrollarlas, nunca podrán tomar resoluciones que contradigan los acuerdos generales de la CNT ni la acción sindical acordada en su respectivo ámbito.

g) Las secciones sindicales nombrarán en asamblea a un delegado o delegada de la sección sindical, que tendrá las mismas características que cualquier otro cargo de coordinación y gestión en la CNT. Dicho delegado o delegada es el representante legal de esa sección sindical ante la empresa en su ámbito.

h) Los delegados o delegadas de las secciones formarán parte del Comité del Sindicato al que pertenecen. Cuando el ámbito de la Sección Sindical sea de empresa o grupo de empresas en un ámbito superior al abarcado por los sindicatos de CNT a que pertenece su afiliación, el delegado o delegada se integrará en el comité de la respectiva Federación de Ramo de su ámbito; de no existir, se incorporará como integrante de pleno derecho en el grupo de trabajo de la Secretaría de Acción Sindical del Secretariado Permanente del ámbito correspondiente, que será el responsable de la misma ante el respectivo comité.

i) Cuando las dimensiones de la Sección Sindical así lo requieran, se nombrará un secretariado de la Sección Sindical distribuyendo la coordinación y gestión de las diferentes áreas que la asamblea de la sección crea necesarios, contando siempre con un delegado o delegada de las secciones de la misma empresa o grupos de empresas constituidos en ámbitos inferiores, de existir.

j) La financiación de las secciones sindicales ha de establecerse en las asambleas de los sindicatos a los que pertenezca su afiliación, teniendo en cuenta las circunstancias particulares de cada caso que deberán recogerse en los estatutos de la sección sindical cuando su ámbito sea superior al de un sindicato.

k) La afiliación se realiza al Sindicato de la localidad donde el trabajador o la trabajadora trabaje o resida según lo establecido en estos estatutos, y no a la sección sindical. Por tanto, la cotización se efectúa a la Tesorería del Sindicato y no a la sección sindical.

l) Las secciones sindicales podrán elaborar sus propios reglamentos de régimen interno, que no podrán contravenir los estatutos de la CNT correspondientes a su ámbito. Dichos reglamentos deberán ser aprobados por el respectivo comité, que podrá recabar las modificaciones y aclaraciones correspondientes antes de dar el visto bueno. La elaboración de unos reglamentos de régimen interno propios de la sección sindical será obligatoria en todas las secciones de empresa o grupo de empresas de ámbito superior al de un sindicato de la CNT. Dichos reglamentos deberán ser aprobados por el comité del ámbito que corresponda.

m) La comunicación a la empresa y a la administración laboral de la decisión de constituir una sección sindical o de proceder a la baja de las mismas corresponde a las secretarías generales o de acción sindical de los respectivos secretariados permanentes de su ámbito, según el esquema precedente, lo que deberá ser comunicado igualmente a los respectivos comités.

CAPÍTULO III. De las Federaciones Locales

Art. 34. La Federación Local es el conjunto de sindicatos de una misma localidad geográfica. Por tanto la Federación Local de CNT es el lugar donde se relacionan todos los sindicatos de una misma localidad. Por ello todo el trabajo de la CNT que sea común a todos los sindicatos de esa Federación local ha de ser decidido, coordinado y presentado al exterior por la Federación Local. Todas las Federaciones Locales de la CNT deberán tener el CIF en el plazo de 6 meses.

Art. 35. Las Federaciones Locales de Sindicatos de la CNT son autónomas y responsables tanto jurídica como legalmente, de la aplicación de sus propios acuerdos así como de la aplicación de los acuerdos emanados por otros órganos de la Confederación.

Art. 36. La Federación Local mediante la toma de acuerdos en sus Plenos y la coordinación permanente del Comité Local, es la garantía de que los diferentes sindicatos no caigan en visiones parciales o corporativas de la acción sindical.

Art. 37. Es tarea de la Federación Local diseñar y planificar la actividad de la CNT en esa localidad, independientemente de la presencia o no en tal o cual ramo de la producción, desde el diseño de una visión global de los trabajos sindicales hasta la acción social, pasando por la relación con los medios de comunicación, las campañas de propaganda, la cobertura jurídica, la gestión de los inmuebles de la organización, la representación externa de la organización, las relaciones con otras organizaciones, la organización de todo tipo de actividades culturales y de formación, etc. La Federación Local también será la encargada de la coordinación de las distintas Secciones Sindicales que, perteneciendo a una misma empresa, están encuadradas en sindicatos distintos por pertenecer a ramos de la producción diferentes.

Art. 38. A su vez la Federación Local es el nexo de unión de los sindicatos de una localidad con otras federaciones locales, constituyendo las federaciones comarcales, provinciales o regionales, dependiendo de los casos.

Art. 39. Cuando en una localidad sólo hay un Sindicato de Oficios Varios, éste actúa con las mismas atribuciones que una Federación Local hasta tanto no exista al menos otro sindicato de ramo, momento en el que el SOV pasa a desarrollar las tareas exclusivas de sindicato.

Art. 40. Cuando una Federación Local se constituya, lo comunicará al SP del Comité Regional. Este a su vez está obligado a informar de tal circunstancia al resto de Federaciones Locales de esa Regional y al Comité Confederal. La admisión de dicha Federación es automática. Si existiese alguna duda de cualquier tipo sobre la admisión de esa nueva FL por parte de algún sindicato o FL, lo comunicará al SP del Comité Regional y el asunto se tratará en el siguiente Pleno que se celebre, que decidirá definitivamente sobre la cuestión.

CAPÍTULO IV. De las Federaciones Comarcales y Provinciales

Art. 41. En aquellas comarcas o provincias que las circunstancias lo aconsejen se podrán constituir Federaciones Comarcales o Provinciales. Dichas federaciones acogerán a todas las Federaciones Locales de esos ámbitos. Todas las Federaciones Comarcales y Provinciales deberán obtener el CIF en un plazo de 6 meses.

Art. 42. Las funciones de las Federaciones Comarcales o Provinciales son similares a las expuestas en el art. 36 para las Federaciones Locales, pero referidas a su ámbito.

Art. 43. Tanto las Federaciones Comarcales como las Provinciales al constituirse han de seguir el mismo proceso que el descrito para las Federaciones locales.

CAPÍTULO V. Confederaciones Regionales

Art.44. La CNT está constituida por las siguientes Confederaciones Regionales:

Confederación Regional Andalucía

Confederación Regional Aragón Rioja

Confederación Regional Asturias León

Confederación Regional Canarias

Confederación Regional Cataluña Baleares

Confederación Regional Centro

Confederación Regional Exterior

Confederación Regional Extremadura

Confederación Regional Galiza

Confederación Regional Levante

Confederación Regional Murcia

Confederación Regional Norte

a) Cada una de ellas acoge a las Federaciones locales que radican en las Comunidades

Autónomas -y en su caso las provincias- que figuran en el nombre de la Regional.

b) La Confederación Regional Centro abarca las Comunidades Autónomas de Castilla la Mancha, Madrid y Castilla León, salvo las provincias de León que se encuadra en la Confederación de Asturias-León, la provincia de Burgos que se encuadra en la Confederación Norte, y la provincia de Albacete que se encuadra en la Confederación Regional de Levante.

c) Ceuta y Melilla se incluyen en la Confederación Regional Andalucía.

d) La Confederación Regional Norte abarca Euskadi, Navarra, Burgos y Cantabria.

e) La Regional del Exterior abarca todas las agrupaciones constituidas fuera del estado español a causa del exilio, por tanto es una regional con la afiliación cerrada que no puede ampliar su afiliación.

Art. 45. La Confederación Regional engloba a todas las Federaciones Locales de su ámbito. Es tarea

de la Confederación Regional el coordinar el trabajo de todos los sindicatos y Federaciones locales de su ámbito dándole un carácter global y evitando los localismos. Es decir, dentro de su ámbito asume las atribuciones que establece el art. 36 para las FL. Todas las confederaciones regionales deberán obtener el CIF en un plazo de 6 meses.

Art. 46. El mapa confederal podrá modificarse por alguna de las siguientes razones:

a) Unión de Confederaciones Regionales. Para ello lo deberán decidirlo en Pleno Regional cada una de las Confederaciones Regionales implicadas en la unión y ser ratificado en posterior Pleno Confederal.

b) División de una regional. Deberá aprobarse en la Regional por al menos el 75% de los votos y ratificarse en posterior Pleno Confederal por mayoría simple.

c) Por acuerdo de un Pleno Confederal, que deberá aprobarse por al menos un 75% de los votos y ratificarse en el siguiente Congreso por mayoría simple.

Art. 47. El acuerdo de Pleno Confederal por el que se decidiera cambiar el mapa confederal deberá anexarse a esta normativa orgánica.

CAPÍTULO VI. De los órganos decisorios

Sección 1.º. De la Asamblea de Sindicato

Art. 48. La asamblea del sindicato es el máximo órgano de decisión en los sindicatos de la CNT. Todas las decisiones que se toman en la CNT arrancan de los acuerdos tomados en las asambleas.

Art. 49. Las asambleas del sindicato son reuniones de afiliados y afiliadas a las que tiene derecho a asistir con voz y con voto toda la afiliación. En las votaciones que se realicen, cada afiliado o afiliada contará con un voto.

Art. 50. La asamblea ordinaria de sindicato se convocará con la periodicidad que el sindicato decida. La convocatoria de la asamblea incluirá el orden del día, lugar, fecha y hora de la asam-

blea. La forma de comunicación de la convocatoria será fijada por el propio sindicato, teniendo presente sus propias condiciones, o mediante correos electrónicos, sms o cartas a cada afiliado o afiliada, o mediante anuncio en el tablón de anuncios del sindicato.

Art. 51. En las asambleas ordinarias del sindicato, el plazo previo entre la convocatoria y la fecha de celebración será estipulado por el propio sindicato, siendo éste acorde con la forma de comunicación de la convocatoria que se haya decidido. El orden del día se confeccionará con todas las propuestas que haya hecho la afiliación, el comité del sindicato y los puntos que hubieran sido fijados en otra asamblea previa.

Art. 52. Las asambleas extraordinarias serán convocadas por el comité del sindicato con antelación suficiente a la fecha de celebración. En la convocatoria se fijará el orden del día, la fecha, hora y lugar de celebración. Dicha convocatoria será publicada en el tablón de anuncios del sindicato y se notificará a la afiliación a través de los cauces habituales que se tengan establecidos.

Art. 53. Los órdenes del día de las asambleas extraordinarias se harán con las propuestas de los afiliados y afiliadas, las del comité del sindicato y con las que pudiera haber hecho una asamblea ordinaria.

Art. 54. En las asambleas se tomará actas. Éstas reflejarán al menos los acuerdos tomados y las votaciones realizadas, en su caso. La secretaría de organización será la encargada de su custodia y archivo.

Sección 2.ª. De los Plenos

Art. 55. El Pleno es la máxima instancia para tomar acuerdos referentes a su ámbito. Lo constituyen las delegaciones nombradas por los diferentes sindicatos en sus asambleas (excepto en el Pleno Confederal).

Art. 56. Las delegaciones asistentes a un Pleno transmiten los acuerdos referentes al orden del día de dicho Pleno previamente tomados en sus respectivos sindicatos, o en Pleno Regional para el caso del Pleno Confederal. Por tanto, no vierten en el pleno opiniones personales de los miembros de la delegación, sino que están obligados a transmitir y defender el acuerdo de su sindicato.

Art. 57. Respecto al ámbito, existen los siguientes tipos de Pleno:

a) Pleno Local cuyo ámbito es la Federación Local.

b) Pleno Comarcal cuyo ámbito es la Federación comarcal, si existiese.

c) Pleno Provincial cuyo ámbito es la Federación Provincial, si existiese.

d) Pleno Regional cuyo ámbito es la Confederación Regional.

e) Pleno Confederal cuyo ámbito es toda la CNT. Es la máxima instancia para tomar acuerdos en los periodos entre Congresos.

Art. 58. El Pleno Confederal estará constituido por las delegaciones nombradas a tal efecto por los diferentes Plenos Regionales. A las delegaciones de las regionales les es aplicable lo establecido en el art. 56.

Art. 59. Las delegaciones a los Plenos asisten con los acuerdos de sus respectivas asambleas o Pleno Regional por escrito y duplicado (una copia para la delegación y otra para la mesa del Pleno). Los acuerdos y la propia delegación van avalados por el sello del sindicato o Comité Regional según corresponda. Estas son las delegaciones directas.

Art. 60. Los sindicatos también podrán enviar sus acuerdos mediante escrito por vía orgánica antes del inicio de los Plenos, o bien entregar sus acuerdos a alguna delegación que vaya a estar presente en el Pleno. Éste último caso constituye las delegaciones indirectas.

Art. 61. Las delegaciones directas podrán interpretar los acuerdos de sus sindicatos en base a su conocimiento de los mismos, así como refundir los acuerdos de su sindicato con los de otros siempre teniendo en cuenta lo fijado en el artículo 55. También podrán tener voz y voto en cualquier cuestión o votación que surja en el propio Pleno.

Art. 62. Las delegaciones indirectas sólo podrán leer los acuerdos que les han sido confiados. Cuando se susciten dudas sobre la interpretación de esos acuerdos, no se incluirán en la votación sobre el punto en cuestión, en caso de que ésta se realice. Las delegaciones indirectas tampoco tendrán voto en las cuestiones o votaciones que surjan en el propio Pleno.

Art. 63. En los Plenos Locales, Regionales, Confederales o Congresos se utilizará un sistema de votación de proporcionalidad corregida, de forma que cada sindicato o Confederación Regional tendrá el siguiente número de votos en función de sus cotizantes:

Votos de los sindicatos para Plenos Locales, Comarcales o Regionales o Congresos

Número de cotizantes	Votos	Número de cotizantes	Votos
De 15 a 20	2	De 81 a 90	9
De 21 a 30	3	De 91 a 100	10
De 31 a 40	4	De 101 a 150	11
De 41 a 50	5	De 151 a 250	12
De 51 a 60	6	De 251 a 500	13
De 61 a 70	7	De 501 a 1.000	14
De 71 a 80	8	Más de 1.000	15

Votos de las Confederaciones Regionales para Pleno Confederal

Número de cotizantes	Votos	Número de cotizantes	Votos
De 15 a 100	1	De 901 a 1.000	10
De 101 a 200	2	De 1.001 a 1.250	11
De 201 a 300	3	De 1.251 a 1.500	12
De 301 a 400	4	De 1.501 a 2.000	13
De 401 a 500	5	De 2.001 a 3.000	14
De 501 a 600	6	De 3.001 a 5.000	15
De 601 a 700	7	De 5.001 a 10.000	16
De 701 a 800	8	Más de 10.000	17
De 801 a 900	9		

Art. 64. El número de cotizantes al que se hace referencia en el artículo anterior se contará cal-

culando la media de cotizaciones de cada sindicato o confederación regional en los 6 meses anteriores a la fecha de convocatoria del comicio. En el caso de los Congresos, este período se determinará en la Metodología del mismo.

Art. 65. El SP del Comité respectivo enviará, junto a la convocatoria de cada Pleno un estadillo con las cotizaciones realizadas por los sindicatos o confederaciones regionales en el plazo a que se hace referencia en el artículo anterior y los votos que le corresponden.

Art. 66. Los Plenos son convocados por el Comité respectivo, con escrito firmado y sellado por la Secretaría General y con una antelación mínima suficiente para la previa discusión de los puntos en las asambleas de los sindicatos y Plenos regionales en su caso. Es decir, los Plenos locales, comarcales, provinciales y regionales con una antelación mínima suficiente acordada por ellos mismos y los Plenos Confederales con una antelación mínima de 30 días.

Art. 67. Puntos de inclusión automática en los Plenos.

a) El orden del día de los Plenos ordinarios contará con los siguientes puntos de inclusión automática:

I) Elección de mesa

II) Elección de comisión revisora de credenciales

III) Elección de comisión revisora de cuentas

IV) Asuntos varios

b) Las comisiones revisoras del artículo anterior estarán formadas por miembros de la delegaciones presentes en el Pleno, bien de forma voluntaria o bien por elección. Estas comisiones realizarán un informe al que darán lectura en el Pleno una vez finalizado el trabajo de las comisiones. El Pleno aprobará o no cada uno de los informes por consenso o por votación.

c) La comisión revisora de credenciales citará en su informe las irregularidades detectadas en las credenciales presentadas por las delegaciones. El Pleno decidirá sobre esas irregularidades y actuará en consecuencia.

d) La comisión revisora de cuentas realizará un informe en el que detallará, en su caso, las irregularidades detectadas en las cuentas y un dictamen final acerca de la aprobación o no de éstas. Para su labor solicitará a la Tesorería del comité, que deberá estar presente en el Pleno, la información que considere necesaria. Tras la lectura de su informe, el Pleno acordará la aprobación o no de las cuentas presentadas.

e) Si las cuentas son aprobadas en el Pleno, la Tesorería del Comité que corresponda realizará las reparaciones, que en su caso, hubiera detectado la comisión revisora según el informe de ésta.

f) Si las cuentas no fueran aprobadas en el Pleno, por la aparición de errores importantes en la contabilidad, como descuadres graves en las cuentas u otras circunstancias similares que no pudieran ser resueltas en el mismo, se incluirá como un punto en el siguiente Pleno ordinario o como único en un Pleno extraordinario.

g) En este caso, se enviará a los sindicatos del ámbito que corresponda el informe de la

comisión revisora y un informe de la Tesorería del comité con la suficiente antelación al Pleno convocado a fin de que sean debatidos en los sindicatos.

h) En este Pleno se mantendrá la misma comisión revisora de cuentas que detectó los errores, y que será la encargada de realizar un nuevo informe en el que se detalle si han sido subsanados. En caso de que tampoco se aprobaran las cuentas, el Pleno decidirá la actuación a seguir y la determinación de las responsabilidades a las que hubiere lugar.

i) En el orden del día de los plenos extraordinarios los puntos de inclusión automática serán los I y II señalados en el apartado a) de este artículo.

Art. 68. Los sindicatos son los encargados de proponer los puntos para el orden del día de los plenos. Para ello, enviarán sus propuestas por escrito antes de la celebración de la Plenaria en la que se convoque el pleno correspondiente. En estas propuestas de punto deberá figurar, al menos, el enunciado y la motivación de la propuesta. Se incluirán todas las propuestas que hayan hecho los sindicatos del ámbito que se trate, excepto aquellas que no sean orgánicas y así sea determinado por el comité encargado de confeccionar el orden del día del Pleno. Se considera no orgánica una propuesta cuando es contraria a los acuerdos de un congreso o resulta repetitiva, sin perjuicio de que puedan determinarse otras causas.

Art. 69. El resto de puntos para el orden del día del Pleno será confeccionado por el comité respectivo en reunión Plenaria. Se incluirán todas las propuestas que hayan hecho los sindicatos del ámbito que se trate. Cuando cualquier miembro del comité esté en desacuerdo con la inclusión de algún punto, podrá pedir que el punto no se incluya en el orden del día. Si no hay acuerdo respecto a su inclusión o no, se decidirá por votación. El punto no será incluido si no cuenta con la mayoría de votos en la Plenaria.

Art. 70. Cuando por razones de urgencia no sea posible la convocatoria de una reunión plenaria del comité, el secretariado permanente será el encargado de confeccionar el orden del día, previa consulta por teléfono, fax, correo electrónico, etc., a todos los miembros del comité. En este caso, también se incluirán todos los puntos propuestos por los sindicatos.

Art. 71. Al inicio de los Plenos, el orden del día será abierto por la Secretaría General del comité que corresponda o en su sustitución, algún miembro del Secretariados Permanente, pasando inmediatamente al primer punto que será el de elección de Mesa, (que se compondrá de moderación, toma de actas y toma de palabras) de entre las delegaciones asistentes.

Art. 72. Los miembros de la Mesa del Pleno serán los encargados de moderar los debates y conceder sucesivos turnos de intervención o de réplica que soliciten las delegaciones. Cualquier delegación podrá solicitar en cualquier momento y por una sola vez en cada sesión del Pleno, la elección de una nueva Mesa, lo que deberá ser pasado a votación entre las delegaciones presentes.

Art. 73. En caso de que se acepte la solicitud de elección de una nueva Mesa del Pleno, se interrumpirá el orden del día y la Mesa saliente pasará a votación la elección de la nueva composición de la Mesa, que tras su elección, ocupará su puesto continuando con el orden del día.

Art. 74. Las delegaciones asistentes al Pleno, podrán plantear, después de la elección de la Mesa y antes del inicio del orden del día, cuestiones previas sobre el tratamiento de ese mismo orden

del día, o sobre cualquier aspecto concreto del funcionamiento del comicio que a su juicio tenga relevancia. También podrán plantear previas referidas a algún punto del orden del día antes de que éste vaya a ser tratado.

Art. 75. Las previas no podrán pedir la retirada ni la inclusión de ningún punto del orden del día.

Art. 76. La Mesa del Pleno someterá las previas presentadas a una votación entre las delegaciones presentes, en las que se aceptará o rechazará cada previa, y se actuará en consecuencia.

Art. 77. Cada punto del orden del día del Pleno se abrirá con una rueda de intervenciones de las delegaciones en la que éstas presentarán el acuerdo de sus sindicatos o Plenos Regionales, según corresponda. Posteriormente tendrá lugar el debate, a través de una o varias rondas de intervención de las delegaciones, finalizando cada punto con la toma del acuerdo. La toma de acuerdos podrá hacerse por consenso entre las delegaciones, por refundición de las diferentes posiciones expresadas, y por votación de las delegaciones.

Art. 78. En los puntos en los que se hayan presentado una o varias ponencias o existan varias posiciones acerca del mismo, la Mesa del Pleno o cualquier delegación presente podrá solicitar la creación de una comisión de refundición de ponencias, propuesta que se someterá inmediatamente a votación. En caso de aprobarse, se realizará otra votación para elegir a las delegaciones que formarán la comisión de refundición, que deberá contar con un número mínimo de tres miembros, interrumpiéndose el debate del punto hasta que la comisión presente sus resultados. Cada delegación designará tres delegaciones para que formen parte de la comisión. Se elegirán las más votadas de entre las que hayan sido designadas hasta completar el número de miembros de la comisión, que será también elegido en el Pleno. La comisión realizará sus trabajos aparte, mientras continúa el Pleno con el orden del día.

Art. 79. Las comisiones de refundición de acuerdos:

a) Los miembros que la integran no actúan en la misma como representantes de sus sindicatos o regionales, sino como un órgano de trabajo del Pleno.

b) Estas comisiones estudiarán los acuerdos y ponencias de todas las delegaciones, refundiendo las que sean compatibles o complementarias y representen el sentir mayoritario del Pleno expresado en los acuerdos y los debates. Así elaborará la ponencia de refundición.

c) Si los miembros de la comisión no se ponen de acuerdo para realizar la ponencia de refundición, podrán someterse a votación las distintas interpretaciones que existan. Cada miembro de la comisión tendrá un voto. La postura mayoritaria será la ponencia de refundición que se presente al Pleno.

d) Los miembros de la comisión que estén en desacuerdo con la ponencia resultante, podrán emitir un informe que será considerado como voto particular, en el que expondrán su interpretación alternativa.

e) En caso de que la comisión lo considere oportuno podrá interrumpir el pleno y consultar a éste sobre las dudas que hayan surgido. El pleno se pronunciará sobre la cuestión y la comisión reemprenderá su trabajo.

f) En caso de que la comisión no sea capaz de realizar su tarea, el Pleno podrá elegir una

nueva comisión.

Art. 80. Toma de acuerdos con ponencia de refundición:

a) La comisión de refundición, una vez concluidos sus trabajos, presentará al pleno el resultado, dando a conocer la ponencia de refundición y los votos particulares, si los hubiera. Tras su lectura, el Pleno abrirá de nuevo el debate sobre el punto y tomará un acuerdo definitivo, que podrá ser alcanzado por consenso o por votación. En caso de que sea por votación, las delegaciones se mostrarán a favor o en contra de la ponencia de refundición. Si ésta es aprobada por mayoría, éste será el acuerdo del pleno sobre ese punto.

b) Si la ponencia de refundición no fuera aprobada, la Mesa pasará a votación el o los votos particulares, si los hubiese. Si alguno de éstos alcanzara la mayoría de los votos, ese sería el acuerdo del Pleno sobre ese punto.

c) Si tampoco ninguno de los votos particulares es aprobado la comisión volverá a reunirse y elaborará la ponencia de refundición con las instrucciones del Pleno.

d) Una vez concluida será pasada a votación en el Pleno. Si fuera aprobada, ese sería el acuerdo del Pleno para ese punto. Si fuera rechazada de nuevo, el Pleno decidiría si continuar con el debate o aplazar el punto para el siguiente comicio.

Art. 81. En el punto de asuntos varios no se podrán tomar acuerdos. Este punto queda reservado a hacer propuestas, lanzar ideas y difundir comunicaciones al resto de la organización.

Art. 82. Las actas de los Plenos serán tomadas reproduciendo lo más fielmente posible las intervenciones de las delegaciones. Cualquier delegación presente en el Pleno podrá presentar una cuestión previa para solicitar la grabación en soporte audiovisual de los Plenos, que será pasada a votación por la Mesa. En caso de ser aprobada, se procederá a la grabación del Pleno. Los medios para ello deberán ser aportados por los solicitantes. Al finalizar el pleno, la única copia de la grabación será entregada por la Mesa al Secretariado Permanente del Comité que corresponda, que será el encargado de su custodia.

Art. 83. Será imprescindible para que el acta sea correcta y cumpla su función, que cada punto del orden del día finalice con la resolución o acuerdo que se haya tomado de forma que este quede perfectamente diferenciado y resaltado. Asimismo deberá quedar claro el resultado de la votación, si la hubiere, y la posición que cada delegación tomó respecto al acuerdo final. Este será el mecanismo de control de los sindicatos a sus delegaciones en los Plenos.

Art. 84. La delegación encargada de redactar las actas de un Pleno, deberá hacerlas llegar al Secretariado Permanente del Comité que corresponda en los 15 días siguientes a la celebración del Pleno. Si el Secretariado Permanente observara al recibir las actas que en ellas no se cumple lo dicho en el artículo anterior, devolverá las actas a quien las redactó para que subsane el error antes de ser distribuidas, teniendo la delegación encargada de redactar las actas un plazo de 5 días para realizar las correcciones oportunas.

Art. 85. Las actas se entenderán aprobadas automáticamente cuando hayan sido recibidas por las delegaciones asistentes y estas no envíen matizaciones o modificaciones en un plazo de 15 días desde su distribución. Sólo en caso de que alguna delegación proponga modificaciones, éstas se enviarán al resto de la organización y se incluirá en el siguiente Pleno el punto de aproba-

ción o no de las actas. Todas las delegaciones asistentes al pleno cuyas actas se votan, podrán realizar informes sobre esas actas que se enviarán junto con las modificaciones presentadas.

Art. 86. A la finalización del Pleno, los tomadores de actas entregarán al Secretariado Permanente una redacción de los acuerdos alcanzados en el mismo. Ésta será distribuida a los sindicatos por el Secretariado Permanente, a la mayor brevedad posible tras el Pleno.

Art. 87. Los acuerdos de los Plenos son vinculantes y entran en vigor en el momento de ser tomados.

Art. 88. Para impugnar un acuerdo de un Pleno Confederal será necesario el acuerdo en tal sentido de un Pleno Regional de alguna Confederación Regional. Para el caso de los demás tipos de Plenos será necesario el acuerdo en tal sentido de la asamblea de algún sindicato.

Art. 89. Los motivos por los que un sindicato o una Confederación Regional podrán impugnar un acuerdo de un Pleno de sus correspondientes ámbitos son exclusivamente las siguientes:

1. Por entender que el acuerdo ha sido tomado sin tener en cuenta los procedimientos establecidos en esta normativa orgánica.

2. Por entender que el acuerdo tomado atenta concretamente contra alguno de los principios, tácticas y finalidades de la CNT.

3. Que el sindicato o la Regional considere que sus delegados a un Pleno Regional o Confederal no han defendido los acuerdos de ese sindicato o Regional.

Art. 90. Las impugnaciones deben indicar:

a) Motivo o motivos en los que se fundamenta la impugnación, de entre los que aparecen en el artículo anterior.

b) Explicación razonada del error o inobservancia producidos.

c) Resolución alternativa que se propone.

Art. 91. Dichas impugnaciones serán tramitadas orgánicamente al resto de la organización del ámbito del Pleno. La impugnación será debatida en la siguiente Plenaria del Comité que corresponda. Esta plenaria podrá acordar su inclusión como punto del orden del día del siguiente Pleno que se celebre o bien rechazar la impugnación si la considera infundada o si ésta no fuera determinante para cambiar el acuerdo final tomado. En caso de que la impugnación vaya a Pleno, éste tomará la resolución definitiva.

Art. 92. Una impugnación nunca paralizará la entrada en vigor de un acuerdo.

Sección 3.ª. De los Congresos

Art. 93. El Congreso de la CNT está constituido por las delegaciones de todos los sindicatos de la Confederación. Es el máximo órgano de decisión de la CNT. En el congreso se traza la línea ideológica de la CNT, diseñando asimismo los objetivos generales de la organización en las diferentes áreas de trabajo de ésta. Los acuerdos de congreso son vinculantes y sólo se pueden modificar en otro congreso, exceptuando aquellos acuerdos en los que el Congreso haya previsto que pueden ser modificados en Pleno Confederal.

Art. 94. Los congresos de la CNT se convocarán por una Plenaria del Comité Confederal cada

cuatro años. En el Pleno Confederal siguiente que se celebre, se ha de aprobar la Metodología y la fecha concreta de celebración. Entre ese Pleno Confederal y la fecha de Congreso debe haber un plazo mínimo de 12 meses.

Art. 95. Cuando se trate de convocatoria de Congreso extraordinario se podrá acordar la misma en un Pleno Confederal, en el que se fijarán todos los extremos relacionados con el comicio acomodando los plazos a la urgencia de la convocatoria.

CAPÍTULO VII. Conferencias Confederales

Art. 96. Las Conferencias Confederales de afiliados y afiliadas:

a) Son reuniones de afiliados y afiliadas para debatir los asuntos de interés que se estime conveniente.

b) En las conferencias no se toman acuerdos.

c) Puede participar toda la afiliación del ámbito respectivo con sus opiniones particulares sobre los puntos del orden del día.

d) Las conferencias son convocadas por el comité del ámbito respectivo, por iniciativa aprobada en Reunión Plenaria del mismo o por mandato de Pleno.

e) Las resoluciones de las conferencias serán editadas por el comité respectivo.

Art. 97. Conferencias de sindicatos y/o secciones sindicales. Tienen la misma naturaleza que las descritas en el artículo anterior salvo que asisten secciones sindicales y/o sindicatos y por tanto las opiniones no son personales, sino decisiones de sindicatos y de secciones sindicales sobre el orden del día de la Conferencia.

TÍTULO VII. ÓRGANOS DE COORDINACIÓN, GESTIÓN Y REPRESENTACIÓN EXTERNA

CAPÍTULO I. Los comités

Art. 98. El Comité del Sindicato.

a) Está formado por secretaría general, organización, tesorería, acción sindical y el resto de secretarías que estime necesario el sindicato, que serán elegidas en asamblea del mismo, y que tendrán voz y voto en las reuniones del comité. También forman parte del comité un representante de cada sección sindical constituida en dicho sindicato, que tendrán voz, pero no voto, en sus reuniones.

b) La secretaría general del sindicato representa a éste orgánica y legalmente.

c) Todos los cargos del comité del sindicato son revocables en cualquier momento por la asamblea del sindicato.

d) Además de lo establecido en el artículo 14, tampoco podrán ser elegidas para ocupar cargos en los comités aquellas personas afiliadas que hayan sido inhabilitados por su sindicato, mientras dure la inhabilitación.

e) Los miembros de los Comités no podrán hacer propuestas en las reuniones de la Organización, a excepción de la reunión de su Sindicato o cuando asistan a Comicios Orgánicos en representación de su Sindicato o Regional.

f) Los compañeros y las compañeras de los Comités no representan a su Sindicato, sino al conjunto de la Organización.

Art. 99. Comité Local. Está formado por las secretarías de los sindicatos y por el Secretariado Permanente. El secretario o secretaria general es el representante legal de la Federación local de CNT.

Art. 100. Comité Comarcal y Provincial. Formado por las secretarías generales de las federaciones locales de su ámbito respectivo y por el secretariado permanente.

Art. 101. Comité Regional. Formado por las secretarías generales de las Federaciones Locales de la Confederación Regional y por el Secretariado Permanente. El secretario o secretaria General es el o la representante legal de la Confederación Regional de la CNT.

Art. 102. Comité Confederal. Está formado por las secretarías generales de las Confederaciones Regionales, por el Secretariado Permanente, y las secretarías de las Federaciones de Ramo constituidas. La Dirección del CNT, la Presidencia de la FAL, la Dirección de la Editorial acudirán con voz pero sin voto a requerimiento del Comité Confederal.

Art. 103. Elección de los Secretariados Permanentes.

1. Secretariado Permanente del Comité Local. La Secretaría General, la Tesorería, la de Organización, la de Acción Sindical y el resto de secretarías que estimen necesario los sindicatos, serán elegidas en un Pleno Local, con propuestas de los sindicatos.

2. Secretariados Permanentes de los Comités Comarcal y Provincial: Se procederá de igual modo que para la elección del Comité Local.

3. Secretariado Permanente del Comité Regional y Comité Confederal:

a) El secretario o la secretaria general y la sede de residencia del SP serán elegidos en Pleno respectivo. El resto de miembros del secretariado permanente serán designados por la Federación Local de residencia. En el Pleno siguiente ha de ser ratificado el conjunto del equipo del SP del CC.

b) Una vez transcurrida la duración del mandato de un Secretariado, se incluirá la elección de uno nuevo en el orden del día del Pleno que corresponda. Con carácter previo a ese Pleno y al menos con 21 días de antelación al mismo, las Federaciones Locales que estén dispuestas a ser sede del Secretariado enviarán su propuesta indicando al menos el nombre del Secretario o Secretaria General, Organización y Tesorería que proponen. Estos cargos deberán pertenecer a la misma Federación Local.

c) Cualquier Sindicato o Federación Local podrán proponerse a sí mismos o a cualquier otro Sindicato o Federación Local como sedes del Secretariado Permanente, pero esta

propuesta sólo podrá ser tenida en cuenta si en el plazo indicado en el apartado anterior, el sindicato propuesto comunica su disponibilidad para aceptar los cargos y los nombres de las personas que ocuparían los cargos señalados.

d) Si no hay propuestas para asumir el Secretariado Permanente o no es elegido ninguno, el resto de los miembros del Comité Regional deberá hacerse cargo de éste, en funciones, asumiendo la Secretaría General la Secretaría General de la Federación Local más numerosa.

e) En este último caso, en el momento en que se presente alguna propuesta se incluirá el punto de la elección de Secretaría General y Secretariado Permanente en el siguiente Pleno Regional que se convoque o en uno extraordinario que se convoque a ese efecto.

CAPÍTULO II. Funciones

Art. 104. Los comités de la CNT son órganos de coordinación y gestión de los acuerdos tomados en Pleno. No tienen poder de decisión, salvo en las materias expresamente encomendadas por esta normativa.

a) Los comités se reúnen en Reuniones Plenarias convocadas por el Secretariado permanente, a iniciativa propia o a propuesta de al menos un tercio de los sindicatos (en el caso del comité local), un tercio de federaciones locales (en caso de comité comarcal, provincial o regional), un tercio de las Confederaciones Regionales (en el caso del Comité Confederal). En el caso del comité del sindicato, sus reuniones las convocará el Secretario del Sindicato, a iniciativa propia o de al menos un tercio de la afiliación.

b) El orden del día de las Plenarias lo confecciona el Secretariado Permanente del Comité que corresponda, y en el caso del comité del sindicato, la Secretaría general del mismo. En él se incluirán todas las propuestas de los miembros del comité y en su caso, las materias que les hayan sido encomendadas por un comicio anterior o por esta normativa orgánica.

c) En las reuniones Plenarias de los comités se coordinan y ponen en marcha los acuerdos de la organización, distribuyendo el trabajo y concretando las propuestas e ideas que surjan. En dichas reuniones, cuando se produzcan votaciones, solo tendrán voto las secretarias y secretarios de los sindicatos (Plenaria del comité local), las secretarias y secretarios de las Federaciones Locales (Plenaria Comarcal, provincial y regional), las secretarias y secretarios de las Confederaciones Regionales (Plenaria del Comité Confederal) y los Secretarios o Secretarias Generales.

d) Cuando se constaten fehacientemente hechos de gravedad unidos a situaciones de urgencia inaplazable, un Comité podrá tomar un acuerdo en reunión plenaria, acuerdo que se incluirá automáticamente en el siguiente pleno a celebrar, donde deberá ser ratificado o rechazado.

Art. 105. Secretariados Permanentes.

a) El cargo de miembro de cualquier secretariado permanente no será remunerado en ningún caso.

b) La duración de los mandatos será de 2 años y con una prórroga de otros dos años

como máximo. Todos los cargos serán revocables en cualquier momento por acuerdo de asamblea o Pleno según el ámbito.

c) Los Secretariados Permanentes son los encargados de las tareas de gestión y coordinación de la organización. Para esta tarea se atendrán siempre a esta normativa, a los acuerdos de los Plenos y a las indicaciones y concreciones del trabajo realizadas por los comités en sus reuniones plenarias.

d) Las funciones de las secretarías para los diferentes secretariados permanentes son las mismas que se definen para el Secretariado permanente del Comité Confederal aplicadas a su ámbito respectivo.

e) Los secretariados permanentes están obligados orgánica y legalmente a cumplir las resoluciones tomadas en las asambleas, plenos o congresos del ámbito que corresponda y en las reuniones plenarias del comité del que forman parte.

f) Además de lo establecido en el artículo 13, tampoco podrá ser elegida para ocupar cargos en los comités aquella afiliación que haya sido inhabilitada por su sindicato, mientras dure la inhabilitación.

Art. 106. Funciones de las secretarías del Secretariado Permanente del Comité Confederal.

a) Secretaría General. Representa legal y públicamente a la CNT. Coordina el trabajo del secretariado permanente y sustituye a las secretarías en caso de ausencia. Asiste a los comicios por su cargo pero sólo a título informativo, independientemente de que pueda asistir como delegada o delegado de su sindicato. Ostentará poder notarial para representar a la CNT en todos los aspectos legales que se presenten.

b) Secretaría de Organización y Archivos. Tiene la responsabilidad de todo lo relacionado con convocatorias de comicios, actas, envíos orgánicos, estadísticas de altas y bajas, archivo de documentación, registros, etc. En caso de ausencia de la Secretaría General, la sustituye. Toma actas en las reuniones plenarias del comité.

c) Secretaría de Comunicación. Mantiene relación permanente con los medios de comunicación en sus diferentes soportes, informando continuadamente a los medios de las actividades, opiniones, estudios y trabajos de la CNT sobre los temas que surjan cotidianamente. Esta secretaría coordina el trabajo que los comités y los órganos de la organización acuerden respecto a la propaganda, campañas e imagen pública de la CNT. Coordina todos los trabajos referidos a imagen oral y escrita de la organización. Asume el suministro de material informativo a la prensa confederal, constituyendo y apoyando la red de corresponsales del cnt y demás publicaciones confederales y libertarias en general. Administra la página web de la CNT. Se coordina también con la Secretaría de Comunicación de las Federaciones de Ramo.

d) Secretaría de Tesorería. Todo lo relacionado con las finanzas de la organización es responsabilidad de esta secretaría. Dispone de las cuentas bancarias de la organización. Tesorería junto a la Secretaría General serán las dos personas autorizadas mancomunadamente para la disposición de fondos de la Organización, bajo las instrucciones que establezcan en cada momento los acuerdos e indicaciones de los órganos de la CNT. Lleva todo el trabajo relacionado con la cuota confederal.

e) Secretaría de Jurídica. Coordina el trabajo de asesoramiento jurídico de la organización. A través de esta Secretaría se mantiene el contacto con los abogados y abogadas de la organización en los diferentes ámbitos. Esta secretaría junto a la de Comunicación coordinará todo lo relacionado con la publicación de materiales destinados al asesoramiento laboral para el trabajo de las secciones sindicales de la organización. Realiza el seguimiento y contacto de la organización con las personas en prisión que la organización haya asumido como presas o presos libertarios o de quienes la organización haya asumido su apoyo y asesoramiento. Mantendrá el archivo y distribución permanente de Convenios, normas legales y publicaciones jurídicas de interés.

f) Secretaría de Acción Sindical. Coordina el trabajo de las secciones sindicales, lleva la estadística de secciones sindicales y mantiene al día el mapa de implantación sindical de la organización. Mantiene los contactos con las coordinadoras de ramo y/o las federaciones de Ramo. Coordina también a las Secciones Sindicales que, perteneciendo a una misma empresa de carácter nacional o internacional, estén encuadradas en diferentes ramos de la producción, en aquellas materias específicas de su empresa.

g) Secretaría de Acción Social, relaciones exteriores y cultura. Mantiene contactos permanentes con otras organizaciones, fundamentalmente coordina lo relacionado con la discriminación en cualquiera de sus formas, la ecología, la represión, etc. Esta secretaría representa a la CNT en la Junta Directiva de la FAL y coordina todo lo relacionado con la organización de jornadas culturales, exposiciones, y demás actos que se organicen. Coordina el trabajo de relación con las organizaciones de la AIT.

-Grupo de Trabajo de Memoria Histórica. Asume los trabajos de recuperación, investigación y difusión de las materias relacionadas con la memoria histórica del anarquismo y anarcosindicalismo

h) Secretaría de Nuevas Tecnologías. Se encarga de la administración de todos los dispositivos que se utilicen para la comunicación orgánica de la CNT, servidores, actualizaciones, seguridad y mejoras a realizar, soporte para las páginas web y correos electrónicos de la organización y las materias relacionadas con estas.

- Grupo de Trabajo de Nuevas Tecnologías. Asume los trabajos encargados a la Secretaría, que son coordinados por ésta.

i) Secretaría de Formación y Estudios. Se ocupa de lo relacionado con la formación de los militantes y con la realización de estudios sociales, económicos, políticos, etc. que tengan interés para la organización. Para ese fin esta Secretaría constituirá dos grupos de trabajo que dependerán directamente de ésta:

a. Grupo de trabajo de Formación: Organiza y coordina la realización de cursos de formación a militantes, la confección de materiales de formación, y analiza las necesidades de formación que demande la organización en cada momento. Se coordina también con la Secretaría de Formación de las Federaciones de Ramo.

b. Grupo de trabajo de Estudios: Se encarga de la realización de los estudios e investigaciones sociales que demande la organización, acerca de las distintas materias (laborales, sindicales, económicas, políticas, culturales, etc.) para su difusión exterior a través de los medios

de la organización, realización de publicaciones, etc.

j) Secretaría de Patrimonio. Se encarga de coordinar todo lo relacionado con la recuperación de Patrimonio Histórico. Asimismo es la encargada de tener al día toda la información de la organización respecto a locales propiedad de ésta, locales alquilados, locales cedidos o locales del Patrimonio Sindical Acumulado. Es también la encargada de la recuperación de locales del Patrimonio sindical acumulado.

-Comisión Confederal de Patrimonio. La comisión confederal de patrimonio es la encargada de coordinar todos los trabajos relacionados con la recuperación de nuestro patrimonio histórico y el acumulado. Está compuesta por los/as secretarios/as de Patrimonio de las Confederaciones Regionales y la secretaría de Patrimonio del Comité Confederal.

Art. 107. Las Secretarías de los distintos Comités, en coordinación con la Secretaría de Organización, podrán crear para el desempeño de las tareas que tienen encomendadas, los grupos de trabajo que estimen conveniente, aparte de los aquí expresados, que estarán formados en todo caso por compañeros afiliados a la organización. Su elección, actividad y funcionamiento será organizado por la Secretaría de la cual dependan.

CAPÍTULO III. De la documentación orgánica

Art.108. La forma de comunicación entre los sindicatos, secciones sindicales y demás órganos de la CNT es la documentación orgánica. Por ésta se conoce a la que envía cualquier ente de la organización a través de los métodos y cauces que establece esta normativa u aquellos que en su momento se acuerden por el conjunto de la CNT. La tramitación orgánica de nuestra información deberá garantizar la seguridad y confidencialidad frente a terceros de la documentación de la CNT.

Art. 109. Sólo la información y documentación emitida u obtenida a través de los canales establecidos para la documentación orgánica será considerada como tal y por lo tanto, tendrá validez a todos los efectos dentro de la organización.

Art. 110. Todos los entes de la CNT vienen obligados a difundir sus comunicaciones internas a través de los cauces orgánicos establecidos en cada momento por la organización. Ningún ente podrá difundir por otros cauces información que contenga materias relacionadas con conflictos o sanciones, número de afiliados y afiliadas, votaciones o deliberaciones, expulsiones, desfederaciones o inhabilitaciones en cualquier ámbito de la CNT o que contenga datos personales de cualquier afiliado o afiliada.

Art. 111. Actualmente, el cauce de distribución orgánica es la tramitación a través de una aplicación informática en internet. Los sindicatos que aún no la utilicen, dispondrán de 6 meses para hacerlo. Hasta entonces, se continuará la distribución en papel para estos sindicatos.

Art. 112. La documentación orgánica se realiza en forma de escritos. En ellos deberá constar al menos el emisor, los destinatarios, la fecha, el nombre y apellidos y la firma del Secretario o Secretaria y el sello del sindicato.

Art.113. La información orgánica de la CNT parte de los Sindicatos. Los afiliados y afiliadas o

las secciones sindicales se comunican a través del Comité del Sindicato al que pertenezcan, que es el órgano que inicia el flujo de comunicación.

Art. 114. Cada sindicato podrá dirigir su documentación al órgano y ámbito que considere oportuno en función de la materia de la que se trate. La distribución se realizará siguiendo el flujo siguiente: del Comité del Sindicato al Secretariado de la Federación Local, si existiese; de éstos a la Comarcal o provincial, si existiesen; de éstas al Secretariado del Comité Regional; de éste al Secretariado del Comité Confederal; de éste al de la AIT, en su caso. Cada Secretariado añadirá a su escrito el sello correspondiente al distribuirlo.

Art. 115. Cada Secretariado viene obligado a tramitar las comunicaciones recibidas al órgano siguiente en el menor plazo de tiempo posible.

Art.116. Los Secretariados están obligados a tramitar todas las comunicaciones que reciban salvo las siguientes:

a) Las que contengan insultos o descalificaciones personales hacia cualquier miembro de la organización.

b) En los casos de conflicto que estén tratándose en la organización, aquellos escritos que se señalan en el artículo 159.

Art. 117. Las comunicaciones dirigidas o provenientes de las Federaciones de Ramo se harán a través de los Secretariados Permanentes de los comités que en cada caso procedan en función del ámbito.

TÍTULO VIII. FEDERACIONES DE RAMO

Art. 118. Las Federaciones de Ramo son el mecanismo por el que los sindicatos de la CNT de un mismo ramo se coordinan para la realización de trabajos sindicales de tipo técnico, como son el estudio de las condiciones específicas en un determinado sector, preparación de plataformas reivindicativas, diseño de campañas de lucha, edición de material propagandístico, publicaciones de información sindical, etc.

Art. 119. Los órganos decisorios de la CNT, como ya ha quedado dicho, se encuentran en la estructura territorial de ésta. En las federaciones de Ramo solo hay capacidad para coordinar y concretar la acción sindical de la CNT en el ramo que corresponda.

Art. 120. Se podrá constituir una federación de Ramo cuando existan, al menos, dos sindicatos de ramo de CNT en esa Ramo. En la federación de Ramo estarán todos los sindicatos del ramo en cuestión y aquellas secciones sindicales de los sindicatos de oficios varios que también pertenezcan a ese ramo.

Art. 121. Para constituir una Federación de Ramo, al menos dos sindicatos del ramo de que se trate, lo solicitarán a la Secretaría de Acción Sindical del Comité Regional o del Comité Confederal, según el caso y ésta comunicará la creación de la Federación a toda la Organización. Al

mismo tiempo convocará un Pleno de la Federación al que podrán asistir todos los sindicatos y secciones sindicales de sindicatos de oficios varios que pertenezcan a la Ramo que se trate, en el que se elegirá al Secretariado Permanente de la Federación.

Art. 122. Se acuerda en este Congreso la siguiente clasificación de Federaciones de Ramo:

a) Federación del Sector Agroalimentario de la CNT.

b) Federación del Metal, Minería y Química de la CNT.

c) Federación de Construcción y Madera de la CNT.

d) Federación de Servicios Públicos de la CNT.

e) Federación de Enseñanza e Intervención Social de la CNT.

f) Federación de Transportes de la CNT.

g) Federación de Banca, Oficinas y Seguros de la CNT.

h) Federación de Comercio y Hostelería de la CNT.

i) Federación de Artes Gráficas, Comunicación y Espectáculos de la CNT.

j) Federación de Limpieza, Mantenimiento y Servicios Auxiliares de la CNT

k) Federación de Sanidad y Servicios Sociales de la CNT.

l) Federación de Telecomunicaciones y Servicios Informáticos de CNT.

m) Federación de Fincas Urbanas de CNT

n) Federación del Mar de CNT.

Art. 123. Los sindicatos de ramo tendrán la misma denominación que el ramo a que pertenezcan. Sólo se podrán crear sindicatos de ramo que se correspondan con el listado de ramos que en cada momento esté vigente en la organización. Los sindicatos de ramo existentes a la finalización del Congreso, tendrán un plazo de 6 meses para adaptarse a esta nueva clasificación.

Art. 124. Cualquier sindicato de la CNT podrá proponer para que se trate como punto en un Pleno Confederal la creación de un nuevo ramo, la redefinición de los existentes o la refundición de varios de los existentes en uno solo. Ese Pleno Confederal tomará un acuerdo definitivo sobre la cuestión planteada. Si de ese acuerdo se desprendiera algún cambio en la lista del artículo 121, el acuerdo en cuestión deberá añadirse como anexo a esta normativa orgánica.

Art. 125. Estructura y funcionamiento de las Federaciones de Ramo.

1. Las Federaciones de Ramo tomarán sus decisiones mediante los Plenos Federales, dentro de las competencias que se indican en los anteriores artículos 69 y 70. A dichos Plenos asistirán las siguientes delegaciones:

a) Las delegaciones de los sindicatos de ramo, llevando los acuerdos de las asambleas del sindicato.

b) Las delegaciones de las secciones sindicales de los sindicatos de oficios varios que pertenezcan al ramo, llevando los acuerdos de la sección sindical. En este caso, los acuerdos

de la Sección Sindical deberán contar con el visto bueno de la asamblea del sindicato de oficios varios al que pertenezcan.

2. Las Federaciones de Ramo contarán con un Secretariado Permanente compuesto de tres miembros: Secretaría General; Secretaría de Organización y Tesorería; Secretaría de Comunicación y Formación.

3. Sus funciones son las siguientes:

a) La Secretaría General pertenece al Comité Confederal de la CNT con voz pero sin voto. Representa a la Federación de Ramo legal, orgánica y externamente, y coordina el trabajo de la Federación.

b) La Secretaría de Organización y Tesorería lleva las cuentas de la Federación, es la responsable de las comunicaciones internas de ésta, convoca las reuniones federales y sustituye a la Secretaría general en su ausencia.

c) La secretaría de Comunicación y Formación es la encargada de coordinar todo lo relacionado con la edición de propaganda, material de formación sindical y jurídica, boletines de información, etc. Asimismo es la encargada de las relaciones de la Federación con los medios de comunicación.

4. El Secretario o Secretaria General de la Federación y el lugar de residencia del Secretariado Permanente serán elegidos en Pleno Federal. El resto del SP se elegirá en el sindicato de ramo del lugar de residencia elegido.

5. La estructura que se establece en este articulo se puede reproducir regionalmente, constituyéndose las Federaciones de Ramo de la Regional. La estructura y funcionamiento son los mismos aplicados al ámbito de cada Regional.

6. Cuando las cuestiones a tratar lo aconsejen por su naturaleza técnica y en aras de un ahorro de esfuerzos personales y económicos, las Federaciones de Ramo podrán convocar Reuniones Plenarias Federales. A dichas reuniones, convocadas por el Secretariado Permanente de la Federación, asisten éste y los secretarios o secretarias de las Federaciones de Ramo Regionales.

Art. 126. Financiación.

a) Cada persona afiliada cotizará a su Federación de Ramo un 5% de su sello de cotización. Está cantidad será administrada por el Comité Confederal, que la repartirá proporcionalmente entre las Federaciones existentes en base a las estadísticas de afiliación realizadas por la Secretaría de Acción Sindical. Mientras estas Federaciones no existan, el porcentaje irá destinado al Sindicato.

b) Del dinero que le corresponda al Comité Confederal procedente de los intereses del Patrimonio Histórico que se repartan anualmente, un 30% será para las Federaciones de Ramo. Dicho dinero también se repartirá proporcionalmente a la afiliación entre todas las Federaciones de Ramo.

c) Los sindicatos y secciones sindicales miembros de las Federaciones de Ramo también harán aportaciones adicionales en función de sus posibilidades y de las necesidades de su Federación.

Art. 127. Cuando no exista el número mínimo de sindicatos establecido para constituir una Federación de Ramo se creará la Coordinadora de Ramo. En la coordinadora de ramo se relacionará toda la afiliación de un mismo ramo de la CNT. Tendrá un funcionamiento similar al de las Federaciones de Ramo pero sin constituir los órganos de éstas. Para ello, en una asamblea de la Coordinadora se elegirá un centro coordinador que hará las veces de Secretariado. Este centro convocará reuniones de los miembros de la Coordinadora que se asimilan a los Plenos Federales. Las coordinadoras de ramo no estarán representadas en el Comité Confederal. La financiación de las mismas se llevará a cabo mediante las aportaciones de los sindicatos que tengan presencia en dichas coordinadoras.

Art. 128. La constitución de una coordinadora puede partir de los sindicatos, de las secciones sindicales implicadas o de la secretaría de acción sindical del comité regional o confederal según corresponda. En cualquier caso dicha secretaría convocará a toda la organización a una reunión de la coordinadora en cuestión, en la que se elegirá el centro coordinador citado en el artículo anterior.

Art. 129. Tanto las Federaciones de Ramo como las Coordinadoras de Ramo de los ámbitos regional o confederal son coordinadas por las Secretarías de Acción Sindical de los Comités Regionales y Confederal, respectivamente.

Art. 130. Las Federaciones de Ramo y Coordinadoras de Ramo informarán al resto de la Organización, mediante la estructura orgánica territorial, de todas sus actividades y reuniones. Además las Federaciones de Ramo lo harán mediante su presencia en las Reuniones Plenarias del Comité Confederal de la CNT.

TÍTULO IX. COTIZACIÓN Y FINANZAS CONFEDERALES

CAPÍTULO I. Financiación de la organización

Art. 131. La CNT se financia con las cuotas de su afiliación, cuyo importe se desglosa en varias partidas dirigidas a sufragar los diferentes entes confederales, según se establece en los artículos siguientes.

Art. 132. Ningún sindicato u órgano de la CNT podrá pedir en nombre de ésta subvenciones al estado, a las administraciones, empresas o fundaciones públicas o privadas, nacionales o internacionales, sea cual sea su origen o finalidades. La CNT, en general, no podrá recibir subvenciones sea cual sea su procedencia.

Art. 133. Los sindicatos, en su ámbito, podrán realizar las actividades (suscripciones, sorteos, venta de material de propaganda, de publicaciones, etc.) que consideren oportuno para complementar su financiación.

CAPÍTULO II. Cuota Confederal

Art. 134. La cuota confederal es el pago que cada afiliado o afiliada hace para el mantenimiento de la organización. La persona afiliada siempre cotizará a la Tesorería de su sindicato. Dicho cuota es repartida proporcionalmente entre las diferentes instancias confederales. El pago de la cuota es mensual. Cada persona afiliada está obligada al pago de la misma, excepto que exista acuerdo expreso de su sindicato que la declare temporalmente exenta de cotización.

Art. 135. El reparto proporcional de la cuota se establecerá en Congreso. No obstante, se podrá modificar dicho reparto en un Pleno Confederal si aparecen circunstancias nuevas y urgentes que lo justifiquen, a petición de cualquier sindicato de la organización. La propuesta de modificación del reparto proporcional debe ser aprobada con el 75% de los votos de dicho Pleno Confederal.

Art. 136. La cuantía de la cuota Confederal se fijará anualmente en Pleno Confederal.

Art. 137. Las personas afiliadas que necesiten acreditar el pago de las cuotas, solicitarán de la Tesorería de su sindicato un certificado en el que consten, junto con los datos de la persona, el número de carné confederal y el último mes cotizado. Asimismo, en las credenciales que extiendan los sindicatos para sus delegados o delegadas a comicios, figurará también el último mes cotizado, que servirá de justificante de cotización a estos efectos.

Art. 138. Reparto proporcional de la cuota.

- Una cuota fija destinada a la AIT.
- El resto se repartirá proporcionalmente según la distribución siguiente:

    Sindicato 46 %

    Federación Local 12 %

    Confederación Regional 12 %

    Tesorería Comité Confederal 12 %

    Fundación Anselmo Lorenzo 8 %

    Periódico c.nt. 5 %

    Jurídica pro-presos 5 %

Art. 139. El mecanismo de reparto de la cuota confederal será el siguiente: el Sindicato paga a la Federación Local la cuota menos la parte que le pertenece al sindicato; aquélla paga a la Confederación Regional siguiendo el mismo criterio. La Regional paga al Comité Confederal el resto de la cuota. Finalmente el Comité Confederal procede al reparto de las partidas cuyo cobro está centralizado en él (AIT, Tesorería, FAL, Jurídica y periódico CNT). En caso de no existir Federación Local, el Sindicato de Oficios Varios se quedaría con la parte destinada a ésta.

CAPÍTULO III. Contabilidad Confederal

Art. 140. Las secretarías de Tesorería de los diferentes comités de la CNT están obligadas a remitir trimestralmente un informe que refleje los ingresos y gastos por conceptos de la contabilidad

del ámbito correspondiente. En los Plenos se revisará la concordancia entre esos informes de cuentas y los justificantes de esos movimientos. Las cuentas se aprobarán periódicamente en los Plenos de cada ámbito, a través del punto correspondiente.

Art. 141. Los fondos de Patrimonio Histórico se regulan por lo acordado en el punto correspondiente de este Congreso. La contabilidad de esos fondos se lleva de forma separada al resto de las finanzas de la organización, pero también será coordinada por la Secretaría de Tesorería del Comité Confederal. También a este capítulo le es aplicable lo dicho en el artículo precedente.

Art. 142. La disponibilidad de fondos de la CNT (contabilidad general y la del Patrimonio Histórico) y de las Confederaciones Regionales será mancomunada entre las Tesorerías de los Secretariados Permanentes respectivos y la Secretaría General.

Art. 143. Funcionamiento ordinario de Tesorería.

a) Los gastos diarios de funcionamiento de la Organización serán efectuados mecánicamente por las Secretarías de Tesorerías de los Secretariados de cada ámbito.

b) La secretaría de Tesorería no puede disponer de dinero sin que medie acuerdo o mandato de asamblea, Pleno, Reunión Plenaria del Comité respectivo, con la salvedad de lo dicho en el apartado a) de este artículo. Por lo tanto, todo acuerdo que implique un gasto deberá llevar explicita la forma de financiación, de forma que la tesorería sólo realizará aquello que el acuerdo le mandate.

c) Los Plenos, en su ámbito, podrán acordar la realización de gastos extraordinarios por razones de urgencia, necesidad o conveniencia, destinados a sufragar las necesidades de otros órganos confederales sin más limitación que la de los fondos que posean y las condiciones de devolución que en su caso se establezcan.

TÍTULO X. CARNÉ CONFEDERAL

Art. 144. El Carné Confederal es el medio simbólico de identificación y pertenencia a la CNT. Debe cumplir varias finalidades, por un lado su tenencia significa la aceptación y conocimiento de los acuerdos fundamentales y las señas de identidad de la CNT. Por otro lado sirve para el control interno de la afiliación y para la relación e identificación interna de los afiliados y afiliadas en el funcionamiento orgánico de la CNT.

Art. 145. A fin de que el carné pueda ser utilizado para el control de la afiliación, éste deberá ser renovado periódicamente, lo que será decidido en Pleno Confederal a propuesta de cualquier sindicato.

Art. 146. En el carné figurarán el nombre, los dos apellidos, la fecha de afiliación, el sindicato al que corresponde y el número de carné. La numeración del carné consistirá en un sistema que permita identificar la confederación regional, la federación local, en su caso, el sindicato y el ramo al que pertenezca el afiliado o afiliada.

Art. 147. Los carnés confederales serán emitidos por los Secretariados Permanentes de los Comités Regionales, a petición de los sindicatos. Para su control, tendrán un listado actualizado con los números de carnés emitidos y los sindicatos a los que se hayan enviado. Los Sindicatos, a su vez, deberán tener un listado con el número de carnés recibidos, especificando los que estén en activo y los que hayan sido dados de baja o estén temporalmente exentos de cotización.

Art. 148. Los sindicatos cotizarán por el número de carnés que les hayan sido entregados y cuya baja o exención de cotización no haya sido comunicada a la Tesorería del Comité Regional. Los sindicatos solicitarán nuevos carnés o comunicarán las bajas y exenciones de cotización que se produzcan a la Secretaría de Tesorería del Comité Regional a través de una aplicación informática creada al efecto. Los datos de cada afiliado o afiliada que se comunicarán a través de esta aplicación serán el número de carné, el ramo a que pertenezca, la fecha de afiliación, la situación en alta, baja o exención de cotización y, a efectos estadísticos, la edad y el sexo de la persona afiliada. La Tesorería del Comité Regional es la encargada del mantenimiento de esta aplicación, así como de informar en las Plenarias del seguimiento de la misma.

Art. 149. Siguiendo los criterios aquí marcados será el Comité Confederal de la CNT el que diseñará el nuevo Carné Confederal.

TÍTULO XI. RESOLUCIÓN DE CONFLICTOS

CAPÍTULO I. Iniciación

Art. 150. A los efectos de este capítulo, por conflicto se entiende cualquier petición de expulsión o inhabilitación de personas afiliadas o desfederaciones de sindicatos, federaciones locales o confederaciones regionales.

Art. 151. Todo conflicto que se origine en la CNT será resuelto en los órganos de decisión de los diferentes ámbitos, cumpliendo los principios de agotamiento previo de los mecanismos de diálogo, respeto a las minorías, federalismo, no intromisión y concordancia con los acuerdos generales de la organización y con esta normativa.

Art. 152. Los ámbitos a los que se refiere el artículo anterior son: para la expulsión de personas afiliadas, el sindicato; para la desfederación de sindicatos, la Federación Local, si existe, o la Confederación Regional en su defecto; para la desfederación de federaciones locales, la Confederación Regional; para la desfederación de una Regional, el conjunto de la CNT.

Art. 153. En una propuesta de expulsión o desfederación deberán constar, al menos, los acuerdos incumplidos, los argumentos que soportan la propuesta y las pruebas que se aportan para demostrarla.

Art. 154. Cuando se origine un conflicto, la propuesta de expulsión, inhabilitación o desfederación será tratada en reunión Plenaria del Comité del ámbito que corresponda. La Plenaria recabará de las partes en conflicto la información que considere oportuna para sus trabajos. La misión de los comités en cada ámbito será la de agotar las vías de diálogo previo, para lo que po-

drán crear una comisión de investigación.

Art. 155. Si el conflicto se hubiere tratado en el comité respectivo sin producirse una conciliación entre las partes y se mantiene la propuesta de expulsión, inhabilitación o desfederación, el Secretariado Permanente incluirá el asunto en el orden del día de una Asamblea extraordinaria o Pleno correspondiente.

CAPÍTULO II. Las comisiones de investigación

Art. 156. Las Plenarias a las que se refiere la sección anterior, en su correspondiente ámbito, podrán acordar la creación de una comisión de investigación sobre el conflicto, a petición de cualquiera de los miembros del comité. Esta comisión se formará por al menos tres miembros del comité respectivo que deseen participar en ella de forma voluntaria. En caso de que no hubiera personas voluntarias, se procedería a su elección por votación. Estará presidida por la Secretaría General del comité que corresponda.

Art. 157. La función de las comisiones de investigación será intentar esclarecer los hechos relacionados con el conflicto y la veracidad o no de las pruebas que se aporten. Para ello recabará información, elaborando un único informe destinado a la asamblea o a los sindicatos del ámbito que corresponda, para que pueda ser valorado por los mismos con la suficiente antelación al Pleno o Asamblea en que se trate sobre el conflicto, que será convocado teniendo en cuenta los plazos dados a la comisión para realizar su informe.

Art. 158. Las comisiones de investigación estarán facultadas para solicitar a las partes en conflicto la información por escrito (actas, relaciones de afiliados y afiliadas, cotizaciones, saldos bancarios, escritos, convocatorias, etc.) que consideren conveniente. También podrán desplazarse para entrevistar a las personas que consideren oportuno.

CAPÍTULO III. Procedimiento de resolución

Art. 159. Las partes en conflicto, por su parte, emitirán los escritos que crean oportunos previos a la celebración de la asamblea extraordinaria o Pleno. Una vez éste se celebre, no se tramitará ningún escrito más sobre el conflicto en cuestión, excepto el recurso de personas expulsadas o entes desfederados.

Art. 160. La asamblea extraordinaria o Pleno tomará una resolución sobre el conflicto, siendo ésta comunicada inmediatamente por el comité respectivo a las partes en conflicto.

Art. 161. En los casos en que se hubiera acordado la expulsión o desfederación de personas afiliadas o la desfederación de Sindicatos, Federaciones Locales o Confederaciones Regionales, éstos podrán formular un recurso ante el órgano superior al que ha acordado la expulsión o desfederación en el plazo de 15 días desde que el acuerdo de expulsión o desfederación entre en vigor. Así, la persona afiliada puede recurrir al Pleno Local y si no hubiera Federación Local, al Pleno Regional; el sindicato puede recurrir al Pleno Regional y si no hubiera FL, al Pleno Confederal; la Federación Local puede recurrir al Pleno Confederal y la Confederación Regional puede recurrir a un Pleno Confederal de nuevo. En el recurso se expondrán las razones de su

desacuerdo, junto con una contrapropuesta de resolución del conflicto.

Art. 162. Sólo se podrá presentar un recurso citado en el artículo anterior si se cumple alguna de estas dos condiciones:

1. Que la resolución del conflicto que se recurre contradiga expresamente algún acuerdo de la organización.

2. Que en el procedimiento se haya incumplido alguno de los pasos del proceso descrito en este capítulo o en otra parte de esta normativa orgánica que afecten directamente al conflicto o hayan provocado la indefensión de alguna de las partes.

Art. 163. La aprobación o no de este recurso se incluirá en el orden del día del siguiente Pleno ordinario que se convoque en el ámbito que corresponda.

Art. 164. El Pleno aprobará o rechazará el recurso presentado teniendo en cuenta que un ámbito superior no puede limitar la autonomía que tiene el ámbito inferior para tomar la decisión de expulsión o desfederación, por lo que sólo podrá entrar a valorar si se han cumplido los requisitos orgánicos en el proceso seguido.

Art. 165. Si es aprobado el recurso presentado, el ámbito inferior está obligado a readmitir a las personas expulsadas o entes desfederados, con independencia de que el proceso de expulsión o desfederación pueda volver a proponerse posteriormente.

CAPÍTULO IV. Expulsión, inhabilitación o desfederación

Art. 166. Podrán ser motivos de expulsión o inhabilitación de la persona afiliada, según la gravedad que se estime en cada caso, las siguientes:

a) El incumplimiento de los mandatos de sus asambleas y Plenos respectivos, cuando actúen como miembros de los Secretariados Permanentes o como delegados o delegadas a los comicios orgánicos.

b) La agresión física a algún compañero o compañera.

c) El comportamiento agresivo, discriminatorio o insultante en los comicios, ya sea como persona delegada u observadora.

d) La realización de acusaciones contra compañeros o compañeras, sindicatos o cualquier órgano de la confederación sin poseer pruebas para demostrarlas.

e) La difusión de información interna según se establece en el artículo 110.

f) El robo, fraude o expolio de los bienes de la organización.

g) El desarrollo de actividades paralelas a los órganos de la CNT atribuyéndose la representación de ésta.

h) El incumplimiento de un acuerdo expreso de la organización

i) La doble afiliación a CNT y a cualquier otro sindicato.

j) La ocultación o la falsedad de los datos proporcionados al sindicato al solicitar la afi-

liación.

k) El acoso sexual o por razón de género, identidad y orientación sexual, violencia de género, vejaciones, insultos sexistas a compañeros o compañeras del sindicato o desvaloración manifiesta de las compañeras en relación a los compañeros.

Art. 167. Podrán ser motivos de desfederación de los sindicatos, o Federaciones Locales, Comarcales, Provinciales o Regionales los siguientes:

a) No acatar un acuerdo firme de los que se citan en el artículo 165.

b) Los citados en los puntos d), e), f), g), h) e i) del artículo anterior.

c) Falsear los datos de cotización o el número de afiliados y afiliadas del sindicato.

d) La falta de cotización durante más de 6 meses sin que exista acuerdo de Pleno Local o Regional sobre su exención de cotizar.

e) El uso sin acuerdo confederal de locales de patrimonio confederal, especialmente si se produce la negativa a entregar llaves, documentación y, en definitiva, a poner un local de patrimonio confederal a disposición del SPCC en el caso de que se constate que tenga acceso al uso del mismo sin acuerdo confederal que lo respalde.

f) Colaborar en la usurpación de las siglas de la organización por parte de sindicatos desfederados, en campañas conjuntas, cartelería, redes sociales u otros medios, en las que se utilice junto a estos sindicatos y de forma indistinta e indiferente las siglas de la organización CNT y CNT-AIT, trasladando la idea de su pertenencia a la organización.

g) No adoptar las medidas señaladas en el apartado anterior ante los incumplimientos señalados en h), i), j) y k) del artículo 166.

Art. 168. Los efectos de la expulsión son los siguientes:

a) La persona expulsada no podrá volver a afiliarse al mismo o a ningún otro sindicato de la CNT, salvo que el sindicato que lo expulsó acuerde su readmisión o autorice su afiliación en otro sindicato.

b) En el caso de que ocupase algún cargo orgánico, dejará en manos de la Secretaría General del Comité que corresponda los materiales, claves de acceso, llaves o cualquier otra cosa que viniera utilizando para el desempeño del cargo.

Art. 169. Los efectos de la inhabilitación son los siguientes:

a) La persona inhabilitada no podrá ocupar cargo orgánico alguno mientras dure la inhabilitación dictada por su sindicato, incluido el formar parte de la delegación de su sindicato para representarlo en un Pleno o en cualquier otro comicio.

b) En el caso de que ocupase algún cargo orgánico, dejará en manos de la Secretaría General del Comité que corresponda los materiales, claves de acceso, llaves o cualquier otra cosa que viniera utilizando para el desempeño del cargo.

Art. 170. Los efectos de la desfederación de un sindicato son los siguientes:

a) El sindicato desfederado deja de formar parte de la Confederación Nacional del Tra-

bajo, dejando de poder emitir o recibir documentación orgánica.

b) En el caso de que el sindicato desfederado ocupe un local del Patrimonio Histórico o Acumulado, el Secretario o Secretaria del Sindicato hará entrega de las llaves u otros medios de acceso a la Secretaría General del Comité que corresponda (Local o Regional) en un plazo de quince días desde la fecha de la toma del acuerdo de desfederación.

c) Los miembros de un sindicato desfederado no podrán afiliarse a ningún otro sindicato de la CNT si esta condición aparece expresamente en el acuerdo de desfederación tomado por el Pleno. Tan sólo otro Pleno del mismo ámbito podrá acordar el levantamiento de estas medidas.

Art. 171. Los acuerdos de expulsión, inhabilitación y desfederación surtirán efecto desde que son tomados por el Pleno que corresponda, independientemente de que se tramite un recurso ante el ámbito superior antes descrito.

Art. 172. Serán las Asambleas de los sindicatos los únicos órganos con competencia para acordar la expulsión o la inhabilitación de afiliados o afiliadas, ya sea a iniciativa propia o de cualquier otro ente confederal.

Art 173. Serán los Plenos Locales, en caso de existir FL, o los Plenos Regionales, en caso contrario, los únicos órganos con competencia para la desfederación de Sindicatos.

Art 174. Serán los Plenos Confederales los únicos órganos con competencia para acordar la desfederación de una Confederación Regional.

CAPÍTULO V. Interpretación de los acuerdos

Art. 175. Cuando existan divergencias en la interpretación de acuerdos ya tomados, estos han de ser resueltos en el mismo ámbito en que se tomaron o en el órgano encargado de aplicar el acuerdo en cuestión. En cualquier caso este tipo de problemas se han de resolver siempre siguiendo los siguientes criterios:

a) La diferente interpretación existe cuando de un mismo acuerdo se deducen opiniones diferentes y/o contradictorias, o bien, cuando lo plasmado en actas no corresponda con lo que se entienda que se acordó y la ejecución tenga que llevarse a cabo antes de poder resolver el posible error de las actas.

b) A la hora de interpretar acuerdos y resoluciones irá siempre siguiendo el siguiente orden de prioridad:

1ª. Acuerdos de Congresos, Plenos y Asambleas

2ª. Acuerdos o decisiones de los Comités

3ª. Actuaciones de los Secretariados Permanentes

4ª. Actuación de la Secretaria General o secretaría en cuestión.

c) En general se intentará resolver las diferentes interpretaciones mediante el diálogo previo para evitar la paralización de la organización. Sólo en los casos en que llevar a cabo el

acuerdo objeto de diferente interpretación pueda traer consecuencias irreversibles para la organización, se paralizará la ejecución del acuerdo o resolución hasta que se resuelva la controversia. Esta decisión de paralización solo podrá ser tomada por una Plenaria del Comité del ámbito del que se trate.

d) Cuando una Plenaria decida la paralización de un acuerdo, se incluirá inexcusablemente como punto en el orden del día del siguiente Pleno del ámbito que se trate, que se pronunciará a favor o en contra de esa paralización, siendo su el acuerdo que se tome definitivo sobre la cuestión.

TÍTULO XII. OTROS ENTES CONFEDERALES

Art. 176. Tanto la Fundación Anselmo Lorenzo como el periódico cnt, la Editorial Confederal o cualquier otro medio que la organización acuerde crear para la difusión de nuestras ideas, se regirá por unas normas internas de funcionamiento elaboradas por esos mismos órganos y que tendrán que ser aprobadas en Pleno Confederal en el plazo de un año a contar desde la fecha de este Congreso. En general el funcionamiento de estos órganos estará inspirado en la filosofía general y el funcionamiento que en esta normativa se han fijado para la CNT.

TÍTULO XIII. RELACIONES CON OTRAS ORGANIZACIONES

Art. 177. Relaciones de la CNT con otras organizaciones.

a) Las Secciones Sindicales, Sindicatos, Federaciones Locales, Comarcales, Provinciales y Confederaciones Regionales o la misma Confederación Nacional del Trabajo gozan de autonomía en su ámbito, para colaborar con otras organizaciones en las reivindicaciones, huelgas, actos o campañas en las que confluyan los intereses de la CNT con los de esas organizaciones, respetando siempre el ámbito de actuación de cada órgano.

b) Las decisiones de colaboración con otras organizaciones serán siempre tomadas en la Asamblea o Pleno del ámbito que corresponda.

TÍTULO XIV. DISOLUCIÓN DE LA CNT

Art. 178.- La disolución de la CNT solo podrá ser acordada en un Congreso, estableciendo en el mismo, el destino de su patrimonio.

Art. 179. La CNT no se disolverá mientras que siete sindicatos, al menos, se posicionen en contra de esa disolución.

DISPOSICIONES FINALES

1º. El Comité Confederal está obligado a poner en marcha todas aquellas iniciativas previstas en esta normativa que estén pendientes de desarrollar o regularizar con respecto a la situación a que hace referencia el artículo 177.

2º . Esta normativa anula todos los acuerdos sobre normativa orgánica anteriores. Sólo en aquellos casos en que se detecte un vacío orgánico se utilizarán los anteriores acuerdos de Congreso y, en este caso, siempre con el acuerdo interpretativo expreso tomado en Pleno Confederal.

3º. Un extracto de esta normativa orgánica constituyen los Estatutos de la CNT. En el plazo de tres meses el Comité Confederal preparará el borrador de estatutos, con el asesoramiento legal necesario para que la cobertura legal de los mismos sea adecuada. El borrador de Estatutos se enviará a los sindicatos, a fin de que pueda ser ratificado en Pleno Confederal. Inmediatamente después se procederá al depósito de los Estatutos.

4º. Los sindicatos, las Federaciones Locales, Comarcales o Provinciales de Sindicatos y las Confederaciones Regionales confeccionarán sus propios estatutos, que tendrán que ser aprobados en Pleno del ámbito que se trate y procederán a su depósito en el organismo correspondiente en un plazo de 3 meses contados a partir de la fecha en que se depositen los Estatutos de la Confederación.

5º. En el mismo plazo, todos los entes citados en el artículo anterior deberán obtener su correspondiente CIF.

ACCIÓN SINDICAL

1. A MODO DE INTRODUCCIÓN

1.1. Treinta años de ataques contra los trabajadores y trabajadoras

La situación de los trabajadores y trabajadoras en España viene marcada por una continua perdida de derechos, una importante reducción salarial y un claro empeoramiento de las condiciones de trabajo que está provocando la exclusión social de las clases populares.

El proceso de reestructuración capitalista iniciado a finales de los anos 70 en respuesta a la crisis del petroleo y los ciclos de luchas obreras de aquellos anos ha tenido como objetivo el aumento de las tasas de beneficio de los capitalistas mediante la progresiva desregulación del mercado laboral, el ataque a lo publico y el desmontaje progresivo de unos servicios sociales y de bienestar ya de por si muy insuficientes.

La inserción de la economía española en la economía global ha determinado la deslocalización de industrias a países de la periferia, la desaparición de los restos del sector industrial y una reconversión agrícola hacia una sector subsidiario y subsidiado. La globalización de la economía española se ha producido mediante la especialización y el desarrollo del sector servicios, el turismo y el sector de la construcción de viviendas y grandes infraestructuras.

Este proceso se ha visto apoyado en la financiarización de la economía, y el endeudamiento masivo, apoyado en el crecimiento de burbujas especulativas que al estallar han puesto de manifiesto, la falsedad de las promesas de bienestar para todos del capitalismo. Destapando la crudeza de las condiciones reales de vida y trabajo de la inmensa mayoría de los trabajadores de este país.

El proceso de construcción europea, y la puesta en marcha del Euro, no han hecho sino reforzar estos procesos, en un proyecto al servicio de las élites capitalistas europeas, que convierten la moneda única, el control del déficit, la inflación y otras magnitudes macroeconómicas, en armas contra los y las trabajadoras, con el paro masivo como principal efecto, y herramienta de chantaje permanente sobre los y las trabajadoras, mientras se fomenta la competitividad a la baja entre trabajadores y trabajadoras por la falta derechos laborales homogéneos y de una organización efectiva de las y los trabajadores a a nivel europeo.

Así en estos años se ha incrementado de manera nunca vista el numero de trabajadores y trabajadoras y del mercado de trabajo, pero fuertemente centrado en sectores con baja productividad,

intensivos en mano de obra de baja cualificación, apoyados en la entrada masiva de trabajadores y trabajadoras migrantes.

1.2. La crisis del sindicalismo

Esta situación afecta decididamente al movimiento obrero, por estar diseñada especialmente para socavar las bases del sindicalismo más tradicional segando la hierba bajo sus pies, colocándolo en el mejor de los casos a la defensiva, cuando no directamente en la traición, la insolidaridad y el entreguismo mas vergonzoso, renuncia tras renuncia.

La supervivencia de los grandes sindicatos se ha producido en función de su progresiva institucionalización, entreguismo, perdida de autonomía y de base social, erigiéndose como barreras frente al conflicto social, en beneficio siempre del mantenimiento del actual modelo económico capitalista.

La aceptación del modelo sindical heredado del franquismo e impuesto en la Transición, ha derivado en las inevitables consecuencias: profesionalización, burocratización, corporativismo, corrupción, total dependencia del Estado, electoralismo, desmovilización, derrota cultural e ideológica, para las que fue diseñado, provocando entre los trabajadores y las trabajadoras la desconfianza frente a la organización y las soluciones colectivas y a los proyectos colectivos de emancipación.

Quienes se mueven en los márgenes de este modelo sindical, se encuentran muchas veces atrapados entre la aspiración de suplantar a los mayoritarios, con la consiguiente aceptación de un modelo sindical irreformable de efectos inevitables y que impone obligadas servidumbres y renuncias.

1.3. Las elecciones sindicales

El sistema de representación unitaria, basado en elecciones sindicales a comités de empresa y a delegados y delegadas de personal, está en la base de gran parte de los problemas que las y los trabajadores sufren tanto en sus centros de trabajo como en su situación general.

Las elecciones sindicales cercenan las más de las veces, la posibilidad de asambleas en los centros de trabajo y por tanto, la libertad de expresión y de decisión de las y los trabajadores sobre los problemas que les atañen. Desde la CNT abogamos porque se recupere la práctica asamblearia donde todos los trabajadores y todas las trabajadoras puedan expresar sus posturas y donde pueda calibrarse el apoyo real que los posicionamientos de cada sindicato tienen en un momento dado.

Del mismo modo, estas elecciones se erigen como la base del poder sobre el que asientan su poder de negociación y representatividad las grandes centrales sindicales del país (CC.OO. y UGT). Es decir, son la puerta a la financiación, a las mesas de negociación, a los pactos sociales y en definitiva, a todo el entramado institucional donde se negocian los EREs, reconversiones, pactos y reformas en las que los y las trabajadoras son vendidas una y otra vez y en las que ven empeorados sus derechos y condiciones de vida.

Asimismo, los comités salidos de estas elecciones son, en la mayoría de los casos, marionetas en manos de las federaciones superiores de sus sindicatos que los utilizan como peones en sus juegos en intereses políticos, alejados y enfrentados de los intereses reales que los trabajadores tienen en sus trabajos.

La CNT considera por ello que las elecciones son una herramienta antidemocrática e inútil a todos los niveles. Además la nueva realidad laboral, atomizada, absolutamente precarizada y hostil al sindicalismo, convierte a estos órganos en herramientas inoperantes para la defensa de los intereses de las y los trabajadores. Por ello, la CNT llama a la abstención y al boicot a las elecciones sindicales y a fomentar las alternativas asamblearias y las secciones sindicales como forma de organización.

1.4. Perspectivas y Oportunidades: El anarcosindicalismo ante la crisis permanente

Ante el permanente panorama de desregulación y desproteccion y miseria social, el anarcosindicalismo retoma el protagonismo desde la acción directa, es decir la acción de los principales afectados por los efectos del capitalismo y desde una clara voluntad de transformación radical de la sociedad.

Apoyándose en una práctica horizontal que da protagonismo a todos y todas las afectadas, la CNT da respuesta en los diferentes campos que afectan a los y las trabajadoras, tanto en sus empresas, barrios como en los campos sociales y culturales.

Con la ambición de transformar la sociedad desde sus cimientos, la CNT fomenta e impulsa el conflicto social rompiendo con la dinámica de los conflictos laborales restringidos a cuestiones concretas, integrando los mismos en una lógica de clases que pretende superar la explotación y la opresión.

En el mismo sentido, la CNT reivindica e impulsa la solidaridad como valor fundamental de la organización, superando la tendencia al aislamiento y al corporativismo que muchas veces destilan los conflictos laborales. En la CNT los problemas de unos pocos son los problemas de todos y se enmarcan en una lucha que supera lo concreto, en una lucha por un mundo mejor.

El permanente impulso de alternativas sociales, sindicales, organizativas y la lucha constante por integrar los conflictos concretos en una dinámica de confrontación global que supere la sociedad presente y de paso a un sociedad más justa y libre, es la respuesta y la proyección que la CNT da ante la crisis permanente, la explotación y la opresión que sufren los trabajadores.

2. ACTUACIÓN DE CNT PARA EVITAR LA DISCRIMINACIÓN POR RAZÓN DE GÉNERO

2.1 Problemática de la mujer trabajadora

2.1.1 Las discriminaciones directas e indirectas

En la actualidad, las discriminaciones directas por razón de género, pese a que existen, no suelen ser palpables ni mucho menos demostrables. Este es el mayor problema a la hora de detectar este tipo de discriminación, ya que normalmente no consta por escrito, no existe una norma o criterio regulado que contemple este tipo de discriminación. Se suele ocultar en prácticas empresariales o criterios de selección no reglados (entrevistas de trabajo, ascensos, etc.).

Hablamos de discriminación directa por razón de género cuando se trata a la mujer y por el hecho de serlo de forma más desfavorable que al hombre. La discriminación directa es patente y manifiesta.

Hablamos de discriminación indirecta por razón de género, cuando existe una norma, criterio o práctica formulada de forma neutral, pero que afecta de forma adversa a las mujeres como colectivo, siempre y cuando dicha norma, criterio o práctica no venga justificada por razones objetivas. El efecto adverso se mide a través de estadísticas.

El concepto de discriminación indirecta, hoy aplicado en Europa especialmente por razón de género (principalmente), edad, nacionalidad o etnia, nace en EEUU vinculado a la raza y a la clase social. Se trata del conocido "caso Grigss vs. DUKE POWER CO." y resulta sumamente ilustrativo. El señor Griggs era un hombre negro, que pretendía trabajar en la empresa DUKE POWER CO. como carbonero. Pero esta empresa no lo contrata porque exige el graduado escolar para poder trabajar. Griggs demanda porque entiende que este título no es necesario para realizar el trabajo para el que pretendía ser contratado y este criterio arbitrario excluía de la contratación a las personas negras, ya que la mayoría de ellas no tenían graduado escolar. Así, los elementos de la discriminación indirecta son:

– La existencia de una norma, criterio o práctica aparentemente neutral: la exigencia de titulación es un criterio de selección neutral, no diferencia por raza, clase social, género ni ninguna otra circunstancia.

– Pero, en la práctica, provoca un efecto adverso en un determinado colectivo: en este caso, se excluye del acceso al empleo a las personas negras, ya que estadísticamente y a causa de una situación socio-económica preexistente, las personas negras no tenían este título.

– Y que no venga justificado objetivamente: así, sería objetivo exigir el graduado escolar para labores administrativas. En este caso, no existiría discriminación, ya que se necesitan determinados conocimientos para desarrollar el trabajo que pueden ser acreditados con el graduado escolar (contabilidad básica, leer y escribir). En cambio, resulta absurdo para realizar funciones de carbonero.

En la actualidad, las discriminaciones indirectas son habituales, especialmente en los convenios colectivos.

La detección de la discriminación indirecta no es fácil. En primer lugar, porque si, por ejemplo, quien negocia un convenio (mayoritariamente hombres), no se encuentra en determinada situación, no va a apreciar que una determinada cláusula puede causar un efecto adverso a las personas que si viven esa situación. En segundo lugar, porque se necesita formación específica para poder anticiparse al impacto o efecto adverso que una determinada medida puede causar en un determinado colectivo. Esta formación puede ser académica y/o de conocimiento de un determinado sector de actividad, geográfico, etc.

Ejemplos de discriminaciones directas

Pese a que no es frecuente encontrarlas en normas, a veces aparecen ocultas bajo la apariencia de acciones positivas. Así ocurría, por ejemplo, en el derogado "contrato de fomento de la contratación indefinida", por el cual se permitía a las empresas despedir más barato (33 días de salario por año de servicio frente a los 45 previstos con carácter general) a colectivos -entre ellos las mujeres- con dificultades de acceso al mercado de trabajo. No se sancionaba a la empresa que no contrataba mujeres, sino que se la premiaba por contratarlas, reduciendo los derechos de estas. Este contrato se deroga cuando se iguala a la baja la indemnización por despido en la última reforma laboral.

En el plan de igualdad de la empresa Bimbo SAU, la promoción de contratación de mujeres se basó

en el aumento de contratos a tiempo parcial, además de expresarse que se fomentaría esta contratación para puestos que puedan ser desarrollados por mujeres.

Pero lo mas habitual es encontrar este tipo de discriminación en prácticas empresariales ocultas, ya que, pese a la prohibición general de discriminación, nos encontramos ante la dificultad de probarla. Estas prácticas empresariales se observan especialmente en el acceso al empleo, promoción profesional y despidos (no contratar a mujeres como práctica habitual, ascender sólo a hombres, despedir con carácter preferente a mujeres). La práctica es manifiesta cuando observamos sectores o empresas feminizados en los que los cargos de mando o intermedios son hombres, sectores o empresas en las que ninguna mujer accede a la contratación, etc. A veces el resultado se produce tras entrevistas de trabajo o promoción en las que se pregunta a la mujer y no al hombre si tiene o va a tener hijos/as, si está casada o tiene pareja, etc. Otras veces simplemente no se contrata o asciende a mujeres.

Ejemplos de discriminaciones indirectas

Como decíamos, son las más habituales y difíciles de detectar. Se trata de normas, criterios o prácticas formuladas neutralmente, sin que se diferencie condición de género alguna, pero que, en la práctica, afectan de forma negativa a las mujeres como colectivo, debido a la existencia de una estructura social previa que nos coloca en una situación de desigualdad de inicio. Al no existir igualdad de base, la neutralidad perjudica al colectivo desfavorecido.

Las discriminaciones indirectas derivan de la existencia de una desigualdad preexistente. Si no existe una desigualdad estructural previa a la norma, criterio o práctica, su formulación neutral impediría la existencia de discriminación. Pero al existir una estructura socio-económica y cultural previa, provoca que una pretendida neutralidad genere un efecto adverso en las mujeres.

Así, los ejemplos típicos de discriminación indirecta son:

1) Diferencias salariales:

- diferentes salarios en categorías equivalentes: el ejemplo típico es el de limpiador/a y cristalero/a. Se formula de forma neutral, pero en la primera categoría existe una sobrerepresentación femenina y en la segunda masculina. Y en la mayoría de los convenios (limpieza de edificios) la primera categoría cobra menos, lo mismo en la diferencia de limpiador/a y "mozo" o "peón". Limpiador/a (en el supuesto de que se formule neutralmente, que no siempre es así) cobra menos; convenios de personal laboral en el que existe diferentes complementos de destino entre limpiadora y peón; etc.

- especial infravaloración salarial de determinadas categorías con sobrerepresentación femenina o de sectores/funciones tradicionalmente femeninos: peluquerías, limpieza, etc. De forma más clara en supuestos de sectores equivalentes (comercio del metal, comercio de construcción etc. tienen mejores salarios que comercio vario. En los primeros hay sobrerepresentación masculina; en comercio vario, femenina. Y, el salario es inferior en este.

-establecimientos de pluses tradicionales para compensar determinadas tareas (nocturnidad, tóxicos y peligrosos, turnicidad, etc.) e invisibilización de otras tareas que suponen un plus de esfuerzo pero que no se remunera (por ejemplo, inexistencia de pluses por tareas que suponen una fuerte carga emocional, especialmente de cuidados relacionados con personas dependientes).

2) Acceso al empleo, promoción y formación:

- establecimiento de criterios de selección (para la contratación o para la promoción) falsamente objetivos, como establecer como requisito una titulación que nada tiene que ver con las funciones a desempeñar (por ejemplo, exigir un título de automoción para trabajar en una cadena de montaje); criterios basados en la disponibilidad horaria; o, lo que es peor y más habitual, ausencia de criterios de selección, que permite a la empresa contratar de forma arbitraria.

- eliminación de determinados beneficios (pluses, preferencia en la cobertura de vacantes y transformación de temporales en personal indefinido) para determinadas categorías con sobre-representación femenina.

- establecer cursos de formación fuera de la jornada laboral. Etc.

2.1.2 Brecha salarial, segregación horizontal y vertical

En relación directa con la discriminación indirecta está la brecha salarial. En el estado español, las mujeres cobran el 23,9% menos que los hombres y la tendencia de esta brecha va en aumento en los últimos años. Las causas de la brecha salarial se atribuyen a la menor retribución de las mujeres por trabajos equivalentes (menor retribución de las categorías feminizadas pese a realizar un trabajo de igual valor al de categorías masculinizadas, como ocurre, por ejemplo, en la diferencia entre limpiador/a y peón), infravaloración de categorías tradicionalmente femeninas (camareras de piso, planchadoras, cuidadoras, etc.), diferencias por sectores feminizados y masculinizados (los sectores masculinizados están mejor retribuidos), diferencias en la estructura salarial (pluses), etc.

Y la brecha salarial está por lo tanto directamente vinculada a la segregación horizontal (segmentación de la participación de las mujeres en determinados ámbitos de la actividad económica, por ejemplo, metal) y vertical (concentración de mujeres en categorías más bajas o peor remuneradas y dificultades de promoción).

También debemos tener en cuenta que el trabajo a tiempo parcial sigue siendo principalmente femenino (11,5% de las trabajadoras frente al 4,3% de los trabajadores).

2.1.3 Los derechos de conciliación personal y laboral

A) El efecto boomerang

Los derechos de conciliación de la vida personal y familiar se encuentra en la ley formulados de forma neutral. No es un derecho (¿deber?) de las mujeres, sino de hombres y mujeres. No obstante, siempre que se habla de igualdad en el acceso al empleo, formación y promoción profesional de la mujer, se habla de derechos de conciliación. Y ello es así porque la realidad es terca y cruel: siguen siendo las mujeres las que se encargan del cuidado de personas dependientes y del cuidado del hogar. Ello se debe a:

– La cultura y valores machistas que persisten en la sociedad.

– La desigualdad de la mujer en el trabajo: la brecha salarial, la segregación horizontal y vertical, la mayor precariedad de las mujeres (contratos a tiempo parcial, temporales, etc.).

Si las mujeres cobran menos por trabajos de igual valor (peón no cualificado/limpiadora), si los sectores feminizados o tradicionalmente feminizados están peor remunerados (convenio de comercio vario frente a comercio del metal), si las mujeres ocupan las categorías más bajas y tienen dificultades de acceso a la promoción (criterios de selección arbitrarios y machistas, criterios de selección sexistas, etc.), a la hora de decidir quien va a reducir su jornada o pedir una excedencia, incluso en el eventual supuesto de situaciones personales -no frecuentes- de igualdad entre la pareja, la remuneración supone un peso determinante en la balanza: si cuesta llegar a final de mes, la reducción de la jornada y la excedencia la solicitará, en condiciones de igualdad en la pareja, quien cobre menos. A ello debe añadirse que en la mayoría de los supuestos estas condiciones personales de igualdad, ajenas a los valores sociales y culturales, no son frecuentes.

Por todo ello, la formulación neutral de los derechos de conciliación provoca un efecto boomerang, esto es, teniendo la finalidad de facilitar la permanencia de la mujer en el empleo, no promueven la corresponsabilidad, sino que, debido a la estructura social preexistente a la norma, colocan con carácter general a las mujeres como colectivo en una situación "más favorable" para usar dichos permisos.

Si se pone el acento en el derecho al trabajo, resulta discriminada la mujer; pero, si se otorga el valor que merece el cuidado de las personas, la discriminación recae sobre el varón. La Ley y la jurisprudencia ha optado por resaltar el valor del trabajo remunerado, entendiendo los cuidados como una carga. Paradójicamente, no resulta extraña esta visión, ya que en una sociedad capitalista se invisibilizan, ignoran y relegan las tareas de cuidado. De esta manera se impone a la mujer la labor de "cuidar de la vida" en un mundo en que este cuidado no tiene reconocimiento alguno. Señala Pérez Orozco que existe un profundo e irresoluble conflicto entre el capital y la vida.

Cabe, entonces, preguntarse: ¿cómo se maneja socialmente? Históricamente, el conflicto se ha "resuelto" mediante, en primer lugar, la concesión de primacía a una de las lógicas, la del mercado; y, en segundo lugar, escindiendo las esferas en las que cada una de ellas opera e invisibilizando aquella en la que, en última instancia, se garantizan las necesidades de la vida y se absorben las tensiones. Es decir, la "resolución" del conflicto implica la concesión de prioridad social a la lógica de acumulación y, consecuentemente –para que esto sea posible y, aún con todo, la vida continúe–, la imposición de la responsabilidad sobre la sostenibilidad de la vida a las esferas invisibilizadas de la economía de las que venimos hablando: las no-monetizadas, las de lo doméstico, las feminizadas.

Por eso, resulta urgente articular reivindicaciones y una acción sindical orientada a promover acciones positivas que favorezcan a los hombres en el uso de estos derechos. Es necesario articular las medidas necesarias para lograr la corresponsabilidad en las tareas de cuidado. Todas y todos tenemos derecho a que nuestra vida privada no se robotice, a poder cuidar de nuestros/as hijos e hijas y de nuestros padres y madres. Pero debe ser un derecho y no una carga ni un deber. Si este cuidado acaba derivando en la pérdida del empleo o, sin la pérdida de este, en una doble jornada laboral, el cuidado se convierte en una carga. Y, hombre y mujeres, deben atender por igual sus responsabilidades familiares – por igual significa co-responsabilidad, no ayuda ni colaboración-.

B) La ausencia de negociación de medidas de conciliación

Pese al peligro del llamado efecto boomerang, lo cierto es que las medidas de conciliación son necesarias para que las personas y, sobre todo, en la actualidad, las mujeres -por razones socioeconómicas y culturales que se deben combatir pero que no por ello dejan de existir-, no se vean expulsadas del mercado de trabajo cuando tienen cargas familiares, o, sin dejar el mercado de trabajo, se les haga harto difícil sacar todo adelante.

Por ello se hace necesario articular medidas en la negociación colectiva que:

– Favorezcan la conciliación de la vida personal y familiar

– Impidan que derechos reconocidos estatutariamente queden en papel mojado por falta de regulación convencional.

– Se dirijan con carácter principal y preferente a los hombres (compensaciones económicas, etc.) como medida de acción positiva dirigida a conseguir la corresponsabilidad.

2.1.4. Situación de las/os trabajadoras/es del hogar

Se trata quizás del sector de actividad más feminizado. La presencia masculina en este sector es anecdótica. Así mismo, la infravaloración de esta actividad es manifiesta, hasta el punto de que ni siquiera se rigen por el ET. La situación de estas trabajadoras (como decíamos, la presencia de trabajadores es anecdótica) ha mejorado con la entrada en vigor del RD1620/2011, pero sus derechos siguen estando a años luz de los derechos fundamentales de las/os trabajadoras/es:

– Pueden estar internas, esto es, pueden tener el deber de pernoctar en la casa en la que trabajan.

– Además de las 40 horas semanales de trabajo, pueden tener la obligación de encontrarse a disposición 20 horas semanales más, además de las horas extra.

– No tienen derecho a prestaciones por desempleo.

– Su despido es más barato y cabe el mero desistimiento.

– No tienen derecho a la jubilación anticipada ni parcial.

– La posibilidad de inspección se encuentra limitada.

– La nulidad del despido nunca conlleva la readmisión y la jurisprudencia tasa la indemnización en caso de despido nulo al equivalente a un despido improcedente en el ET.

Además de esta normativa absolutamente discriminatoria, las propias circunstancias de este tipo de trabajo hacen que sea prácticamente imposible probar los abusos cometidos.

La normativa española vulnera de forma manifiesta la normativa internacional. E convenio 182 de la OIT sobre trabajo doméstico (año 2011, vigente desde 2013), garantiza la igualdad de derechos de estas (os) trabajadoras (os) respecto al resto. No obstante, dicho Convenio no ha sido ratificado por España y, pese a las reivindicaciones de las asociaciones de empleadas de hogar y de los sindicatos.

2.2. Medidas para evitar la discriminación de la mujer a través de la Acción sindical

La acción sindical de la CNT debe tener siempre presente la perspectiva de género, tanto en su tabla reivindicativa, como en las mesas de negociación. En las mesas de negociación no siempre se consigue todo lo que se reclama, pero se hace necesario tener unas directrices mínimas y obligatorias en materia de género a la hora de negociar.

Como medidas en la acción sindical de CNT se proponen las siguientes:

1) Ficha de trabajo de las secciones sindicales

-Se incluirá dentro de la ficha de trabajo de las secciones sindicales en empresas que ocupen a menos de 250 trabajadoras/es:

1ª.- Solicitud por escrito a la empresa de las medidas de igualdad de la misma conforme a lo establecido en el artículo 45 de la LOI.

2ª.-Para el supuesto de que existan medidas de igualdad, análisis de las mismas y elaboración de propuestas para alcanzar un acuerdo de empresa

3ª.- En el probable supuesto de que no existan, elaboración -a efectos de alcanzar un acuerdo de empresa- de propuestas y medidas de igualdad adecuadas al sector de actividad, teniendo en cuenta su feminización o masculinización, que deberán comprender, cuando menos:

-Medidas de igualdad en el acceso al empleo: establecimiento de criterios de selección objetivos y coherentes con el trabajo a desarrollar, eliminación de todo criterio de selección no relacionado con el trabajo a desarrollar, establecimiento de desempate en función del género infra-representado en la categoría de que se trate.

-Promoción profesional: establecimiento de criterios de selección objetivos y coherentes con el trabajo a desarrollar, eliminación de todo criterio de selección no

relacionado con el trabajo a desarrollar, establecimiento de desempate en función del género infra-representado en la categoría de que se trate.

-Formación profesional: siempre en horas de trabajo.

-Establecimiento de medidas frente al acoso

-Establecimiento de acuerdos en todos los derechos en materia de conciliación de la vida personal y laboral en los que el ET se remita a la negociación colectiva para su ejercicio (acumulación del permiso de lactancia, elección horaria en supuestos de reducción de jornada, adapatación de la jornada de trabajo, etc.).

-Soluciones a posibles discriminaciones indirectas: equiparación de salarios en categorías equivalentes, supuestos de eliminación de determinadas categorías feminizadas de acceso a determinados derechos.

4ª.- Introducción de permisos retribuidos por emergencia familiar.

5ª.- Mejoras en materia de derechos laborales de las víctimas de violencia de género: posibilidad de acreditar las faltas de asistencia con posterioridad, introducción específica de permisos retribuidos para gestiones administrativas y judiciales, reingreso preferente en supuestos de extinción del contrato, etc.

6ª.- Establecer mejoras, retribuciones a tanto alzado, u otras medidas de acción positiva de forma exclusiva para los hombres que se acojan a derechos de conciliación.

7ª.-En el supuesto de negativa de la empresa a negociar demanda en materia de conflicto colectivo o de vulneración de derechos fundamentales. Igualmente ante la negativa a adoptar medidas en materia de género que resultan obligadas por remisión legal.

-En empresas de más de 250 trabajadoras/es:

1ª.-Comprobación de existencia de plan de igualdad. Si existe, analizarlo, comprobando el cumplimiento de todos los requisitos del mismo, especialmente exigiendo la adopción de cláusulas normativas y no meramente obligacionales. Si no exista realizar una propuesta de plan de igualdad.

2ª.- Creación de guarderías y centros de día para mayores a cargo de la empresa o con precios inferiores al del mercado.

– En ambos tipos de empresas: realizar un especial estudio en orden a adoptar medidas, especialmente en materia de acceso al empleo, formación y promoción profesional en. En sectores masculinizados, intentar favorecer al máximo las facilidades de conciliación. En convenios sectoriales, además de lo señalado a nivel de empresa, facilitar la movilidad de las trabajadoras víctimas de violencia de género entre las empresas de su ámbito con el objeto de suplir las dificultades de cambios de centro de trabajo en un mercado mayoritariamente formado por PYMES.

2) Negociaciones de convenios y acuerdos de empresas

1ª.- Nunca utilizar lenguaje sexista (masculino genérico, géneros por categorías, etc.)

2ª.- Analizar las tareas de cada categoría y en ningún caso establecer diferentes salarios ni pluses en categorías equivalentes. Evitar la multiplicidad de categorías que sólo sirven para rebajar salarios, del tipo ayudante de, etc. Evitar los grandes saltos salariales entre categorías cualificadas y no cualificadas. Igualmente a la inversa (es frecuente que en sectores industriales las categorías no cualificadas tengan una mayor retribución que algunas de la cualificadas, como el personal administrativo, normalmente mujeres. Es un dato curioso, ya que esta categoría, que proviene de las antiguas "secretarias", pese a exigir formación, suele estar peor retribuida que las categorías de producción que no exigen cualificación).

3ª.-Introducir pluses con la finalidad de compensar penosidades propias de categorías feminizadas (implicación emocional, reiteración de movimientos, etc.).

4ª.- Realizar análisis ergonómicos en relación al tipo de jornada, turnicidad horarios, etc. y la afectación a la salud de personas con responsabilidades familiares y establecer las medidas oportunas para evitar riesgos psicosociales o de salud.

5ª.- Introducir complemento de IT para cualquier baja.

6ª.- Introducir todas las medidas anteriormente señaladas en materia de conciliación, acoso, acceso al empleo, formación y promoción profesional.

3) Negociaciones de ERTEs, MSCT Y MG de carácter colectivo

Prestar especial atención en los criterios de selección y su impacto por razón de género (afectación desproporcionada a mujeres o categorías feminizadas, etc.). Preferencia en los criterios de selección para las personas que ejerzan derechos en materia de conciliación.

4) Impugnaciones de despidos colectivos, ERTEs, MSCT Y MG de carácter colectivo

Utilizar el criterio de género en la impugnación de medidas de carácter colectivo.

5)Tabla reivindicativa de CNT en materia de género:

Se deberán incluir las siguientes:

– Permiso de maternidad/paternidad idénticos en duración, intransferibles e indistintos

– Eliminación de toda diferencia en los permisos establecidos entre padre/madre fuera de lo estrictamente relacionado con la salud y el cuerpo de la mujer.

- Establecimiento de sanciones a las empresas más allá de las previstas para incumplimientos específicos de los planes de igualdad (empresas absolutamente masculinizadas o feminizadas, etc.)

– Denuncias por parte de CNT de ofertas de trabajo discriminatorias

– Establecimiento de acciones positivas respecto a los hombres en materia de conciliación y de acceso al empleo en sectores feminizados paralelas a las acciones positivas de acceso al empleo de mujeres en sectores masculinizados

– Establecimiento de una red de guarderías y centros de día gratuitos y geográficamente accesibles.

– Ratificación del convenio de la OIT sobre trabajo doméstico e inclusión de este sector en el ET.

– Acceso a las prestaciones de las personas inmigrantes en situación irregular en igualdad de condiciones que las personas nacionales, con cómputo de la carencia de los servicios prestados en situación irregular y regularización automática.

– Introducción de las medidas de igualdad en el contenido mínimo de los convenios colectivos, así como todas aquellas cuestiones en que el ET se remita a la negociación colectiva para su eficacia.

– Eliminación de la brecha salarial, mediante la equiparación retributiva de los sectores feminizados a los masculinizados y extensión del ámbito del conflicto colectivo a los supuestos de existencia de segregación horizontal

3. CAMPO

Revisión de los acuerdos Congresuales respecto al campo

La situación agropecuaria española, europea y mundial atraviesa un periodo de profundos cambios de tipo político, social y económico que han acentuado más si cabe la complejidad sindical de este sector productivo. De siempre ha habido polémica en el seno del movimiento obrero sobre el papel del campesinado en la revolución social y la sociedad sin clases. Mientras el marxismo consideraba al campesino (tanto propietario como trabajador) como un sujeto revolucionario inferior -si no directamente contrarrevolucionario- respecto al proletariado industrial; el anarquismo, y por extensión el anarconsindicalismo, ha defendido siempre el importante papel que jugarían los hombres y mujeres del campo en las transformaciones sociales, políticas y económicas en pos del comunismo libertario. No hay más que fijarse en la revolución mexicana (con insignes líderes de origen campesino), la Maknovichina ucraniana (aplastada a fuego y hierro por el Ejército Rojo dirigido por Trotsky) o la propia Revolución Española (con uno los mayores experimientos autogestionarios en el campo).

La apuesta cenetista por el campo es bien temprana, dándose una pronta incorporación de jornaleros/as y pequeños/as labradores/as en número no desdeñable sobre todo en Andalucía (los primeros) y el Levante (los segundos). A lo largo de sus Congresos la CNT fue ampliando el marco en el que se habría de desenvolver la organización de las y los campesinos, culminando con el papel fundamental que les otorgaba para el sostenimiento de la revolución la ponencia sobre el Comunismo Libertario aprobada en el IV Congreso Confederal (Zaragoza, 1936). El V Congreso (Madrid, 1979) supuso una puesta al día tanto en el análisis del sector como en las reivindicaciones y modo de actuar de la CNT. Dando relevancia al papel de las y los consumidores organizados en cooperativas para evitar el yugo que supone para el campesino la cadena de intermediarios que le impiden llegar a una renta suficiente y el perjuicio para el propio consumidor en cuanto a encarecimiento del producto.

Desde 1979 España ha experimentado grandes cambios en el sector pasando de un 20% de población activa en el sector primario a un 4% en el último cuatrimestre de 2009 (EPA, INE). El despoblamiento del campo se ha visto frenado en parte por la política subsidiaria europea de la que España se ha venido beneficiando y las restricciones a la importación. Ambas medidas están en entredicho (como analizaremos en el siguiente punto) y la alternativa que se fragua en Bruselas y otros centros de poder es transformar al campesino en un gestor del territorio (ayudas agroambientales) o proveedor de servicios para la gente de la ciudad (caza, turismo rural...). Eso supone que el papel del campesinado como proveedor de alimentos se externalizará a terceros países, generándose una gran dependencia para el consumo de las grandes de distribución. Más si cabe pues recordemos que Carrefour, Eroski y Mercadona ya controlan más del 60% de este sector. Ya en el V Congreso adelantamos lo que cualquier movimiento revolucionario debe afrontar en cuanto a la provisión de alimentos: *"[...] potenciación de canales de distribución alternativos al capitalismo (coordinación de colectivos de producción y consumo)*" (8.7.5. V Congreso, Madrid 1979). Pero sin embargo hoy en día nos enfrentaríamos a que no habría agricultores/as y ganaderos/as que organizar porque simplemente no existirían al ser la mayor parte de los alimentos de importación.

El mantenimiento de un campesinado no es sólo cuestión de justicia social en el sentido de que cada cual pueda elegir su modo de vida sino también de asegurar la viabilidad de un movimiento revolucionario aislado, por lo que deberemos incorporar a nuestra acción sindical en el sector agrario una componente social de creación de cooperativas de consumidores y consumidoras: *"Frente a la comercialización capitalista debemos luchar por la eliminación inmediata de los intermediarios. Potenciar canales de comercialización alternativos a los capitalistas. Intentar utilizar al máximo la estructura sindical para esa distribución. Esto debe lógicamente venir acompañado de una red de colectivos o cooperativas de consumo colectivizadas que se abastezca de estos productos y les dé salida, dando así un ejemplo de organización como consumidores"* (8.7.5. V Congreso, Madrid 1979).

Dichas cooperativas a pequeña escala se denominan Grupos Autogestionados de Consumo (GACs). Ya existen por todo el territorio nacional (algunos creados o promovidos por sindicatos cenetistas) y es una necesidad imperiosa por todo lo que hemos aportado.

Los y las consumidoras que optan por un consumo responsable aceptan la certificación social participativa más antigua del estado español: el lábel; e incorporan nuevos criterios, aparte del respeto a los derechos de los trabajadores y trabajadoras, entre los que destaca el respeto al medio ambiente, es decir, apuestan por los alimentos producidos en la agricultura y ganaderías ecológicas. Cuando importan alimentos lo hacen fijándose que las y los productores de origen obtengan un precio justo lo que supone relaciones con cooperativas o el mínimo número posible de intermediarios. La CNT no es ajena este movimiento, al revés, hemos estado en su inicio. Ahora toca, además, darle contenido revolucionario a través de la constitución de nuestros propios GACs siempre que sea posible y la inclusión de nuestra visión y contactos en las redes de consumo responsable.

Ya en el congreso referido poníamos acento en la necesidad de promover la *"investigación de nuevas técnicas de cultivo que nos permitan una autonomía y autosuficiencia frente a posibles sabotajes y boicots del capitalismo y garanticen la calidad del campo y de sus frutos"*. La disci-

plina científica que da sentido a aquella demanda cenetista de hace más de 30 años se denomina hoy en día agroecología, pues aboga por una producción agropecuaria sustentable, basada en los sistemas tradicionales pero sujetos a una innovación que aporte mayores rendimientos al menor coste ambiental y de trabajo e incorporando criterios relacionados con la justicia social.

3.1. Política Agraria Comunitaria.

La Política Agraria Comunitaria (PAC) es uno de los apartados más controvertidos en el seno de la Unión Europea, tanto por sus implicaciones económicas como sociales. Al finalizar la II Guerra Mundial la obsesión por conseguir una producción alimenticia suficiente llevó a tomar una serie de medidas para incentivar la producción agropecuaria y de proteccionismo para blindar el mercado europeo hacia los productos de fuera. De este modo se creó un agro intensificado, con pautas de producción más acordes con la realidad capitalista y que pronto alcanzó la sobreproducción. La adopción progresiva de una mentalidad empresarial en el sector agrario supuso el paso de unas explotaciones mayormente de tipo familiar a agroindustrias altamente tecnificadas con un protagonismo absoluto de los sistemas de producción intensivos: aumento del uso de fito y zoosanitarios, abonos químicos, tecnificación y especialización lo cual repercute más hondamente en contra del equilibrio ecológico, además de debilitar el tejido social rural, por la despoblación que la menor necesidad de mano de obra y la conversión de puestos de trabajo de agricultores/as (trabajadores/as por cuenta propia) a asalariados de las nuevas agroempresas suponen.

En ese sentido el sector primario disminuyó a marchas forzadas su peso relativo dentro de las tasas de ocupación laboral acelerándose el éxodo campo-ciudad (proceso que en España se hizo notar fuertemente en las décadas 50-60).

Este proceso no es casual sino que se asocia directamente con las políticas de incentivar la productividad, restricciones de mercado (por ejemplo las normativas sanitarias que afectan tanto a los productores interiores como exteriores y las barreras arancelarias para los segundos) y apoyo a la exportación europea; directrices todas ellas materializadas en la PAC. Este proceso lo vivirán también los países de nuevo ingreso al igual que lo sufrió España en mayor medida a partir de su incorporación en 1986, sufriendo una auténtica reconversión agraria. Puesto que, a pesar de que el capitalismo en el campo es anterior a la PAC, esta ha demostrado ser un instrumento fundamental para su hegemonía actual.

En los años 70-80, con un sector claramente excedentario la prioridad ya no sólo es lograr una mayor producción al menor coste sino que ante el acelerado deterioro medioambiental se incluye la conservación del mundo rural como otro objetivo más de la PAC. La figura del agricultor y de la agricultora ha de incluir no sólo la función de productor de alimentos sino también la de gestor/a del territorio. Para asegurar un tejido rural y unas prácticas agrarias más acordes con estos nuevos objetivos las ayudas irán dirigidas a zonas de especial interés para la conservación y se incentivarán mediante ayudas desacopladas de la producción.

En este contexto vemos un sector muy dependiente del subvencionismo y claramente influenciado por la decisiones políticas con una introducción progresiva de la mentalidad empresarial en menoscabo de formas de explotación tradicionales más respetuosas de por sí con el medio

ambiente y que se ha convertido en caballo de batalla de las cumbres internacionales donde se debate sobre la expansión del sistema liberal-capitalista.

EE.UU. y la UE desvirtúan el mercado agrario mundial por su fuerte intervencionismo en el mismo. El fracaso de la cumbre de la Organización Mundial del Comercio en Cancún se debió en gran parte a que los países agroexportadores (en torno al grupo de Cairns: Australia, Nueva Zelanda, países del MERCOSUR...) plantearon la desaparición de estas políticas como condición previa para seguir en la liberalización de todos los sectores. En mayo de 2004, la UE ofreció abandonar las subvenciones a la exportación en la reunión celebrada en París por los principales países de la OMC como gesto para reiniciar las conversaciones multilaterales en torno a una mayor liberalización de las transacciones comerciales mundiales. No es el primer paso que se daba en ese sentido. La Agenda 2000 aprobada en Consejo Europeo en marzo de 1999 en Berlín establece la congelación del presupuesto agrario comunitario (mayor partida presupuestaria de la UE, en torno al 50% del total). Se desacoplan las ayudas de la producción en aras de mantener un tejido rural subsidiario pues la alimentación deja de ser la razón de ser del agricultor en menos cabo de su papel como "gestor del

territorio".

Durante la crisis alimentaria mundial del año 2008 los incrementos de los precios de los cereales en los mercados internacionales en torno al 50% han echo saltar las alarmas de gobiernos, instituciones transnacionales y sobre todo los consumidores que ven cómo repercute en su bolsillo esta tendencia alcista de los mercados. Sin embargo, no son las y los campesinos, sino las y los intermediarios, quienes se están beneficiando. La UE se plantea acabar con la política de cuotas (límites a la producción para mantener los precios de mercado) y volver a incentivar la productividad. Y es que la alimentación no es cuestión baladí. Como sector de interés estratégico supone un gran quebradero de cabeza que los stocks de grano llegaran a estar al menor nivel en 30 años. Las potencias emergentes (como China e India, tercera parte de la población mundial) se han incorporado a los mercados internacionales agroalimentarios, ha aumentado exponencialmente el consumo de carburantes y parte de la producción agraria se ha orientado hacia los llamados biocombustibles. La soberania alimentaria, reivindicación clásica en los países del Sur -que a pesar de ocupar la mayor parte de su población activa en el campo pasan hambre-, estará en las agendas de los países del Norte en breve. Para la clase trabajadora ha sido históricamente cuestión no de agenda, sino el "pan nuestro de cada día".

3.2. La inmigración como fenómeno asociado al sector agrario

Si los/as agricultores/as-empresarios/as agrarios/as quieren incorporarse al mercado global la reducción de gastos se convierte en premisa fundamental. En ese sentido la mano de obra es un gasto como otro cualquiera, teniendo en el sector agropecuario unas connotaciones especiales como son la penosidad y la temporalidad.

La penosidad de las tareas agropecuarias y la poca valoración del mundo rural hace que el mantenimiento de una población estable en nuestros pueblos haya dependido durante mucho tiempo del subvencionismo: para el empresario agrario y para el trabajador por cuenta ajena. Con el "Decretazo" de 2002 el Gobierno español ventiló de un plumazo las políticas subsidiarias rela-

cionadas con el PER (financiadas mayormente por la UE y la Seguridad Social) que suponían que unos 365.000 jornaleros y jornaleras de Andalucía y Extremadura (de un total de unos 600.000) recibieran unos 1.625 euros al año para completar los escasos ingresos que aportan la media de 100 peonadas trabajadas al año en las comarcas más productivas. Para sustituir al jornalero/a que encuentra mejores rentas en sectores emergentes de los 90 y principios de 2000 (léase construcción principalmente) se ha instaurado la práctica de contratar extranjeros/as en origen (favorecido por las últimas Leyes de Extranjería del Estado Español) y así la patronal agraria se asegura unas partidas de inmigrantes a la carta, baratos, con poca capacidad de organización en un medio extraño y muchas veces hostil. Además estos trabajadores y trabajadoras permanecen aislados en los cortijos durante la temporada para ser devueltos a su país cuando dejen de ser necesarios.

Se abusa además de esta práctica hasta el punto de enfrentar a las y los trabajadores según su procedencia como ha sucedido con la sustitución de las y los trabajadores magrebís por polacos/as en la fresa onubense o de africanos/as por latinoamericanos/as en Murcia.

3.3. El campo fuera de Europa

Como ya hemos apuntado más arriba la cumbre de Cancún fue un auténtico pulso entre los que defienden la intervención en los mercados agrarios (postura abanderada por EE.UU., la UE y Japón principalmente) y los que están en contra (en torno al grupo de Cairns). Finalmente no se llegó a una resolución consensuada y las negociaciones siguen tensas sin propuestas que permitan retomar plenamente el camino de liberalización total marcado en la cumbre de la OMC de Doha (Qatar) en 2001.

Son muchos los agentes sociales y gobiernos que señalan a este intervensionismo agrario como un obstáculo para el desarrollo de los "países del Sur" que tienen una gran dependencia de su sector primario para la entrada de divisas en sus depauperadas economías. Si bien es cierto que no sólo no exportan todo lo que podrían de no existir el blindaje de los mercados norteamericano y europeo sino que además ven inundados sus mercados de productos agropecuarios del "Norte" a precios competitivos pero irreales (dumping), también lo es que la liberalización beneficiará principalmente a las grandes agroindustrias que ya están en una situación estratégica. En Latinoamérica, por ejemplo, Chiquita, la multinacional hortofrutícola que ha derrocado gobiernos en Centroamérica a su antojo desde mediados del s. XX ha denunciado en varias ocasiones las pérdidas que le produce el proteccionismo europeo. Empresas como Monsanto y Syngenta (resultante de la fusión de Novartis y Zeneca) son firmes defensoras de la liberalización del mismo modo que de las nuevas prácticas de cultivo, punta de iceberg de la revolución verde. Además, son las principales sustentadoras de la ingeniería genética, del desarrollo de los Organismos Genéticamente Modificados (OGM) y de las patentes de vida. Con la excusa de las patentes sobre las investigaciones y las técnicas relacionadas con los recursos naturales y agropecuarios se privatiza el saber agrario y la propia Naturaleza.

Es de reseñar que en gran parte de Latinoamérica, África y Asia la agricultura tradicional es la principal vía de sustento del 65% de la población y la extensión del capitalismo agrario está en ciernes. Además en estos continentes los movimientos sociales surgidos del mundo rural son

muy fuertes y punta de lanza del movimiento anticapitalista: movimientos de trabajadores sin tierra en Brasil y Paraguay, zapatistas y magonistas en México, etc.

En resumen, el campo está en el punto de mira de los intereses capitalistas y por lo tanto será un sector de fuertes choques trabajo-capital. Es un sector de una alta conflictividad, al menos latente, tanto en Europa como en el resto del mundo, no sólo entre capital y trabajo sino también entre capital y pobladores/as puesto que muchos movimientos reivindicativos en el medio rural no encuentran el nexo de unión en su condición de asalariados/as sino de pobladores/as-indígenas que ven como sus formas tradicionales de vida y subsistencia están en entredicho por los planes de expansión capitalistas. La mano de obra agraria tiene una clara vocación migratoria.

4. VíAS PARA LA ACCIÓN SINDICAL

4.1. Con carácter general

Pensamos que se debe combinar el desarrollo de las estructuras de ramo (secciones, sindicatos, coordinadoras, federaciones) junto con la estructura territorial apegada a la localidad, incorporando el trabajo sobre temas transversales (genero, inmigración, ecología, derechos sociales) que deben guiar el trabajo sindical de la CNT.

La CNT debe valorar desarrollar un protocolo de actuación ante distintos tipos de conflictos, distinguiendo entre aquellos que impliquen a afiliados y secciones sindicales y aquellos que afectan a trabajadores/as no afiliados/as o afiliados/as en el proceso. Aquellos que buscan la continuidad y profundizacion de la acción sindical de la CNT, de aquellos de autodefensa ante despidos y otros abusos. Aquellos de ámbito local, o regional, confederal, etc.

La CNT debe valorar aquellos que permiten la puesta en practica y el desarrollo de nuestras tácticas especificas de acción directas y aquellos donde el peso de lo jurídico es mas importante.

Son necesarios protocolos de actuación, basados en las experiencias de distintos sindicatos, una optimización de los recurso dedicados a cada conflicto y una evaluación de los resultados. Igualmente es necesario aumentar los mecanismos y herramientas de formación e intercambio de información y contar con un apoyo jurídico estable y adecuado.

La CNT debe incluir dentro de su acción sindical el permanente cuestionamiento de la LOLS, el rechazo al sistema de elecciones sindicales, desde la afirmación de nuestra alternativa. Debemos formar a los trabajadores y las trabajadoras que se afilien en los motivos de este cuestionamiento y su carácter fundamental en la acción sindical de CNT. Debemos continuar el esfuerzo explicativo llamando la atención sobre su carácter corporativo, antidemocrático, cupular y desmovilizador para llevar el cuestionamiento que en muchos medios y organizaciones existe hacia el sistema electoral en las instituciones burguesas al sistema electoral en las empresas.

La CNT impulsara en las movilizaciones en que participe el cuestionamiento de la LOLS y sus consecuencias, poniendo de manifiesto las contradicciones de quienes dicen rechazarla mientras

la legitiman.

Ahora bien esto nunca debe ser el único elemento distintivo de CNT sino la practica en positivo de un modelo alternativo y real.

4.2. Necesidad de implantación Sectorial

4.2.1 Organización Sectorial: Sí, pero ¿cómo?

Desde CNT debemos ser capaces de poner en marcha las estructuras de ramo o sector con la flexibilidad que la propia estructura del capitalismo actual, y la propia debilidad y carácter incipiente de nuestra organización requiere.

La estructura de ramo se enfrenta a los retos de la proliferación de contratas y subcontratas, la aparición de las empresa de multiservicios de gran nivel. Como ejemplo, sirva Eulen, empresa que subcontrata trabajos a otras empresas. Así la puesta a disposición de trabajadores/as se ha extendido a todas las ramas de la producción y a la administración. Cada vez hay mas trabajadores/as que estando contratados/as por una empresa, trabajan en otra, aumentando la subdivisión de los colectivos de trabajadores/as. Esto merma su capacidad reivindicativa aun mas.

Por otra parte, muchas empresas tienen diversificada su producción y con frecuencia sus trabajadores/as pertenecen a varios ramos, y por lo tanto, deberían estar en diferentes sindicatos, siguiendo la agrupación que tenemos establecida en la CNT. No obstante, no por eso dejan de tener también muchas cuestiones a reivindicar con sus compañeros/as de empresa, como su convenio colectivo, si es que este existe. Es decir, tenemos que mantener la estructura por ramos de la producción, que evita el corporativismo, pero no debemos descuidar la coordinación de las Secciones Sindicales que, en diferentes ramos de la producción, pertenecen a la misma empresa.

También se esta convirtiendo en un caso cada vez mas frecuente la existencia de trabajadores/as que, perteneciendo a una misma actividad o ramo de la producción, sin embargo trabajan en distintas empresas. Cuando no existe sindicato de ramo que agrupe a esos trabajadores, se da la circunstancia de que a veces tampoco tiene sentido la creación de una sección sindical de empresa; los y las trabajadoras cambian rápidamente de trabajo, o de empresa, hay pocas personas en cada una de las empresas... Sin embargo, alguno de estos grupos de trabajadores/as han demostrado un importante vigor en su actividad sindical y una gran proyección dentro de la organización, pero que al carecer de un sistema de coordinación establecido, desaprovechan muchos de sus esfuerzos. Es el caso que se da con los trabajadores y trabajadoras del sector de la arqueología. En este tipo de casos, proponemos que puedan crearse Secciones Sindicales de trabajadores/as que aun perteneciendo a diferentes empresas, pertenecen al mismo ramo o actividades determinadas dentro de un mismo ramo, como ocurriría con la arqueología dentro del ramo de la construcción.

Mientras que no exista el sindicato de ramo en el que correspondería incluir a estas Secciones Sindicales, la coordinación de estas tendría que hacerlo la Secretaria de Acción Sindical del SOV. La idea es que, en estos casos, aparte del trabajo en el sindicato al que corresponda la Sección, las Secretarias de Acción Sindical de la FL, Comité Regional y comité Confederal coordinen a las secciones sindicales que pertenezcan a una misma empresa en las reivindicaciones que

puedan ser comunes. Ademas, esta coordinación debería permitir que una estas secciones sindicales de centro de trabajo, difundiera su actividad entre el resto de centros que tenga la empresa en esa localidad. Así la agrupación en ramos debe ser constantemente revisada bajo criterios de solidaridad, huyendo del corporativismo, pero también de eficacia sindical.

A pesar de ello consideramos que los sindicatos de ramo fueron una respuesta exitosa a los sindicatos de oficio en su momento. Hoy día, incluso a pesar de la atomización del colectivo de los trabajadores, podrían seguir siéndolo. Pero para eso habría que utilizarlos. Nuestra escasa actividad a nivel de ramos y el reducido numero de sindicatos de ramo existentes anula prácticamente esta forma de trabajo sindical.

Nosotros y nosotras seguimos pensando que el sindicato de ramo puede ser la forma mas efectiva de actuación, coordinada a través de las federaciones o coordinadoras de ramo. Por tanto creemos que la estructuración en ramos de producción es la mejor, que sigue siendo la agrupación organizativa mas adecuada, a pesar del mosaico de actividades, salarios y condiciones de trabajo que podemos encontrar en cada uno de ellos.

Por esto, proponemos que coexistan las Secciones Sindicales de empresa, que serán las habituales, con las SS de trabajadores de una empresa que trabajan en centros de trabajo diferentes, por ejemplo, SS de Eulen en ABB y SS de Eulen en la UCO. Si Eulen en ABB se dedica a trabajos del metal, este sera el sindicato de ramo donde este esta SS; si Eulen en la UCO se dedica a mantenimiento dentro de un edificio publico, estara en el sindicato de servicios publicos.

En este sentido el primer paso debe ser la puesta en marcha de las secciones de ramo en los distintos SOV, y su información al resto de la organización, esto permite experimentar el trabajo sectorial, sin las exigencias orgánicas de un sindicato de ramo y asegura el éxito cuando las circunstancias aseguren su creación. A su vez es necesario que este paso, se de asegurando que el sindicato que se crea tiene posibilidades de sea autónomo, de cubrir sus cargos y de llevar adelante el trabajo sindical y orgánico. Es decir, que cuente con una militancia e implantación suficiente como para ello. De esto depende que todo no termine siendo un bluff y estemos todavía mas atrás que al principio. A su vez se debe evitar que los sindicatos de ramos deriven hacia comportamientos corporativos, o deriven en una acción sindical aislada o fragmentada.

El papel de las Federaciones Locales y las Secretarias de Acción Sindical es, en esto fundamental, se deben crear herramientas de coordinación entre sindicatos y sectores en las FL y los ámbitos superiores.

También hay que valorar herramientas de coordinación entre secciones de distintos ramos que trabajan en un mismo espacio físico o centro de trabajo (Secciones o afiliados que trabajan para empresas de distinto sector en un mismo Centro Comercial o secciones de distintas contratas de una misma empresa principal.)

Creemos que aquí la realidad organizativa de la CNT, la practica y las experiencias, aciertos y errores nos irán marcando el camino, se debe facilitar la experimentación y el intercambio de experiencias, para ello las conferencias de acción sindicales son fundamentales.

4.2.2. Prioridades Sectoriales

Evidentemente la CNT debe abordar con carácter general todos los ramos de la producción, in-

tentando mantener una presencia uniforme. Ahora bien, debemos abordar con mayor intensidad y de forma planificada el trabajo sindical en los sectores y empresas donde nuestras propuestas y tácticas tienen unas mayores posibilidades.

Así debemos incidir en los sectores en los que por sus características (sectores en desarrollo, nuevas ocupaciones, sectores poco atractivos para los sindicatos oficiales) no existe organización sindical. Igualmente la CNT debe estar presente en los sectores mas precarizados y en los sectores mas sensibles a nuestras tradicionales herramientas de presión social y publica. Convertirse en un referente en un sector o empresa determinado es una de las mejoras formas de entrar en otros sectores o empresas.

4.3 Integrando Perspectivas Específicas y Transversales

Debe ser propio de la CNT introducir en la acción sindical, temáticas que mas allá de la lucha contra la explotación laboral la atraviesan condicionándola. No prestar atención a estas realidades desde un pretendido igualitarismo, o desde la pretensión de que el carácter libertario de la CNT ya resuelve e incluye todas estas contradicciones es dejar fuera a las realidades mas explotadas de nuestra sociedad desde un discurso de trazo gordo que olvida muchos de los mecanismos a través de los cuales se produce y se reproduce la explotación y la dominación en nuestra sociedad. Así proponemos una atención especifica en la acción sindical a:

4.3.1 Inmigración

En los ultimos anos la CNT, salvo algunas excepciones, se ha mantenido al margen de las principales luchas por los derechos de los trabajadores y trabajadoras inmigrantes. La conferencia sobre Inmigración tuvo una escasa participación, y no ha tenido continuidad, ni se ha traducido en campanas o acciones concretas. Valoramos muy positivamente el esfuerzo de los sindicatos que han impulsado este tema en los ultimos anos, pero creemos que es necesaria una acción global y coordinada.

La CNT debe ser una herramienta de lucha útil a los trabajadores y trabajadoras migrantes especialmente aquellos/as en situación irregular por ser los/as mas explotados/as y carecer de los mas elementales derechos. Sin abandonar la perspectiva de una sola clase obrera, la CNT debe poner en marcha herramientas y estrategias que faciliten en primer lugar el conocimiento de la realidad en este campo, para facilitar la afiliación de trabajadores/as migrantes y orientando la acción sindical en función de esta realidad. Así se deberían editar materiales y preparar campanas especificas

La problemática de los trabajadores/as inmigrantes debe ser tenida en cuenta en las asesorías jurídicas y por parte de las secretarias de acción sindical y jurídicas

La CNT debe implicarse en las luchas y campanas por los derechos de los trabajadores y las trabajadoras migrantes, trabajando junto a colectivos que puedan compartir mínimos comunes y siempre desde el protagonismo de los trabajadores afectados, posiciones anticapitalistas y desde ópticas no asistencialistas.

4.3.2 Ecología

La CNT debe considerar en su acción sindical una perspectiva ecológica radical, ya que enfrentarse a la explotación de los trabajadores sin contemplar la crisis ecológica nos condena a permanecer atrapados en los estrechos limites del productivismo y el consumismo.

Una perspectiva amplia de la lucha por los derechos de los trabajadores y las trabajadoras debe incluir la lucha por el derechos al disfrute de los recursos y de la naturaleza. Los efectos del desastre ecológico tiene un claro sesgo de clase. Ademas la formulación de un nuevo capitalismo verde, la reutilización del discurso ecologista por parte de sectores de las elites mundiales, desprovisto siempre de su critica al sistema capitalismo, la utilización de discursos sobre el consumo responsable y ecológico que obvian las condiciones de producción y explotación, hace previsible la utilización del discurso medioambiental como nueva arma contra los trabajadores y las trabajadoras desde posiciones insolidarias, jerárquicas y fuertemente autoritarias. Por ello debemos integrar el ecologismo radical en la acción sindical desde una perspectiva anarquista, de clase y revolucionaria.

4.4 Refuerzo de la organización territorial

Una de las fortalezas de la CNT es la extensión territorial de su organización con presencia en numerosas localidades y pueblos donde el sindicalismo oficial está en franco retroceso. Si bien esta presencia es débil y esta formada por pequeños sindicatos o núcleos confederales, es posible reforzarla mediante federaciones comarcales o provinciales que permitieran el desarrollo de campanas sindicales.

En las ciudades mas grande también seria necesario el protagonismo de las FL en campanas de carácter local, localizando sobre el territorio las luchas sindicales buscando elementos comunes, alianzas y solidaridades mas allá del centro de trabajo dadas las dificultades de acción sindical convencional en estos sectores.

4.4.1 Organización en barrios

El centro de trabajo ha dejado en muchos casos espacio de socialización, la fragmentación, la movilidad y la temporalidad dificultan en muchos casos y en los sectores mas precarios la formación de un sentimiento colectivo en el trabajo. Muchas veces este proceso se da con mas facilidad en el barrio, que es ademas donde se plasman muchas de las injusticias y formas de explotación del capitalismo: situaciones de exclusión, segregación y redadas de trabajadores inmigrantes, aplicación de leyes de seguridad y vigilancia, etc.

La existencia de una organización de barriada que refuerce la sindical ha sido un elemento presente en la organización de la CNT, fundamentales en muchos casos en su capacidad de movilización general mas allá de los centros de trabajo.

Proponemos retomar estas formas de organización de barriada que de manera informal y sin capacidad de decisión alguna en la estructura confederal permitan ensayar esta posibilidad de trabajo, integrando a los trabajadores de distintos ramos, para la distribución de propaganda, el apoyo mutuo, la acción sobre la realidad del barrio, con campanas sociales, pero también sindicales en zonas concretas desde el mayor conocimiento posible de la realidad de una zona. En

nuestra realidad hemos observado como en ocasiones el crecimiento de la afiliación se produce por conocimiento entre trabajadores/as del mismo barrio, mas que por extensión en el centro de trabajo. También permitiría ligar la lucha sindical con otras que afectan a los trabajadores y trabajadoras en su conjunto, como los servicios sociales, transporte publico, problemas sociales, etc

4.4.2 Lucha contra el Paro

La lucha contra el Paro es una de las realidades en que la importancia de la organización territorial y el trabajo por barriadas se hace evidente frente a la dinámica sectorial o de centro de trabajo. El abandono de los/as trabajadores/as parados/as por parte de las corporaciones sindicales es mas que evidente, desde el diseño de su estructura, hasta las políticas que apoyan o su complicidad a través del negocio del Formación Profesional Ocupacional. La denuncia de esto, y el impulso de las auto-organizacion de los trabajadores en paro, cediendo infraestructura, experiencia, asesorías a estas experiencias debe ser una constante. Junto a ello, la propia organización interna de los afiliados y afiliadas en paro creando herramientas de organización intersectorial en su seno de trabajadores y trabajadoras de CNT en paro.

De igual forma planteara plataformas reivindicativas globales que contemplen el paro como principal problema e incluyan reivindicaciones que permitan movilizar a trabajadores/as asalariados/as junto a autónomos/as, desempleados/as, trabajadores en negro, trabajo domestico, etc.

5. LA ACCIÓN SINDICAL DE CNT EN DISTINTOS ÁMBITOS

5.1 Acción Sindical Sectorial o de Ramo

La CNT elaborará plataformas reivindicativas adaptadas a las necesidades de cada sector, buscando reivindicaciones e ideas-fuerza que permitan aglutinar a los trabajadores y trabajadoras por encima de la división promovida por el capitalismo. La acción sindical de Ramo incluirá ademas de las reivindicaciones y campana especificas del mismo, campanas amplias que incluyan reivindicaciones basadas en lo sectorial pero con un objetivo social mas allá de los trabajadores y trabajadoras del sector.

5.2 Acción Sindical de la CNT en las grandes empresas y sector público

En las grandes empresas y sector publico, la existencia de una estructura sindical consolidada en general hostil a la acción de CNT dificulta la acción en las mismas. Por otro lado, los mayores derechos laborales pueden permitir la mas fácil implantación legal de secciones sindicales que pueden ser aprovechadas, si es necesario para en apoyo de trabajadores/as en condiciones mas precarias.

En general, se deben forzar los mecanismos donde sea posible para la convocatoria de Asambleas donde se nos permita exponer nuestros planteamientos. Se debe mantener una labor con-

tinuada de información, presencia y denuncia.

Las secciones sindicales en grandes empresas y en la administración deben estudiar los distintos eslabones de la red productiva de la empresa, identificando la presencia de ETT, contratas y subcontratas, empresas auxiliares, etc para dirigir hacia ellos la acción sindical desde una perspectiva unitaria frente a las divisiones promovidas por la empresa. Se deben confrontar las estructuras sindicales con esta realidad auxiliar, y denunciar las practicas mas perjudiciales: horas extras, destajos, pluriempleo.

Los sindicatos y secciones del sector publico deben asumir la reivindicación de los derechos sociales vinculadas a los servicios sociales: Sanidad, Educación, Asistencia Social, etc., reivindicando los mismos ante el avance de las privatizaciones, buscando alianzas con los trabajadores/as usuarios/as de estos servicios.

En las grandes empresas con sucursales es fundamental la coordinación entre las secciones de centro de trabajo, bien a través de las coordinadoras de ramo o federaciones de industria, bien directamente a través de las secretarias de acción sindical del ámbito correspondiente.

5.3 Acción Sindical de la CNT en las medianas y pequeñas empresas

En las medianas empresas es donde con mas facilidad se puede poner en practica la alternativa de secciones sindicales y asambleas de trabajadores,que nos son propias mediante un trabajo constante y paciente y una buen planificación y estudio de cada paso se deben poner en marcha secciones sindicales, asegurando las posibilidades de defensa de los delegados y trabajadores implicados de la represión patronal. En las pequeñas empresas, es donde el apoyo del sindicato y las redes de solidaridad que seamos capaz de generar son mas necesarias.

6. RELACIÓN DE CNT CON OTRAS ORGANIZACIONES EN LA ACCIÓN SINDICAL

La CNT podrá en su acción sindical en cualquier amito establecer relaciones y colaborar con otras organizaciones que compartan el planteamiento de CNT en campañas y movilizaciones concretas. En esto se respetara la autonomía de los distintos entes confederales, que serán quienes valoraran la idoneidad de dichas relaciones en cada ámbito.

La CNT promueve una pautas mínimas -en ningún caso con carácter excluyente respecto a movilizaciones generales- a nivel de funcionamiento en los centros de trabajo, que serán en todo caso revisables en Pleno Confederal:

- Rechazo de la doble escala salarial.
- Lucha contra el fraude en la contratación.
- Priorización de la negociación por secciones sindicales, en detrimento de la representa-

ción unitaria (delegados de personal, comités de empresa, etc), ponderándose el peso de cada sección sindical en la mesa negociadora en base a su porcentaje de afiliación en la plantilla.

– Lucha contra los despidos colectivos, y contra los individuales cuando éstos no sean realmente disciplinarios.

– Asunción en cualquier proceso de reestructuración empresarial de que no pueden discutirse las consecuencias que plantea la patronal, sin antes haber cerrado por completo el debate de las causas que motivan la medida que se discute

– Priorización de la negociación empresa por empresa, dado el debilitamiento que las últimas reformas laborales han producido en los convenios provinciales, incentivando así que las empresas que cuenten con plantillas organizadas sean las primeras en conquistar mejoras, buscando un efecto llamada con las demás. Asimismo, construcción desde abajo de la negociación colectiva sectorial y territorial, de acuerdo con una serie de bases mínimas a defender ante todas las empresas, en línea con las aquí enumeradas.

7. ACCIÓN SINDICAL DE LA CNT: OBJETIVOS

Se planificarán en los distintos niveles campañas periódicas de acción sindical, que deben contar con el respaldo de conferencias de acción sindical. Todos los comités en los distintos escalones de la organización confederal deberían contar con una secretaria de acción sindical.

7.1 Grupos de trabajo de Acción Sindical

Se crearán grupos de trabajo sindical en los distintos niveles confederales que agruparán a las distintas secretarías de ese nivel.

7.2 Protocolo de Acción Sindical

Se seguirá como guía de la planificación y coordinación de la acción sindical de la CNT un protocolo de acción sindical que implicara a los miembros de las secciones sindicales en tareas concretas, comités etc., buscando la coordinación y la implicación en el sindicato.

Los últimos conflictos laborales en los que ha intervenido la CNT han puesto de manifiesto, una vez más, que la solidaridad es nuestra mejor arma para defendernos de los abusos patronales. Y la CNT ha demostrado que la acción solidaria es la base de su sindicalismo. En este sentido hablamos de nuestra Organización como una gran red solidaria anarcosindicalista.

Aun así, muchos conflictos se crean en el ámbito local y de ellos poco mas sabemos que la reseña en nuestros medios o la petición de envío de faxes. Mucha información, conocimientos de otros compañeros, posibilidades de extender el conflicto o la experiencia en situaciones similares de otros sindicatos se pierden por falta de coordinación. Para aprovechar mas nuestro poten-

cial de acción sindical solidaria, creemos necesario establecer en Pleno Nacional de Regionales un protocolo que mejore y aumente nuestra capacidad de respuesta ante conflictos sindicales.

Este protocolo establecería una serie de actuaciones y métodos, con las siguientes finalidades:

Saber fácilmente que conflictos están abiertos y en que fase del mismo se esta.

Saber que personas son las encargadas de la gestión del conflicto

Que la información del conflicto se transmita adecuadamente

Saber que se puede hacer en cada situación

Hacer que las peticiones de solidaridad se conozcan en todos los sindicatos de forma ágil y con la información adicional que se necesite

Mejorar la coordinación de las acciones dentro de cada conflicto

Poder gestionar un conflicto, de forma organizada, cuando un sindicato no tenga capacidad para ello

7.3 Planificación de campañas sectoriales y de empresa

Se realizarán campanas periódicas en sectores concretos, estructuradas a nivel territorial y confederal, que deberán ser evaluadas en su cumplimiento y resultados. Se identificaraán a iniciativa de secciones sindicales empresas sobre las que realizar una acción planificada, que será evaluada en su cumplimiento y resultados.

7.4 Autónomos/as y trabajadores/as no asalariados/as

Desde el Sindicato queremos recalcar que la cantidad de trabajadores/as no asalariados (entiéndase por autónomos/as, los/as que prestan sus servicios en cooperativas, economía sumergida, parados/as está creciendo exponencialmente. En este sentido, la CNT presta el mismo soporte y protección que a las personas asalariadas. Se tienen en cuenta las reivindicaciones mas básicas del colectivo en las tablas reivindicativas de las huelgas generales, movilizaciones sindicales y sociales que puedan estar relacionadas con la cuestión.

7.5 Conferencias de Acción Sindical

Las conferencias de Acción Sindical deben ser herramientas básicas del intercambio de información y de la planificación y adecuación de la acción sindical. Se celebraran [con una periodicidad anual=periódicamente] en los distintos ámbitos, para la planificación de campañas y elaboración de plataformas reivindicativas, los resultados deberán ser aprobados por un pleno.

7.6. Formación

Convencidos/as de que tenemos que fomentar la formación de todes les militantes, tanto de los

que llegan de nuevo, como de los mas antiguos consideramos que les recién llegades necesitaran familiarizarse con la normativa orgánica, los principios, tácticas y finalidades, significado y practica de la acción directa, la historia de la organización y diversas materias de índole practico: Derechos sociales y laborales, LOLS, Estatuto de los trabajadores, Guía laboral, calculo de nominas, etc.

Los/as militantes mas antiguos, en cambio, necesitan formarse, ademas de en los temas anteriores, en otras materias. Una de las mas importantes, a nuestro juicio, es prepararse para las negociaciones con las empresas, puesto que todos los conflictos pasan por esta fase. Al menos, todos los delegados y delegadas de Sección Sindical o Secretarios y Secretarias de Acción Sindical deberían tener estos conocimientos básicos para manejar de forma optima estas situaciones, que muchas veces resumen en unos minutos el trabajo hecho en la calle durante semanas o meses, por lo que merecen una especial atención. No obstante, resulta especialmente importante que las personas que formen parte de las Secciones Sindicales existentes (no solo los/as delegados/as) participen de forma prioritaria esta formación.

7.7. Creación y refuerzo de las Asesorías Jurídicas

Hay que hacer ver a toda la CNT de la gran importancia que tienen las asesorías jurídicas en los sindicatos, ya que son, si se utilizan bien, una fuente importante de conflictos sindicales. Las asesorías jurídicas, lejos de convertir a los sindicatos en "gestorías", cuando se manejan adecuadamente permiten que llegue a los sindicatos una gran cantidad de personas que, en primer lugar conocen la organización o se afilian en muchos casos, y en segundo, nos abre las puertas de un posible conflicto sindical que le toca al sindicato gestionar. En esta gestión es fundamental la actuación de la Secretaria de Acción Sindical (del sindicato o FL).

Esta Secretaría debe conocer todos los casos que llegan a la asesoría, actuando como filtro de la misma y seleccionando aquellos en los que sea posible (por las razones de que se trate en cada momento; por la motivación del conflicto, porque afecte a una pluralidad de trabajadores/as, etc.) iniciar un conflicto sindical de CNT con la empresa de que se trate. Del mismo modo, llegan a la asesoría multitud de consultas que suelen finalizar en una demanda a juzgados de lo social y que por sus características, (los trabajadores y trabajadoras quieren denunciar pero no están convencidos/as de una campaña en la calle, o se trata de cuestiones solo económicas que no se preve que puedan conseguirse por la acción directa, etc). El papel de la Secretaria de Acción Sindical es dar curso a todos los casos que puedan llevarse al terreno de la acción directa, acompañada, en su caso, de las demandas o denuncias a la Inspección de Trabajo que puedan ser apropiadas dependiendo de las circunstancias. Para ello, deberá trasladar estos posibles conflictos a la asamblea, procurando que los/as trabajadores/as implicados/as participen desde el primer momento.

Por ello, se fomentará la puesta en marcha de Asesorías Sindicales y Jurídicas en todos las Federaciones Locales. En ellas se tendera a incluir apoyo jurídico en cuestiones no específicamente laborales, como asistencia problemática de permisos de residencia y trabajo, antirepresivas, desalojos y desahucios. Las asesorías de la CNT tendrán una perspectiva global, huyendo de perspectivas asistenciales o profesionalizadas, siendo fundamental la coordinación con la secre-

taria de acción sindical, para identificar posibles conflictos y promover la autoorganizacion de los implicados mas allá de la asistencia jurídica.

Los Comités Regionales se dotarán los recurso jurídicos necesarios para asistir a sindicatos que no puedan cubrírselos.

7.8. Comunicación

En la acción sindical la comunicación es fundamental. Se establecerán estrategias de comunicación adaptadas a la empresa o sector al que nos dirigimos. La comunicación se introducirá en los planes de formación, especialmente su adaptación al trabajo sindical. La presentación de campañas y movilizaciones tenderá a ser en positivo, lanzando propuestas y defendiendo nuestro modelo y alternativas y no solo criticando lo que hagan otros.

7.8.1 Comunicación en Redes

I. Activismo en Redes Sociales

1. Introducción

No empezaremos diciendo que las redes sociales e Internet son el futuro, pues ese futuro hace años que quedo atrás. Hablamos del presente. De un presente que no estamos aprovechando e su totalidad. A pesar de que muchos sindicatos están realizando un uso inteligente de estas herramientas, es evidente que aún queda mucho camino por recorrer. Si las empresas venden sus productos a través de estas vías y los políticos ganan campañas gracias a ellas, ¿por qué nosotros/as permanecemos al margen?

Lo que expondremos a continuación no es más que la valoración sobre la repercusión que un conflicto aparentemente pequeño tuvo entre las personas usuarias de este tipo de redes, Facebook y Twitter, a raíz de la campaña Stop Falsos Autónomos emprendida por el sindicato de Artes Gráficas Comunicación y Espectáculos de Madrid de la CNT.

Dicha campaña nació con el objetivo de visibilizar un conflicto concreto, el mantenido por los trabajadores/as despedidos de la web de noticias tecnológicas ADSLZone, en situación de Falsos Autónomos y en la calle por intentar regularizar su relación laboral; la misma que les deja sin prestación por desempleo ni indemnización de ningún tipo. En definitiva, una figura fraudulenta de la que muchos empresarios/as se sirven para ejercer el despido libre y anular los derechos de su plantilla, entre otros, la posibilidad de ejercer la actividad sindical.

Como decíamos, se ideó una campaña con dos objetivos: por un lado visibilizar el conflicto al que hacíamos mención y por otro dar una continuidad a dicha problemática, de ámbito global. Conscientes de que no se trataba de un caso aislado, decidíamos poner en la agenda política éste fraude y lo cierto es que obtuvimos muy buenos resultados. ¿Cómo? Utilizando las redes sociales.

2. Por qué las redes sociales

La decisión de centrar nuestros esfuerzos en las redes sociales respondía a una premisa bien simple: como nuestro 'enemigo' funciona en la Red, nosotros llevaremos nuestra actividad sindical a la Red.

Es probable que muchos otros conflictos no se adecuen a este planteamiento y encajen mejor con otro de corte clásico. Nosotros haremos referencia a aquellas empresas que funcionen a nivel online o hayan construido su imagen en base a una marca bien conocida (pensad en El Corte Inglés, La Central, Fnac, etc). En el primer supuesto, es obligatorio. No tiene sentido ir a la sede de estas empresas a hacer un piquete físico cuando su actividad se centra en Internet. En el segundo caso, nuestra acción se centrará en cuestionar y desmontar esa imagen o 'marca' generada alrededor de la empresa, señalando cuestiones como su falta de ética o su escaso compromiso con la ciudadanía, tal y como hicieron los trabajadores/as de Coca Cola.

Planificación y conocimiento del medio

Que un conflicto laboral se convierta en Trending Topic no responde al azar sino a un trabajo de meticulosa planificación. Hemos de conocer los puntos débiles de nuestra empresa y saber en qué ámbito se mueve para posteriormente viralizar el conflicto en la Red. A su vez, debemos desenvolvernos con soltura en este entorno, conociendo su funcionamiento para sacarle el mayor partido posible.

Para ello, tuvimos en cuenta tres redes concretas (pero hay más): el agregador de noticias de Menéame, Facebook y Twitter. La táctica que llevamos a cabo fue la siguiente: Publicación de una entrada en nuestro blog, apoyo de la misma en el portal Meneame y, de forma paralela, difusión de la entrada por Facebook y Twitter con el apoyo de todos los movimientos sociales y sindicatos afines que tuvieran cuenta en cada una de las dos redes. Todo sincronizado y planificado. Sin dejar cabos sueltos.

3. Ejemplo de difusión

Como sindicato, construimos un blog para la campaña llamado Stop Falsos Autónomos que, a su vez, funcionaría como soporte para éste y otros conflictos. Cuando publicamos la noticia, y a pesar de contar con un buen número de personas allegadas dispuestos a apoyarnos (algo que consideramos fundamental), ésta se movió de forma espontánea en el portal Meneame y obtuvimos miles de visitas al blog. Un éxito que no habría sido posible sin la ayuda de otros colectivos y sin el apoyo del resto de sindicatos de la CNT. A su vez, la planificación y el factor sorpresa fueron clave. Recapitulando, lo que hicimos fue generar un blog, sacar una noticia sobre el conflicto y preparar su difusión por la Red, partiendo de Meneame y moviendo la noticia por Twitter a través de un 'hash tag', todo ello de forma sincronizada. Hicimos lo propio en Facebook y conseguimos que un montón de gente se sintiera identificada con nuestra causa.

Muchos y muchas pensaréis que fue en el momento de la difusión donde más tiempo invertimos pero no, fue en la planificación. Antes de mover la entrada contactamos con infinidad de movimientos sociales y sindicatos afines vía Twitter, a través de los 'mensajes directos'. En dicho mensaje iba adjunto un documento de tipo PAD (es decir, editable y accesible a través de Internet vía invitación) en el cual se detallaría todo el plan de difusión. Se señalaba el momento en que se movería la noticia y la hora en la que arrancaría la campaña de Stop Falsos Autónomos/as, con su correspondiente 'hashtag'. A su vez, se sugerían diferentes tuits sobre el tema, y se añadían herramientas para programar tuits, así como enlaces e información de interés. Además, hicimos coincidir el día y hora con un evento de sumo interés para la página como fue la presentación del iPhone 6. El efecto sorpresa fue total.

Valoración de la acción

La campaña se convirtió en Trending Topic en Madrid, y obligamos a la empresa a lanzar un comunicado. El apoyo de la comunidad de usuarios fue total y un buen número de medios se pusieron en contacto con nosotros/as para hacerse eco del conflicto. Eso sí, nada hubiese sido posible sin esa planificación. Tampoco sin el apoyo de otros colectivos.

4. Otros aspectos que hemos de tener en cuenta:

La importancia de la imagen y el lenguaje

Es esencial tener un mínimo conocimiento del medio que se usa; de sus reglas y normas sociales. No puedes entrar en un foro y presentarte de primeras a soltar tu speech sin parecer un vendedor/a de enciclopedias a domicilio. Tampoco puedes entrar en Meneame y marcarte un 'spam' de libro. Asimismo, cuando crees un 'hashtag' has de tener en cuenta varias cuestiones: que sea participativo, que no eche para atrás a la gente (y cuando decimos gente incluimos a los y las trabajadoras) y que se ajuste a la brevedad del medio, de 140 caracteres.

Por otro lado, si vas a redactar algo y deseas conseguir una gran difusión, procura utilizar un lenguaje que de pie a ello. En este sentido, menos siempre es más, y cuanto más fácil lo expliques, mejor.

Por último, no está de más generar contenido gráfico, ya sean 'memes' o carteles de propaganda. En este sentido, la creatividad y el humor siempre serán bien recibidas mas deberás tener en cuenta algunas pautas básicas de diseño gráfico como puedan ser la tipografía o el tipo de imagen. Una vez más, se trata de difundir, interactuar y viralizar. Difícilmente lo haremos con un cartel torpe y mal elaborado.

Interactuar, esa es la clave

De nada sirve estar en Twitter si no vamos a interactuar con otras personas usuarias. No solo has de interpelar a quien criticas, también tienes que estrechar lazos y ayudar a difundir otras campañas, no sólo las de CNT. No puedes comportarte como un ente cerrado en este tipo de redes. Lo que en definitiva queremos transmitir es que hablamos de una Red de redes. De no ser así, tendría otro nombre, ¿no es así? Por ello, es importante valerse de todas estas herramientas para difundir conflictos, informar de nuestra actividad o contribuir a que otras campañas salgan adelante. Que otros colectivos cuenten con nosotros/as para mover un desahucio o protestar contra la Ley Mordaza es señal de que lo estamos haciendo bien; de que somos un referente más. A su vez, si queremos que un conflicto o campaña tenga repercusión, hemos de informar a aquellos agentes sociales que sean susceptibles de mover nuestra causa. Un retuit de alguien con miles de seguidores/as es un gran retuit.

Conclusiones

Como se puede observar, hemos enumerado un gran número de pautas. Una serie de pasos que nos han resultado de gran utilidad y que consideramos pueden ayudar a otros sindicatos. El objetivo no es otro que mostrar la efectividad de este tipo de redes. Sabemos que no están aquí para hacernos la vida más fácil, pero al igual que la vía judicial se ha convertido en una herramienta más de presión, las redes sociales también pueden serlo. No en vano, tene-

mos un buen número de cuentas abiertas. Si todas estas se coordinasen, las acciones tendrían un empuje mayor. Ese es nuestro reto.

II. STOP Falsos Autónomos/as

Situarnos en la vanguardia de la lucha contra el fraude de los falsos autónomos/as, máxime en un sector abandonado por el resto de sindicatos. Éste es el objetivo de la campaña STOP Falsos Autónomos que lanzamos desde CNT en septiembre de 2014. Para dar el pistoletazo de salida a la misma hicimos pública nuestra denuncia contra el Grupo ADSLZone, empresa con toda su plantilla formada por falsos autónomos/as y que despidió a tres compañeros por el mero hecho de intentar formalizar su relación laboral.

La noticia fue un auténtico bombazo en Internet, medio en el que se mueve la citada empresa. Más allá del daño hecho a ésta, la cual ha sufrido por su tropelía nuevas acciones por parte del sindicato y otros colectivos, pudimos comprobar el gran apoyo recibido a la campaña en general. Fueron varios los mensajes que recibimos de trabajadores/as en la misma situación. A su vez, algunas personas se afiliaron al sindicato tras conocer la campaña. Una de ellas también denunció a la empresa en la que trabajaba como falsa autónoma. Se trata del caso de Play-Ground Magazine, otro medio online que ha quedado en evidencia de forma pública gracias a nuestra campaña. Además, el caso apunta a una resolución positiva para nuestra compañera, por lo que hemos visto la eficacia de una campaña que creemos debe tomar por bandera CNT más allá de nuestro sector.

Por desgracia, este fraude afecta a un número inmenso de trabajadores/as, de todos los sectores y en todas las provincias.Vemos muy necesario que CNT como sindicato sea la mejor herramienta que pueda utilizar el falso autónomo/a para acabar con esta condición. Los riesgos que implican para el/la trabajador/a son muy graves, dando pie al despido libre de facto. Sin embargo, muchos desconocen lo que implica aceptar este tipo de condiciones y es ahí donde creemos que CNT tiene que estar.

Asesoría y denuncias desde el sindicato

De este modo, planteamos dar un impulso a STOP Falsos Autónomos a nivel confederal, ofreciéndonos desde nuestro sindicato para articular la campaña y solventar cualquier duda que surgiese al respecto. En el anuncio de la misma se incidiría fundamentalmente en hacer un llamamiento a los trabajadores y trabajadoras para que se acercasen a su sindicato para una asesoría de su caso e interponer una correspondiente denuncia.

Debido al riesgo de un posible despido de estos/as trabajadores/as -cuya situación es muy delicada ya que no tienen derecho a prestación por desempleo-, vemos importante abrir la puerta de buscar una solución mediada desde el sindicato ante Inspección de Trabajo. De este modo, promoveríamos denuncias ante este organismo que llevaría a cabo el sindicato -con las pruebas aportadas por el/la trabajador/a en cuestión- pero quedando en el anonimato los trabajadores/as afectados/as en caso de que no quisiesen interponer directamente la denuncia.

Esperamos que la campaña reciba el apoyo de los distintos sindicatos. Estamos ante una gran oportunidad para situar a CNT como referente en la lucha contra este fraude, ante el inmovilismo de otros sindicatos y colectivos al respecto. Desgraciadamente y siendo rea-

listas, las victorias ante este fraude son lentas y pueden conllevar un gran desgaste económico en el trabajador/a. Sin embargo, estas victorias llegan y consideramos que una buena campaña que las ponga de relieve ayudará tanto a los trabajadores/as como al propio sindicato. No pasemos por alto que las multas a nivel económico que se juegan los/las empresarios/as que incurran en este fraude son muy elevadas y la simple amenaza de recibirlas puede llevar a las empresas a optar por no buscar mejores soluciones para el trabajador/a. Si a ello unimos el arma del sindicalismo activo y combativo, el resultado puede ser muy positivo. Tenemos los recursos y la fuerza para llevar adelante esta lucha y crecer como sindicato. ¡Hagámoslo!

7.9. Gabinete Confederal

Desde su aprobación en el X Congreso de 2010 y su puesta en marcha en su forma actual unificada en 2012, el Gabinete Confederal ha sido una herramienta fundamental para dotar de apoyo especializado en casos estratégicos a Secciones Sindicales y Sindicatos que lo han precisado. Sin embargo, su desarrollo e implementación práctica ha sido a menudo disfuncional con el objetivo que fue creado, principalmente por la inestabilidad en las líneas de trabajo jurídico y sindical Confederal, la escasez de recursos y formación militante de la propia CNT así como la ausencia de asesorías laborales y servicios jurídicos especializados en algunas localidades, cuestiones cubiertas por el mismo Gabinete Confederal. Por otra parte, las reformas regresivas impuestas por las políticas económicas de la Unión Europea y el Fondo Monetario Internacional, por extensión de los gobiernos neoliberales del PSOE y PP, han supuesto un incremento de la judicialización en casos de crisis empresariales y en una implosión de la negociación colectiva en general, descentralizándola a nivel de empresa y provocando profundos cambios en lo que a las reformas en los mercados de trabajo se refiere. Ello ha implicado una necesidad mayor de análisis y especialización para intervenir en dichos procesos convenientemente. A este respecto, es importante tener en cuenta que las patronales y empresas recurren con asiduidad a grandes despachos (quienes también han asesorado a los gobiernos en las reformas de los mercados laborales) para diseñar y ejecutar sus medidas. Estos despachos, a su vez, encargan informes a consultoras que justifiquen la objetividad de las políticas empresariales a implementar. Todo ello es necesario contrarrestarlo con medios e instrumentos propios, pues la experiencia nos enseña que las organizaciones del mundo del trabajo deben oponer a sus enemigos de clase un sistema organizativo como mínimo tan desarrollado como aquel al que pretenden hacer oposición o incluso cómo en el caso de la CNT, superar para implantar un modelo social y económico distinto.

Dicho lo anterior, la valoración del desarrollo del Gabinete Confederal es positiva aunque es preciso ir asentando y puliendo sus funciones así como la estructura del mismo para dotar al SPCC, Comité Confederal y Federaciones Sectoriales o Territoriales y Secciones Sindicales de apoyo técnico especializado en aquellas cuestiones estratégicas para la CNT. Recogiendo lo aprobado en el X Congreso y lo implementado con su adecuación en la práctica, así como a las necesidades detectadas en este periodo de funcionamiento, se propone que la estructura y forma de trabajo del Gabinete Confederal se establezca de la siguiente manera:

El Gabinete Confederal es un órgano técnico formado por profesionales que depende orgánicamente de la Secretaría de Jurídica Confederal y del Secretariado Permanente del Comité Confe-

deral, con supervisión del Comité Confederal. Contará asimismo con un coordinador/a del equipo de trabajo interlocutor entre el equipo técnico de profesionales y los responsables sindicales.

El Gabinete Confederal forma parte de los acuerdos y la estrategia de la CNT. Las personas que realizan su trabajo para el Gabinete, estarán sujetas a las directrices de la Secretaría de Jurídica y de los Sindicatos de la CNT, ya que en la CNT los que elaboran las directrices de sus actuaciones son los Sindicatos y no los órganos técnicos. Es necesario establecer una diferencia entre el órgano y la forma en la que puedan desarrollarse las tareas que este tenga encomendados. El trabajo profesional desarrollado como Gabinete Confederal supone que se esté sujeto a los acuerdos y estrategia sindical de la CNT. Por lo tanto la implicación debe traspasar las convenciones profesionales al uso para integrarse en los trabajos que se realicen con la consecución de los objetivos finalistas de la CNT.

Lo anterior significa romper las dinámicas profesionales que puedan suponer limitación para la consecución de dichos objetivos, debido a eventuales prácticas e interpretaciones jurídicas o económicas restrictivas. En el caso concreto de la rama del Derecho, por medio de la judicatura, este es uno de los pilares fundamentales de la reproducción del sistema capitalista y las estructuras de poder estatal. Incluso el derecho laboral como herramienta de desmercantilización y de evitación del conflicto directo que se produce en el trabajo, tiene como función el control y reproducción del sistema social vigente, a la par que ha ido incrementando su cariz mercantilizador -por disponer a los trabajadores y trabajadoras para su explotación total en los mercados de trabajos- y herramienta necesaria para la implementación ordenada de los objetivos empresariales. Lo anterior nos conduce a abordar la utilización de los marcos legislativos y jurisprudenciales como referencia a superar por la acción colectiva anarcosindical en aras de la consecución de los objetivos sindicales. Por otro lado supondrá el desarrollo de un enfoque jurídico, cuando el debate se centre ahí, que no debe ser restrictivo -se debe agotar cualquier vía por pequeña que sea- y si promovedor de sentencias y normas que puedan ayudar a la consolidación anarcosindical y caminar hacia una transformación social. La perspectiva económica se enfocará con oposición a la lógica capitalista de legitimar la propiedad privada de los medios de producción, la explotación económica y el beneficio empresarial como motor social. Por lo tanto se impulsará un enfoque anticapitalista, de redistribución hacia los trabajadores y trabajadoras de la renta, del empleo, del control empresarial y de su propiedad, con un objetivo finalista libertario y autogestionario. Asimismo adoptará un enfoque feminista y ecologista, esto es, sensible en la defensa e implementación de perspectivas de género y ecológicas. El Gabinete Confederal es pues una herramienta al servicio de la acción sindical y social de la CNT para la consecución de sus objetivos a corto, medio y largo plazo.

El Gabinete Confederal se estructura en cuatro áreas que abordaran un trabajo interdisciplinar, cuyas funciones son las siguientes:

- En general, tiene la función de asesorar presencialmente y representar en Juzgados y Tribunales en sus diferentes jurisdicciones (social, contencioso-administrativa, mercantil, penal y civil) tanto en el Estado español cómo en su dimensión europea e internacional, al SPCC, Comité Confederal, Federaciones Sectoriales y Territoriales. Asimismo, a petición de los entes citados, asesorar directamente o elaborar informes técnicos y boletines de información sobre aspectos

legales, económicos y sociales.

Gabinete Jurídico. Área Jurídica

El Área Jurídica se concibe como un apoyo de la actividad sindical y consiste básicamente en:

- Dar asesoramiento e información técnica y legal a los órganos del sindicato. El asesoramiento e información puede producirse sobre cualquier aspecto o derecho relacionado con el desarrollo de la actividad laboral y sindical, tanto en el sector privado como en el sector público. Incluye la realización de aquellos informes jurídicos que sean solicitados desde los órganos del sindicato, la actualización de conocimientos jurídicos, mediante el análisis de la doctrina judicial reciente, más relevante y la participación en jornadas formativas organizadas por el sindicato. Asistir a los órganos del sindicato en las negociaciones con la empresa o la Administración cuando se requieran sus conocimientos técnicos.

- Asumir la representación y defensa de los mismos sujetos en los procesos extrajudiciales de solución de conflictos individuales y colectivos. Asumir la representación y defensa de los mismos sujetos, en procesos judiciales, tanto individuales, como colectivos, en cualquier instancia judicial nacional o internacional; por cuanto el/la abogado/a o graduado/a social asume la defensa jurídica durante toda la vida del proceso (demanda y recursos frente a sentencia). Promover cambios jurisprudenciales que asienten derechos favorables al desarrollo de la actividad del Sindicato y sirvan de apoyo en la consecución de las finalidades de la CNT.

- Por ultimo en cuanto a estudios y formación, elaborando boletines que sean solicitados desde los órganos del sindicato y materiales técnicos para uso en general de la CNT, sobre aspectos legales y jurisprudenciales: contables, fiscales, laborales, mercantiles, concursales, administrativos y penales. En cuanto a la formación, participación en la misma en tres niveles: con los servicios jurídicos de ámbitos inferiores, con los responsables correspondientes para la negociación colectiva y con las federaciones y secciones sindicales respecto a las materias jurídicas necesarias.

Gabinete Económico. Área de Economía

El Área de Economía se estructura en apoyo a la actividad sindical, abarcando el campo de la negociación colectiva y el control anarcosindical, fundamentalmente de empresas y administraciones, y de aquellas situaciones que requieren el análisis, diagnóstico y actuación en relación a las situaciones económico-financieras y laborales. Tiene tres ámbitos de trabajo, principalmente:

- Por un lado, un trabajo de asesoramiento en la anticipación económica para las secciones sindicales y federaciones, recogiendo información de las Secciones Sindicales, emdiante fichas de trabajo sobre la situación económico-financiera y productiva organizativa de empresas y administraciones, con un volcado y diagnóstico para las mismas (ventas y producción, márgenes comerciales, productividades, estructura de costes, gastos de personal y distribución de rentas, aspectos laborales, resultados de explotación, margen de fraude económico, fiscal y a la seguridad social, estructura financiera, inversiones, etc.). Asimismo, las federaciones (sec-

toriales, territoriales) deben entregar a la Secretaría de Jurídica y el Gabinete los resultados de las negociaciones sectoriales y de empresas o administraciones que afecten a las Secciones Sindicales (tiempos de trabajo, incremento y estructura salarial, aspectos sociales, formas de control anarcosindical, etc.). Se elaborarán resultados estadísticos dos veces al año, cuyo análisis servirá para medir el alcance concreto de nuestra acción sindical. Con ello se facilitará a las federaciones las conclusiones que se obtengan del estudio de las situaciones económico-financieras para la obtención de datos que nos reflejen los márgenes en el planteamiento concreto de cada proceso de negociación, empresarial, sectorial o territorial, cómo forma de planificación de la acción sindical, el impacto económico de la acción sindical y huelga, las formas de control anarcosindical y la propuestas de política económica, laboral e industrial de los ámbitos donde se intervenga. Asimismo asesorará al Consejo de Economía Confederal en la recopilación y sistematización en forma de bases de datos estadísticos, con elaboración de indicadores económicos y sociales necesarios para medir la negociación colectiva y el control anarcosindical de empresas, sectores y de la dinámica económica general. Asimismo, para elaboración de documentos de análisis y propositivos respecto la política laboral y de rentas, política fiscal, política industrial y política económica en general, que permitan dirigirse y ahondar en las propuestas y praxis para la construcción de mecanismos de apropiación de los medios de producción y distribución así como de planificación social libertaria de la economía.

- Por otra parte, tiene la coordinación necesaria con las federaciones para el apoyo técnico del diagnóstico y propuestas en materias relacionadas con las situaciones económico-financieras y productivo-organizativas de procesos concretos. Reuniones con las federaciones y Secciones Sindicales, exponiendo las conclusiones de las situaciones económico-financieras. Asesoramiento tanto en negociación colectiva y control anarcosindical -derechos de información, consulta y control- cómo en las negociaciones de crisis empresariales o de administraciones: modificación sustancial de condiciones de trabajo, ERTEs, EREs, procesos concursales con elaboración de planes de viabilidad, recuperación de empresas y cooperativización autogestionada. Participación en asesoramiento en modificaciones de condiciones de trabajo individuales y despidos objetivos, así como en procesos colectivos que requieran de una intervención pericial contable y económica.

- Por ultimo en cuanto a estudios y formación, elaborando boletines que sean solicitados desde los órganos del sindicato y materiales técnicos para uso de la CNT, sobre aspectos económicos, legales y jurisprudenciales: contables, fiscales, laborales, mercantiles, concursales y penales. Asimismo elaboración de artículos e informes económico-jurídicos, socioeconómicos sobre territorios y sectores, mercados de trabajo, negociación colectiva, política económica e industrial, política social, etc. En cuanto a la formación, participación en la misma en tres niveles: con los servicios jurídicos de ámbitos inferiores, con los/as responsables correspondientes para la negociación colectiva y con las federaciones y secciones sindicales respecto a materias de análisis contable y económico, productivo u organizativo, de empresas y administraciones, gestión de procesos colectivos, economía laboral, estructura económica, política económica, etc.

Gabinete Social. Área Social

El Área Social se orienta principalmente al asesoramiento en la acción sindical y

social. Desarrolla su actividad en tres ámbitos de trabajo:

- Por un lado mediante el asesoramiento con la recopilación de información por medio de fichas de trabajo para Secciones Sindicales de la organización social y productiva de empresas y administraciones, con un volcado y diagnóstico para las mismas con el objetivo de contribuir al reforzamiento y cohesión de secciones sindicales y colectivos de trabajadores. Elabora herramientas para la construcción de mapas sociales en las empresas así como de las relaciones de poder en las mismas.

- Asimismo asesora en procesos de negociación colectiva, huelga y conflicto desde una perspectiva de psicología social, motivación, construcción de elementos de cohesión y fuerza colectiva, así como de desmontaje de las estrategias empresariales e institucionales de debilitación de la capacidad colectiva. Asesora a las federaciones territoriales y sectoriales respecto a la inserción social y formulas de incrementar la afiliación, participación y militancia en las empresas y el territorio. Promueve la adopción de mecanismos de democracia directa y participación social, así como de organizar a los sectores laborales no organizados. También elabora informes periciales en aspectos productivo-organizativos, relacionados con cuestiones de discriminación por género, origen, edad o cualquier otra.

- Respecto a la formación y estudios, desarrolla materiales y estudios para implementar métodos de organización de colectivos (organizing), formas de incrementar la fuerza sindical, los perfiles y motivos de afiliación/desafiliación, participación y militancia, respecto a la dinámica de los mercados de trabajos (evolución de la contratación, empleo y calidad del empleo, desempleo, etc.), grado de protección social de los subsidios, contenido y cobertura de la negociación colectiva, condicionantes sociales de las relaciones laborales e industriales, estudios sobre conflictividad laboral y huelgas, etc.

Gabinete de Salud Laboral. Área de Salud Laboral

El Área de Salud Laboral se encarga del asesoramiento en materia de prevención de riesgos y salud laboral, por parte de un equipo técnico sindical, que asesora y colabora en articulados de la materia en la negociación de convenios colectivos. Asesora sobre la normativa de Salud Laboral y Prevención. Se encarga de la información, consulta y participación con los diferentes órganos del sindicato, cuando se requieran sus conocimientos técnicos. Tiene encomendada la elaboración de Informes periciales en materia de salud, prevención de riesgos y accidentes laborales. Promueve cambios jurisprudenciales y normativos que contribuyan a la mejora de la salud laboral y la seguridad en el trabajo.

Por ultimo en cuanto a estudios y formación, elabora estudios sobre la prevención y la salud de los trabajadores y las trabajadoras que sean solicitados desde los órganos del sindicato. Lo que incluye la revisión de las evaluaciones de riesgos laborales y de las planificaciones de la prevención, así como de los planes de emergencia. Así mismo, investiga sobre las condiciones de trabajo en materia de salud y prevención de riesgos de los trabajadores y de las trabajadoras, la identificación y evaluación de riesgos laborales y la elaboración de mapas de riesgos. En cuanto a la formación, participación en la misma en tres niveles: con los servicios jurídicos de ámbitos inferiores, con los/as responsables correspondientes para la negociación colectiva y con las federaciones y secciones sindicales.

8. SECCIONES SINDICALES

Es evidente que el paso del tiempo ha ido modelando la realidad sindical de la CNT, asentando paulatinamente nuestro modelo sindical y, en los últimos años incluso han evolucionado en su composición interna. Esta realidad es desigual en el conjunto de la CNT con zonas donde el anarcosindicalismo es una existencia demostrada tanto en el seno de la empresa como en la localidad, y otras sin embargo que no poseen realidad anarcosindicalista y están emplazadas en planos difusos supuestamente teóricos e igualmente inoperativos. Acercar a la realidad anarcosindicalista a quienes no practican la lucha de clases y dotarlos de una metodología guía es urgente, además fortalecer nuestra actividad interna anarcosindicalista. Es evidente que las realidades anarcosindicalistas de las secciones sindicales se están multiplicando, pero si esto es positivo en todo su sentido plantea problemas que ya fueron resueltos parcialmente en el congreso de Bilbao de 1990. De manera que en el mismo ya se proyectaron dudas a la hora de ligar las secciones sindicales con el sindicato. Sobre todo para impedir que la actividad de las secciones se vieran como actuaciones autónomas al sindicato. Evitar esta realidad pasa indudablemente por incluir en el seno del sindicato y su estructura plenaria a las secciones sindicales existentes en el sindicato. Es decir, que el/la delegado/a de la sección sindical sea miembro con voz y voto en las plenarias del sindicato al que corresponda, estrechando las relaciones entre la sección sindical y el sindicato y dotando al sindicato de mayor peso militante a la hora de encontrar miembros para sus comités, diversificando su militancia y la composición del comité del sindicato. Además de ejercer un control por parte del sindicato de la actividad de las secciones sindicales. Evitando esa dualidad de planos inconexa entre el sindicato y la actividad que se desarrolla en el seno de la empresa.

El enriquecimiento de las plenarias del sindicato será efectivo pues dará una visión concreta de las formas de actuación marcadas por las asambleas de los mismos. Si la plenaria consiste en reuniones de trabajo del sindicato, basadas en las decisiones ya tomadas en la asamblea, este trabajo tendrá que ser desarrollado tanto por el comité –entendamos su composición clásica de SG, SO, etc.- como

por parte de las secciones sindicales que le darán conexión en el tajo correspondiente, manteniendo la actividad sindical viva y, bajo supervisión directa del sindicato. De forma que evitaremos el trabajo de francotiradores/as aislados/as de la sección y, por otra parte, enriqueceremos por medio de la acción concreta la formulación de la acción sindical de las plenarias del sindicato.

Para ello tenemos que hacer constar que no debe de existir cortapisa alguna para que los miembros de las secciones puedan ocupar –como en muchos casos ya ocurre actualmente- las secretarías del comité del sindicato. Esta visión de trabajo proyecta un trabajo doble a los/as delegados/as sindical que resolveremos en la medida de lo posible con otra de las propuestas que ya son una realidad en buena parte de nuestras secciones sindicales.

Es evidente que no existe libertad sindical en España, puesto que la Ley Orgánica de Libertad

Sindical reconoce dos vías de acción sindical en la empresa, pero en la práctica se favorece sólo a una de ellas y se persigue a la otra (la anarcosindicalista), teniendo que permanecer muchos/as compañeros/as en una situación de semi-clandestinidad o de clandestinidad absoluta, si no quieren ser despedidos/as o sufrir cualquier otra represalia por parte de la empresa. Es evidente, también, que tal situación es intolerable. Por ello hemos de adoptar medidas para la consecución del reconocimientos de las secciones sindicales-mediante la acción directa. Además de elaborar un plan general a aplicar en el ámbito nacional, encaminado a la consecución de una auténtica libertad sindical en España.

8.1 Composición de las Secciones sindicales

Es evidente que la CNT ya posee una estructura interna determinada, como objetivo último hacerse cargo de la gestión de la sociedad e implantar el comunismo libertario. En el interior de la empresa el objetivo de la CNT es hacerse con los medios de producción y de prestación de servicios, además de enfrentarse a las injusticias que provoca el sistema capitalista. Es absurdo que dicha intención programática quede reducida simplemente a una circunstancia futura o utópica, desatendiendo una plasmación metodológica y práctica en la actualidad. Dicho esto no es lógico pensar que la CNT se conforme con poseer un/a delegado/a sindical de cara a la empresa, cuando la actividad que la CNT desarrolla dentro de ella se extiende más allá de una simple interlocución con la misma. La CNT necesita desplegar una actividad que abarque campos tan amplios y complejos como la tesorería; el control de los recursos económicos de la empresa o, la prevención de los riesgos laborales -accidentes y enfermedades profesionales. Pretender que dichas actuaciones las realice una sola persona carece de sentido. Si a dichos requisitos le sumamos ser miembro del comité del sindicato, la suma de tareas evidentemente da resultado negativo, se convierte en un despropósito. Aprovechar los recursos existentes, la militancia siempre será escaso, nos lleva a plantear “nuevas” y diversas alternativas.

La ley permite a las secciones sindicales de dotarse y organizarse de la forma que deseen, es el sindicato quien decide como deben de organizarse, y decide también su organigrama interno. La CNT se ha conformado con la expresión mínima de las secciones sindicales, que en ningún momento se encuentra limitada de forma legal, ni tampoco confederal. Sin embargo la hemos asumido como un hecho incuestionable. La asunción de la expresión mínima por parte de la CNT a la hora de componer las secciones sindicales, ha sido en buena parte, un handicap pernicioso, que ha sido sustentado por su miopía a la hora de desarrollarse en el marco tanto legal, como también anarcosindicalista en el interior de la empresa. Aun hoy en día muchos/as compañeros/as piensan que las secciones sindicales son los sujetos protegidos por la ley, cuando es la actividad sindical lo que se protege, la actividad.

Por lo tanto, plasmar la estructura interna de la CNT en el seno de la empresa, debe ser otro de los objetivos a corto plazo de las secciones sindicales. Estructurando su composición con el objetivo último de llegado el momento hacerse con el control de la misma, y como objetivo a corto plazo diversificar la actividad sindical con la asunción por parte de la mayor parte de les afiliades del desarrollo de la misma. Pero es evidente que esta propuesta no puede quedar sin su pertinente concreción programática.

La sección sindical siempre que pueda, es decir, que cuente con número suficiente, se dotará del delegado/a sindical, secretaría de organización, de prevención y tesorería, así como de aquellas que áreas que crea pertinente y posea capacidad para desarrollar.

8.2 Delegado o delegada sindical

Representa a la sección sindical de cara a la empresa y a los efectos legales pertinentes. Como también es miembro del comité del sindicato y se establece como nexo de unión entre la sección sindical y el sindicato.

8.3 Secretaría de organización

Se ocupa de los preceptos organizativos, asambleas, actos, determinadas reivindicaciones de la sección, estudios pertinentes, etc.

8.4 Secretaría de Tesorería

Responsable de la recaudar las cuotas sindicales, así como de la planificación y estudios de las cuestiones económicas de la empresa.

8.5 Secretaría de prevención

Responsable de las medidas de protección y seguridad laboral en el seno de la empresa. Por supuesto que este modelo sindical más desarrollado va a contar con las mismas reticencias con las que nos topamos con nuestras secciones sindicales en la actualidad, que si bien cuenta con dichas intransigencias, lo cierto es que tanto los tribunales y, más nuestra propia acción está permitiendo que las secciones sindicales sean ya una materialización evidente y constatable en el mundo laboral. Es hora de dar otro paso adelante.

8.6. Secciones sindicales de empresa, grupos de empresa, y otros

Introducción

La actual organización empresarial ha ido buscando paulatinamente eliminar la responsabilidad contraída con las y los trabajadores. Tal es así que esta práctica se ha generalizado tanto que ha escapado al control sindical. Las empresas han superado con creces la organización sindical atomizando los procesos productivos –hoy minoritarios- como los de prestación de servicios actualmente mayoritarios-, la externalización de los servicios o de la producción suele ser una fórmula para deteriorar lo máximo posible la fuerza sindical y maximizar la explotación.

La externalización es una práctica que desde las secciones sindicales en el centro de trabajo podemos, de forma objetiva resolver, sin embargo la atomización empresarial ha tenido otras fórmulas de organización con la misma intencionalidad. Los Holding empresariales han

sido otra de las recetas organizativas para eludir las responsabilidades ante los y las trabajadoras. Así nos encontramos con que empresas o sociedades pertenecientes al mismo Grupo empresarial se contratan entre sí, y de forma ficticia mantienen no sólo su independencia jurídica, sino también la económica.

No es motivo de esta ponencia explicar las diferentes tipologías de los grupos empresariales; de aquellos que lo son de forma clara y reconocible, como aquellos que no lo son y utilizan entramados societarios, testaferros, administradores y socios para eludir responsabilidades ante las y los trabajadores. Pero si es preceptivo que entendamos a la complejidad a la que nos enfrentamos, para atender de forma eficiente el trabajo anarcosindicalista que nos permita en un futuro hacernos con los medios de producción y/o servicios.

Así nos encontramos grupos empresariales determinados por la subordinación que tienen las diferentes empresas que existen en el grupo. Bien porque los derechos de voto sobre las demás empresas la posee una matriz que controla al resto, o porque controla al órgano de administración –su nombramiento y destitución-. También existe unidad de decisión cuando, por cualquier otro medio, una o varias sociedades, se hallan bajo dirección única y, en particular, cuando la mayoría de los miembros del órgano de administración de la sociedad dominada, sean miembros del órgano de administración o altos directivos de la empresa dominante o de otra dominada por ésta. Y dicha subordinación puede darse porque una o varias empresas poseen acciones de las filiales o empresas dominadas. O bien porque las empresas dominantes participan en el capital de otras empresas, que a su vez ostentan la titularidad de participaciones sociales en otras sociedades del grupo y así sucesivamente.

La creación o constitución de filiales, a su vez, puede presentar variantes lo que viene a retorcer el conglomerado de empresas de tal forma que podemos observar como una empresa decide fragmentar su estructura, segregando partes de su actividad que quedan encomendadas a sociedades formalmente independientes. Y de otra forma, una o varias empresas del grupo deciden la constitución de otra u otras sociedades, generalmente para la prestación de servicios comunes a las mismas. Por último las empresas del grupo adquieren capital social de una empresa previamente existente, que a partir de ese momento se incorpora o vincula a las demás. Pero sin abordar dicha problemática, tenemos que destacar que en el ámbito jurídico/laboral, la Jurisprudencia ha venido a limitar responsabilidades entre aquellos grupos de empresa que posean ciertas características ayudando a limitar las responsabilidades que los mismos tengan en función de uno parámetros organizativos que no dejan de ser absurdos y contradictorios.

El grupo de empresas en el ámbito laboral

Como hemos explicado en el grupo de empresas se desarrolla partiendo de dos realidades necesarias para su existencia, sin duda alguna una es la de evitar la responsabilidad de las decisiones afecten al grupo, al ser personas jurídicas independientes. Pero la más importante es la atomización de una realidad sindical homogénea en una misma empresa, bajo una ficción jurídica que ha venido a llamarse grupo de empresas.

Adelantábamos que para mayor confusión en las relaciones de trabajo el Tribunal Supremo había creado una diferenciación que ha venido a llamarse grupo laboral de otro que es el grupo financiero.

Lo que ha hecho el Tribunal Supremo es, sin duda alguna, sacarse un as de la manga para exonerar a las empresas –grupos- de su responsabilidad solidaria. Se tiende entonces a atender a cada una de las empresas como entidades autónomas, independientes de las normas de jerarquía interna que puedan tener. Esto es, una empresa subordinada o filial recibe las órdenes pertinentes de la matriz, pero para el TS esas órdenes no son suficientes para atender a criterios de responsabilidad solidaria, y esto aun coincidiendo con la persona representante o administradora, o parte de los y las accionistas, como tampoco de que las acciones de la subordinada estén bajo el control total de la matriz.

Este hecho no ocurre en otras jurisdicciones como pueda ser la Mercantil o Civil, es únicamente en el ámbito laboral donde se necesita –para que las empresas del grupo sean solidarias en responsabilidad- que exista confusión de plantillas y patrimonio con apariencia de unidad empresarial, la prestación (por parte de asalariados) de trabajo común sucesiva o simultánea para varias empresas del grupo, la creación de empresas "fantasmas" para evitar responsabilidades, o que exista confusión de capital y patrimonio.

La importancia de la solidaridad entre empresas de un grupo significa que los y las trabajadoras del mismo podrán exigir y dirigir a cualquiera de las sociedades o personas integrantes del grupo, o a todas ellas, el cumplimiento de las obligaciones que se derivan del contrato de trabajo.

Podemos observar que las estrategias empresariales pretenden eludir el cumplimiento de sus obligaciones, pero también fragmentar la unidad de clase y de representación en las empresas del grupo.

La CNT siempre ha innovado en sus fórmulas de representación sindical, ahí las federaciones de industria, como los sindicatos de ramo. Ahora nos enfrentamos a una realidad laboral diferente, atrás quedan los métodos fordistas de producción, y es la externalización, la subcontratación o los grupos de empresas a los nuevos retos organizativos que nos encontramos. Existen otras realidad que necesitamos considerar para entender la trascendencia de estas fórmulas organizativas patronales.

Los despidos colectivos, suspensión de contratos, MSCT, en los grupos de empresas

La normativa establece que la persona empresaria que vaya a desarrollar un despido colectivo, debe de transmitir determinada información y consultar a los/as representantes de los y las trabajadores/as, esto incluye a las secciones sindicales que posean una implantación suficiente (el criterio suele ser el del 10%) sobre los motivos de dicha decisión, así como la necesidad de justificarla documentalmente.

Esas obligaciones informativas y documentales de la empresa del grupo afectada por las causas económicas, técnicas, organizativas o de producción, puede haber sido tomada bien por la empresa o, bien por la matriz. Por tanto se puede hacer una reestructuración –despidos colectivos, movilidad funcional o geográfica, como modificar sustancialmente las condiciones de trabajo- admitiéndose que las decisiones no se adopten aisladamente en cada empresa, sino que las tome quien lleva las riendas del grupo. La empresa misma a la que se refieren los despidos es la que deberá aportar todos los datos, información y documentación sobre los que se apoye la justificación de esa medida, y la que soporte la carga de probar la misma.

Complejidad que puede verse nuevamente retorcida si nos encontramos en un rupo transnacional, como ha pasado en IMESAPI (conflicto abordado por el Sindicato de Granollers) dónde para evitar la reincorporación de la sección sindical, se encomendaba a reincorporarlos en una empresa del grupo en un país de Latinoamérica.

Las medidas de objetividad, procedencia y proporcionalidad tendrán que ser analizadas por nuestra sección sindical y, siguiendo con las pautas recogidas en nuestra formación sindical, contrastadas para observar su veracidad y elaborar las alternativas pertinentes. Lo lógico es que para desarrollar ese trabajo si existiese implantación en el grupo de empresas, lo hicieran las diferentes secciones sindicales que deberían encontrarse coordinadas y en un contacto directo, al fin y al cabo trabajan para un/a mismo/a empresario/a.

Las secciones sindicales de empresa y de grupo de empresas

Es lógico comprender a quienes alejados/as de la realidad anarcosindicalista – lucha de clases- no observen estos procesos organizativos con intranquilidad, como tampoco estén preocupados/as en afrontar el trabajo complejo y militante que enfrentarse ello conlleva. Sin duda alguna necesitamos mejorar la organización y la coordinación para hacer frente a estas situaciones cada vez más comunes. Dicha mejora significa desterrar el sentido de militancia sindical de permanencia en el sindicato como un estadio pasivo, como también entender el enfrentamiento sindical bajo una premisa defensiva/pasiva donde la existencia se convierte en un único fin. Ante los grupos de empresa tenemos tres posibilidades, no excluyentes.

1) Sección sindical de empresa con un único centro de trabajo

La primera sería permanecer la estructura sindical tal y como está, esto es secciones sindicales de empres que funcionarían como las de centro de trabajo, vinculadas a un sindicato local cada una de ellas. Con este modelo necesitaríamos implantar en cada centro de trabajo de cada una de las empresas del grupo una sección sindical. Eso significaría que no se podrían afrontar con un mínimo de garantía los procesos de coordinación –nivel interno- como de representación ante la empresa o el grupo de empresas por no estar recogidos en nuestros estatutos. Y esto no es sólo una visión plenamente legal, sino de carácter interno, que casualmente son coincidentes.

2) Secciones sindicales de empresa con varios centros de trabajo

Este plan mucho más ambicioso que el primero necesita un cambio estatutario y de coordinación importante. Especialmente porque según el tamaño de la empresa, y su ámbito geográfico necesitará la intervención de más de un sindicato.

Vayamos por partes; si el ámbito de la empresa es una localidad, tendría la sección sindical de empresa la vinculación a dicha FL, de igual forma que si hubieran dos o tres centros de trabajo, las secretarías de la sección sindical estarían repartidas entre las y los afiliados en los diferentes centros de trabajo. No olvidemos que las y los delegados del sindicato deben de estar en el comité del sindicato.

Esta realidad ya la encontramos en nuestro sindicato con cierta regularidad, y entendemos que a mayor crecimiento mayor casuística. Por tanto debemos estar preparadas y preparados para ello.

Hemos de entender que la sección sindical de empresa puede tener afiliación en todos o en algunos centros de trabajo, pensamos que la mejor manera es poseer secretarías y delegados/as en todos los centros de trabajo. Como sabemos nuestros acuerdos dejan libertad para la creación de secretarías, por tanto se puede como ya ha ocurrido en algún caso establecer delegados/as de centro de trabajo y secretaría del centro de trabajo (bajo el nombre del centro) sin otra connotación. Este sistema flexible nos permite adaptar al sindicato a las diferentes realidades organizativas de las empresas, de su tamaño y composición, de tal forma que la incidencia y coordinación se pueda desarrollar en todo momento.

2.1) Sección sindical de empresa en el ámbito regional/confederal

Otra de las particularidades a las que nos estamos encontrando, es que en el ámbito regional podemos encontrarnos con empresas que tienen diferentes centros de trabajo en la CC.AA. por tanto la coordinación de la actividad sindical necesitará superar los límites locales para poder desarrollar un trabajo efectivo. Y de igual forma, sucede cuando el ámbito de la empresa traspasa el umbral de la comunidad autónoma y tiene carácter estatal.

La coordinación estaría centrada en una sección sindical de ámbito de empresa ligada al SP del CC o del CR, y directamente en su secretario de acción sindical. Es decir dicha sección sindical de ámbito de empresa estaría coordinada por el SP del CC o del CR.

El modelo a seguir significaría que en cada provincia o comunidad autónoma dónde la sección posea una secretaría, la misma adquiriría un doble canal. De una parte cubriría la sección sindical de centro de trabajo y las demás secretarías específicas propias de la sección (salud laboral, propaganda, organización, etcétera). La delegada/o sindical de centro de trabajo sería la/el responsable de la coordinación en la sección sindical en el ámbito provincial o de comunidad autónoma. Adaptando la sección sindical de empresa a cada singularidad provincial, o comunidad autónoma, pues dependerá de factores a valorar en cada momento; los centros de trabajo que la empresa pueda tener, la implantación que la sección tenga, la distribución de la implantación, etcétera.

Aun a pesar de encontrarnos sujetos aun a cierta incertidumbre en la aplicación de este modelo sindical, lo cierto es que de igual forma que una vez aprobada la sección sindical y sus secretarías, la puesta en marcha de las mismas, ha dado a conocer una realidad sindical mucho más profunda que la que se desarrollaba hasta el 2010. Aumentando la militancia en las secciones y una ampliación del trabajo a desarrollar por una misma sección sindical. Es evidente que aun nos queda mucho trabajo para mejorar las secciones sindicales pero este proceso de mejora y de método es imparable.

Aunque la implantación es un fenómeno que aun no es homogéneo, y supeditado a la orientación del sindicato. Lo cierto es que cada vez más, un número importante de sindicatos va aplicando los métodos de trabajo acordados en el Xª Congreso. En dicha implementación es donde el sindicato se visualiza como una alternativa sindical seria, que transforma la realidad en el mundo laboral, con una práctica concreta, reconocible.

Ahora bien, los trabajos de coordinación exigen mayores competencias que hasta la fecha eran necesarias. En estos momentos se necesita mayor responsabilidad, conocimiento y habilidad, para comprender la trascendencia organizativa y práctica que conlleva. De

tal forma que podemos atender a conflictos cada vez más complejos. La complejidad organizativa debe de ser abordada desde la perspectiva de crecimiento que estamos teniendo, así en nuestro sindicato se mantienen secciones sindicales de empresa, en varios centros de trabajo, y también tenemos secciones sindicales de grupo de empresas. A nadie se le escapa que las necesidades de coordinación han aumentado, pero también la afiliación y la militancia.

La formación sindical, que se ha mantenido de forma irregular con el anterior SP, esta práctica de vaivenes debe de ser sustituida por una pauta de carácter continuo que permita adaptar la militancia a las necesidades de la acción sindical, dejando a un lado la actividad exclusivamente política e intranscendental a las que parece que algunas y algunos quieren perpetuar.

Es necesario que entendamos que el crecimiento conlleva mayores responsabilidades. Asumir que la CNT no es aquella organización dónde se discutía sobre las eternas verdades, sino que es una organización sindical con implantación, con un modelo organizativo, con un modelo social determinado y único. Pasar del discurso a la acción requiere mayores grados de implicación e insistimos de metodología, y por tanto de formación.

Los comités confederales y regionales deben de estar a la altura de las actuales circunstancias, de nada sirve ir a plenos y plenarias si éstas no están asociadas al desarrollo de lo acordado en los congresos de la CNT.

Tenemos que entender el cambio que la CNT ha dado. Se ha pasado, de una prácticamente nula implantación sindical en 2007 a una realidad completamente diferente. Así nos encontramos con secciones sindicales con una fuerte implantación en diferentes empresas, como en INFOSA, Hotel Ercilla, Casa Monjes, pero también con sindicatos que al abrigo de lo acordado en el último Congreso han experimentado un fuerte auge sindical con el establecimiento y fijación de secciones que en antaño eran destruidas.

2.2 Sección Sindical de Grupo de Empresas

Finalmente nos encontraremos con los grupos de empresas una realidad en el tráfico societario que tiene un régimen jurídico y asistemático. Es ahí donde la realidad se está volviendo confusa y la representación unitaria no puede dar una cobertura sindical de forma adecuada. Tal es así que incluso en el ámbito jurídico estamos asistiendo a mesas de negociación mixtas, donde por un lado, en el banco social se sienta comités de empresa y secciones sindicales. Esto ocurre porque en las empresas del grupo coexisten diferentes realidades representativas.

Como hemos explicado las secciones sindicales son la representación del sindicato en la empresa, es el sindicato con su capacidad de autoorganización el que puede avalar un determinado funcionamiento y por tanto adaptar su capacidad organizativa a sus necesidades. La realidad de los grupos de empresas, o las empresas multiservicios cada vez son más frecuentes y la capacidad representativa mayoritaria no está adaptada a tal funcionalidad.

La CNT basa su estrategia sindical en las secciones sindicales, adaptables perfectamente a esta realidad tal y como hemos explicado anteriormente. Esto significa que la CNT se encuentra en posesión de una ventaja estratégica (potencial) sobre el resto de organizaciones sindicales. Creemos que el esquema es suficientemente claro, pues lo que se trata es de re-

petir y combinar lo descrito hasta la actualidad.

La sección sindical de grupo de empresas estará compuesta por las y los delegados de las secciones de empresa. Estas últimas compuestas por las secciones sindicales de los centros de trabajo. La sección sindical de grupo estará integrada en la secretaría de acción sindical del Comité Confederal, con el resto de delegadas y delegados de las secciones de empresa, para la coordinación de la actividad sindical.

En el Xª Congreso había personas del Sindicato que decían que el anterior modelo sindical era irrealizable hasta un futuro utópico. Lo cierto es que el modelo anterior ha resultado ser acertado y en muchas empresas se nos ha quedado corto, por tanto lo único que estamos presentando es un modelo que ya es necesario implantar para superar los márgenes limitativos que tenemos en el ámbito local.

8.7. Medidas para el reconocimientos de las Secciones Sindicales

Las secciones sindicales en buena parte de nuestra historia reciente han sido más un proyecto deslavazado –salvo honrosas excepciones- sin un programa claro y metodológico que permitiera una mínima garantía de acción sindical. Por suerte, anteriormente lo indicábamos, esta realidad está cambiando paulatinamente en muchos lugares. En estos momentos estamos evolucionando. De tener secciones unipersonales, a contar con un respaldo cuantificable de la plantilla. De media esta bascula entre 7 y 20 afiliados/as en los centros de trabajo. A pesar de no ser una realidad uniforme y mayoritaria debemos ser ambicioses asimilando aquellas estrategias globales que puedan ser trasladadas a diferentes existencias y que ya cuentan con un trabajo desarrollado.

9. SOBRE LOS DESPIDOS Y EXPEDIENTES DE REGULACIÓN DE EMPLEO

La CNT en todos sus acuerdos se ha manifestado en contra de la firma de despidos por suponer el nivel de empleo, el mecanismo para el ajuste empresarial a las crisis económicas y/o al mantenimiento de sus tasas de beneficios. En este sentido nos ratificamos en rechazar como CNT cualquier despido individual o expediente de regulación de empleo ya sea en legislación social o mercantil (concursal), es decir parcial o de liquidación. El sindicalismo entregado es el que desde la transición aplaudió la política de pactos sociales, que han llevado a sucesivas reconversiones, cientos de miles de despidos subsidiados, jubilaciones anticipadas, rotura de la solidaridad obrera, que cada cual mire por sí. A eso lleva el aceptar que en vez de a cien, echen a sesenta y cinco. Los/as que quedan humillados/as, y los que se van, se van rencorosos/as. Esa fue la reflexión del Vª Congreso del 79.

Como decimos este rechazo frontal tiene un doble sentido: a) por una parte pretende evidenciar la negativa a aceptar la gestión capitalista de las crisis o los vaivenes de la economía de mercado, y por otro lado b) pretende obligarnos a pensar, analizar y buscar alternativas coherentes

con una organización como la CNT que se pretende revolucionaria.

9.1 Sobre el primer punto es preciso aclarar que las empresas planifican el crecimiento a medio plazo (3-5 años) y los ajustes a corto plazo (1-2 años), es decir, cuando existe previsión de crecimiento de beneficios y empleo se fijan en la evolución de la empresa a medio-largo plazo y cuando existe previsión de pérdidas se fijan en el corto plazo. Esto supone que si solo nos fijamos estrictamente en el período de crisis le sirve a la empresa para justificar los ajustes en el empleo al no tener en cuenta los períodos de crecimiento y distribución de beneficios. Estos beneficios no han ido a parar a los trabajadores y trabajadoras sino a los empresarios y accionistas que los tienen acumulados en bancos, empresas paralelas de especulación, inversiones de viviendas, paraísos fiscales, en dinero negro no declarado a Hacienda, etc. Entonces un motivo central para oponerse al ajuste de la destrucción de empleo es que las rentas distribuidas como beneficio vuelvan a la producción para sostener los periodos recesivos, adoptando pues como CNT enfoques medio-largo plazo para los que el ajuste serían los beneficios y no el empleo. Cuando todo va bien los gestores de las empresas ganan mucho dinero y los trabajadores y trabajadoras sobreviven. Cuando hay crisis los gestores ganan menos pero tienen guardado y los trabajadores y trabajadoras van al paro o a cobrar del Estado, siendo el proceso redistributivo de renta entre la clase trabajadora (vía familia o vía impuestos o cotizaciones pagadas previamente al Estado). Esto es fácilmente comprobable a nivel macroeconómico donde en los últimos 30 años, no solo en España sino también en Europa y el resto del mundo, los beneficios empresariales han ido ganando terreno a las rentas salariales y teniendo en cuenta el incremento del número de trabajadores, que nos tenemos que conformar con salarios reales menores.

Asimismo otro aspecto fundamental para rechazar los despidos y expedientes de regulación de empleo es que los trabajadores y trabajadoras, nuestras secciones sindicales, acostumbran a tener menos de la mitad de la información real de la empresa. No hay que olvidar que a la mismísima Hacienda del Estado se le escapa una parte importante de los beneficios declarados por las empresas siendo el fraude fiscal abrumador. La manipulación contable está al orden del día y el propio Estado no dedica los suficientes recursos para poner coto a esto. Es por este motivo que, aparte de ser una reivindicación fundamental en cualquier momento, la información económica-financiera, cuando las empresas declaran disminución de beneficios o pérdidas es probable que los trabajadores y trabajadoras seamos engañados/as y no tengamos una información veraz y que por lo tanto hay que ponerla siempre en duda, tratando de obtener la información más correcta posible por las fuentes que sean necesarias.

9.2 Dicho lo anterior podemos abordar algunas líneas de trabajo para pensar, analizar y buscar alternativas coherentes con una organización anarcosindicalista y ponerlas encima de las mesas de negociación de los Expedientes de Regulación de Empleo. Ante una supuesta caída real de ventas o dificultad económica hay que afilar los argumentos y las estrategias y nunca aceptar despidos:

9.2.1 De entrada que los empresarios asuman las pérdidas con beneficios anteriores y/o con su patrimonio: por ej. bajada de sus sueldos y privilegios (dietas, coches de empresa), sus cuentas corrientes, sus activos inmobiliarios, etc; esto para los empresarios es inaceptable por-

qué no solo ataca a sus privilegios, sino también mina su autoridad, y sin embargo desde un punto de vista técnico es una medida que puede ayudar económicamente a la empresa aparte de ser coherente con la postura de CNT por la igualdad salarial.

9.2.2 Que se opte por el reparto del empleo sin reducción salarial, o sea con reducción salarial en el caso que exista suficiente información de la evolución real de la empresa, es decir que el conocimiento del estado de la empresa sea equiparable al que puedan tener unos/as trabajadores/as de una cooperativa u otras formas de autogestión del trabajo. En los casos de procesos concursales, es imprescindible que paralelamente o incluso antes de que se sepa la intención del empresario de presentar un concurso de acreedores, la sección sindical de CNT tiene que empezar a plantearse la posibilidad de pedir el desarrollo de un plan de viabilidad de la actual empresa así como de una eventual cooperativa con menores dimensiones para anticiparse a posibles situaciones de cierre de empresa.

9.2.3 Aspectos económicos, previa realización de un plan de viabilidad por parte de CNT en lo que se refiere a la gestión capitalista de la empresa:

9.2.4 Obligar a la reinversión en la empresa por parte de los empresarios si la han descapitalizado:

• Análisis de los beneficios de años anteriores y de la distribución por salarios de directivos para contar con ellos.

• Bienes de los administradores para supuestos de embargo preventivo y copropietarios, incluidos accionistas.

9.2.5 Valoración de activos para continuar con la actividad en forma cooperativa (mejor esperar a la fase de liquidación) a cambio de deudas con los/as trabajadores/as o con la compra de los mismos si son mayores las deudas que la valoración. A ello habría que añadir un plan de viabilidad desde la perspectiva cooperativista. La sección sindical de la CNT debe siempre plantear la posibilidad de aprovechar el proceso de liquidación de bienes para conseguir los medios de producción en circunstancias beneficiosas.

Normalmente implicaría el inicio de una cooperativa con una dimensión menor. La propuesta de cooperativa se puede y debe dimensionar al grupo de trabajadores/as y al volumen de activo (y pasivo) imprescindible para producir y mantener la ocupación dispuesta a tirar adelante. Hay que contar de entrada como grupo motor con la sección sindical: si con esos afiliados y otros trabajadores/as es posible iniciar ese camino, la dimensión de la futura cooperativa no será nunca a corto plazo del tamaño de la anterior empresa capitalista, y no pasa nada por ello mientras pueda tener viabilidad y la dimensión no sea un factor determinante para la viabilidad (como lo puede ser una empresa en según qué sectores económicos donde existe un tamaño "mínimo-optimo" imprescindible para sostenerse en el tiempo).

En el supuesto en el que no sea viable o posible la cooperativización se propone instar concurso de acreedores necesario o personarse en él, si es que algún acreedor lo ha presentado, con el fin de demostrar la culpabilidad del empresario en la mala gestión de la empresa, e intentar conseguir las mayores indemnizaciones posibles para los/as trabajadores/as, atacando el patrimonio personal del empresario para responder a esa deuda. Se trata por tanto de que el empresario pague el daño causado por los despidos y no eluda responsabilidades derivándoselas a

otros organismos como FOGASA.

9.3 Aspectos laborales:

9.3.1 Recolocación de los trabajadores en otras empresas puesto que la patronal actúa organizada. Esta recolocación tendría que incluir el reconocimiento de la sección sindical.

9.3.2 Teniendo en cuenta que la CNT no firma despidos, sin embargo sí que es necesario tener claros criterios para el tema de las indemnizaciones pues se puede conectar con el anterior punto a la hora de adquirir activos. Estas pueden ser cercanas a:

• El activo disponible o el activo y una previsión de lo que se pueda embargar al administrador debido a su gestión ilegitima o ilegal, como posible forma de relanzar la producción.

• A la que reciban los directivos que siempre será superior a la de los trabajadores y trabajadoras.

• Si es un criterio de volumen de dinero o días por año mirar la que más favorezca a los/as compañeros/as en la empresa siguiendo los dos criterios anteriores. Siempre hay que justificar que la mínima legal es insultantemente baja, puesto que por culpa de una mala gestión de la empresa encima se echa a la gente casi gratis. Por otra parte siempre se puede justificar mediante informe la necesidad de indemnizaciones muchísimo más elevados vista la coyuntura y las previsiones de paro. Siempre se pueden encontrar argumentos para exigir que las indemnizaciones se acerquen al activo de la empresa.

Es preciso pues que en procesos de Expedientes de Regulación de Empleo se traten de conseguir en las negociaciones y mediante la presión sindical estas posturas convenciendo al resto de trabajadores/as y a las otras organizaciones sindicales presentes. Por todo ello también es imprescindible contar con sistemas de asesoramiento preparados para abordar estos tipos de análisis de caso.

10. SOBRE LA NEGOCIACIÓN COLECTIVA

10.1 - Introducción

En los acuerdos vigentes del X Congreso, la CNT no tiene un posicionamiento en materia de negociación colectiva. Es por ello que esta ponencia plantea recoger algunos puntos relativos a esta cuestión y que han sido obtenidos y afianzados por Secciones Sindicales que se han enfrentado a éstos problemas en el día a día de su actividad. La relación existente entre la negociación sectorial y empresarial ha cambiado totalmente en la última reforma de la negociación colectiva en 2011. Este cambio implica que debemos cambiar nuestra forma de ver la cuestión, ya que no tiene las mismas consecuencias apostar por un tipo u otro de negociación en el año 2015, que hacerlo dos o tres años atrás. Teniendo en cuenta estos cambios legislativos, producidos en gran parte a la crisis económica y sobre todo al momento de debilidad que atraviesa la clase trabaja-

dora y el movimiento sindical, debemos encontrar un modo práctico y realizable a corto plazo que permita a aquellas de nuestras secciones sindicales con suficiente capacidad pasar a la ofensiva para mejorar sus condiciones de trabajo, y la propuesta pasa por los convenios colectivos.

10.2 – Aspectos jurídicos relacionados con la Negociación Colectiva

La reforma de la negociación colectiva de 2011 establece la prioridad aplicativa del convenio de empresa respecto del convenio sectorial, pudiendo rebajarlo en determinadas materias Por otra parte se tiende centralizar la negociación, introduciendo en la legislación la limitación de la ultractividad de los convenios. En la práctica se está traduciendo en la no firma de convenios sectoriales provinciales y por lo tanto la finalización de la vigencia de los mismos, ano ser que exista cláusulas específicas que lo impidan. Por contra se firman convenios estatales de mínimos por CCOO y UGT, que rebajan las condiciones sustancialmente, produciéndose así el empeoramiento generalizado de las condiciones de trabajo que tanto ansían patronal y capital.

En la reforma de 2012 se introducen novedades en materia de Negociación Colectiva, estableciendo preferencia a las negociaciones desarrolladas por secciones sindicales, frente a la negociación vía representación unitaria. Esto tiene matices ya que para que la negociación se desarrolle por secciones sindicales, éstan tienen que sumar la mayoría de la representación unitaria.

El derecho a la Negociación Colectiva y la eficacia vinculante de los convenios viene recogido en el artículo 37.1 de la CE, como un derecho fundamental de trabajadores/as y empresarios/as. Como dice dicho artículo, el derecho a la negociación colectiva lo ejercerán sus representantes legales. La CE no desarrolla más este concepto, si bien es cierto que la única forma de representación que contempla es la sindical Art. 28 CE. Posteriormente, la LOLS en su art. 2.2.d estableció inequívocamente que las organizaciones sindicales tienen derecho a la negociación colectiva, por lo que no cabe ninguna duda, combinando lo dicho en una y otra ley, que todas las organizaciones sindicales son sujetos que ejercen la representación legal de los trabajadores/as, en el momento mismo en que todas ellas sin excepción pueden negociar colectivamente.

Por otra parte, el ET también contiene formas de representación de los trabajadores, todo su Título III está dedicado a la negociación colectiva, por lo que la única conclusión lógica que cabe es que con la redacción del ET se dio lugar en el Estado Español a un sistema dual de representación de los/as trabajadores/as, estando de una parte la representación sindical, formulada en la CE y la LOLS, y de la otra la creada por el ET, que recibe el nombre de representación unitaria.

En el ordenamiento jurídico vigente, la representación sindical dentro de las empresas la ejercen las secciones sindicales, las cuales son una prolongación de la organización sindical en la empresa y necesitan de implantación, es decir afiliación, para tener legitimación. En la representación unitaria la representación recae sobre delegados/as de personal y comités de empresa, elegidos mediante elecciones sindicales, que les otorga la llamada representatividad como forma de legitimación.

Como dice el Art. 37.1 de la CE un convenio colectivo firmado entre sindicatos y empresarios/as siempre será vinculante, porque así lo dice la CE, independientemente de que pueda ser estatutario, es decir, negociado según lo establecido en el Título III del ET y por tanto

via representación unitaria, o extraestatutario, negociado de cualquier otro modo que, siendo legal, no siga los dictados del Título III del ET, por ejemplo si toda la representación sindical que negocia está desvinculada de la unitaria, como sucede en el caso de la CNT.

La principal diferencia de negociar un convenio por una u otra vía se encuentra en la eficacia de los convenios. Un convenio tendrá eficacia general si se negocia por la representación unitaria y en cambio la eficacia será limitada si se negocia por representación sindical. Esto no tiene porque suponer una limitación ya que hay formas de convertir la eficacia limitada de un convenio en eficacia general mediante pacto de fin de huelga. Además en la práctica los convenios extraestatutarios o de eficacia limitada se suelen aplicar a todos trabajadores/as del ámbito en cuestión para evitar la afiliación masiva a los sindicatos firmantes, puesto que solo afecta a las partes que hayan firmado dicho convenio.

Dicho todo esto, tenemos vías jurídicas para la negociación de convenios colectivos, en los diferentes ámbitos. En el centro de trabajo o empresa, por medio de la Sección Sindical cuya ámbito de constitución deberá ser acorde con del ámbito de negociación. No olvidemos las ventajas de poder elegir el ámbito de la Sección Sindical que nos da nuestro modelo sindical, sobre todo la de centro de trabajo para romper con la externalización y la fragmentación de la clase trabajadora. También existe la opción de la negociación sectorial por medio de la implantación como forma de legitimación.

Y por último apuntar la posibilidad de los convenios franja, en la que la legitimación de una sección sindical para negociar un convenio de este tipo, se obtiene por medio de votación directa. Este tipo de convenio puede suponer una oportunidad de entrada en las grandes empresas.

10.3 – Representatividad - Implantación

A día de hoy el efecto paraguas que podían tener los convenios sectoriales en el pasado ha sido tremendamente erosionado, de manera que dicha cobertura ya no parece que pueda darse desde las plantillas grandes y cohesionadas hacia las pequeñas y precarizadas. Más bien parece que quienes pueden hacer ahora de paraguas son las organizaciones sindicales si, como se hacía antiguamente, trazan sus propias tablas de mínimos en cada sector a nivel primero interno, dentro de la propia organización, en lo que podríamos llamar una elaboración de "convenios internos", para después pelearla conflicto a conflicto y huelga a huelga en todas las empresas que se pueda, buscando el contagio con el llamado "efecto espejo".

Bajo toda esta cuestión, subyace el debate representatividad o implantación. Dos modelos diferentes por un lado: representatividad, con audiencia electoral y petición del voto anónimo, tiende de manera natural a estructurar las cosas de arriba hacia abajo. Con el reconocimiento institucional que otorga la representatividad, se abre de negociación "arriba", y luego se trata de llevarla a los sectores y a las empresas. Es un modelo más apto para sindicatos con vinculaciones políticas, que tiene interés por obtener reconocimiento institucional, entrando así el sindicato en juegos multifactoriales más amplios que el del propio mundo laboral y donde éste es una pieza de tantas otras que en un momento dado puede ser moneda de cambio. Por ejemplo LAB, además de CCOO y UGT.

Si por contra tomamos un sindicato que apoya su legitimación en la implantación, y no en la

representatividad, como CNT, entonces lo lógico es actuar en sentido contrario, empezar por fortalecer y unificar las condiciones de trabajo empresa por empresa, y sólo a partir de tener esta asignatura totalmente cubierta, dar entonces el salto a la negociación colectiva sectorial. En los años 80 estaba cubierto el apartado de tener implantación en numerosas empresas, no de CNT, y un clima de combatividad que hoy no hay, y en ese contexto la negociación de empresa era un paso atrás, cuando hoy es en realidad el primer paso a dar debido a que hemos retrocedido muchísimo más.

10.4 – Negociación colectiva empresarial o sectorial

Creemos que la CNT a día de hoy debe apostar por la negociación en el ámbito empresarial, en primer lugar porque es en el único ámbito donde podemos aspirar a movernos con fuerza dada nuestra situación actual, ya que empezamos a tener secciones sindicales fuertes en algunas empresas. Si empezamos aspirando a entrar en la negociación sectorial, a lo que nos condenamos de facto es a ser sindicato escoba, que como mucho podrá elaborar críticas o aplausos a lo que hacen otros, pero que no podrá tener un papel protagonista si no hace antes sus propios deberes, es decir si no consigue la implantación necesaria.

Por otra parte, optar por la negociación colectiva de empresa como estrategia general, no debe significar abandonar la pretensión de que en un mismo sector se den unas determinadas condiciones de trabajo generales. Hay algunas excepciones en las que se ha entrado en negociaciones o incluso firmado convenios sectoriales autonómicos, como son las auxiliares de infantil en Aragón o fincas urbanas en Cantabria, pero esto también puede lograrse si desde el propio sindicato se abre una ofensiva empresa por empresa, de manera gradual.

Es más conveniente alcanzar un determinado logro objetivo mediante una pelea planificada, sistematizada y organizada por los propios implicados, con el correspondiente de empoderamiento colectivo, esto con implantación, que alcanzarlo por una determinada aquiescencia institucional como es la representatividad. Puede ser el caso de algunos convenios sectoriales firmados por UGT y CCOO como el comercio y la hostelería, que están ausentes en la inmensa mayoría de empresas del sector ya que muchas ni suman 6 empleados, imposibilitando siquiera la convocatoria de elecciones sindicales.

No es lo mismo, dado el actual contexto legislativo, tomar como estrategia la elaboración de un "convenio interno" en el sindicato y luego pelearlo empresa por empresa en aquellas donde podamos, que tratar de correr a firmarlo en el sector en un momento puntual de fuerza, ya que cualquier sindicato amarillo puede después echar por tierra esa realidad con un pacto de empresa que empeore lo firmado en el sector.

La idea de ir firmando empresa por empresa fomenta, además, la idea de afiliación forzosa. La plantilla que se afilie al sindicato podrá tener unas condiciones dignas, la que no lo haga, queda a expensas de lo que dicte la empresa de forma unilateral. Las empresas sindicalizadas deben servir como espejo para las que no lo están, buscando de esa manera, extender la presencia del sindicato en los diferentes sectores a fin de lograr la mayor implantación.

En definitiva, vemos más óptimo centrar nuestra estrategia en la consecución de convenios de empresa o centro de trabajo. Para conseguir esto es necesario sindicalizar las empresas con la he-

rramienta de las Secciones Sindicales. Si no conseguimos aumentar el poder sindical a nivel de empresa no vamos a estar en disposición de mejorar las condiciones de trabajo, ni frenar el deterioro generalizado de éstas. La fuerza de la clase trabajadora es una fuerza colectiva, por eso la CNT debe buscar el reconocimiento de la clase obrera, poniendo de manifiesto el conflicto de intereses entre empresarios y trabajadores mediante la acción sindical constante.

11. ACCIONES A FAVOR DEL EMPLEO

Introducción

Esta ponencia pretende abordar de forma estructurada propuestas entorno a posibles acciones a favor del empleo aplicables por la CNT. Es importante preguntarse qué podemos proponer y aplicar para reforzar una salida de la crisis reduciendo el impacto que estamos sufriendo. Las medidas de política económica y laboral que se vienen aplicando no hacen más que reforzar el impacto negativo de la crisis económica sobre el empleo y las condiciones del mismo. Es por este motivo que se hace necesario proponer y proceder a aplicar medidas que por un lado sirvan para mitigar el impacto de la crisis contra la clase trabajadora y por otro sirvan para reforzar el vector organizativo de la CNT a la vez que se den pasos, aunque sean pequeños con políticas sindicales orientadas la cobertura del trabajo socialmente necesario con contraprestación de recursos para la vida digna, al pleno empleo y el trabajo garantizado con control anarcosindical, hacía el modelo socioeconómico que defendemos autogestionario y comunista libertario.

Precisamente una de las principales expresiones del conflicto entre capital y trabajo se da en las crisis económicas. En las épocas de crecimiento económico es donde se pueden conseguir mejoras en términos de incremento del nivel de ocupación, de mejores condiciones de vida o de salario real independientemente que los beneficios crezcan más (como ha sido el caso del Estado español). Sin embargo en las épocas de crisis, el primer ajuste suele ser la reducción de plantilla y de salarios si le es factible a la empresa, independientemente que existan reservas monetarias o beneficios distribuidos ya. La justificación en las épocas de crecimiento para la contención salarial o la restricción al crecimiento de la ocupación es la necesidad de la competitividad y por lo tanto la viabilidad de la empresa a medio y largo plazo. Asimismo la justificación en épocas de crisis es la viabilidad en el corto plazo para hacer frente a la caída de las ventas y restablecer los equilibrios entre ingresos y gastos.

Dicho lo anterior, en la presente ponencia vamos desarrollar tres propuestas a favor del trabajo y el empleo, cómo política económica especifica desde el anarcosindicalismo.

11.1.- Control sindical de la oferta de trabajo en la negociación colectiva y asambleas de parados y paradas

Desde una perspectiva anarcosindicalista, tanto histórica como actualmente, uno de los principales objetivos ha sido encuadrar en nuestra organización a una mayoría de la clase trabajadora

para con ello conseguir el objetivo de una revolución social. Los mecanismos aplicados para ello a nivel de técnica sindical, se han fundamentado siempre en la necesidad de que los sindicatos controlen la oferta de trabajo, es decir, que la mayoría de trabajadores y trabajadoras estén afiliadas a los sindicatos de forma que las empresas deban recurrir a las organizaciones obreras para las políticas de contratación. Asimismo esta cuestión facilita la oposición a los despidos o empeoramiento de condiciones de trabajo. Esta es una fuente fundamental de poder de los sindicatos y por supuesto es una medida dirigida a asentar cualquier control sindical y del empleo en las empresas.

Históricamente han existido dos variantes de una misma medida. Por una parte estaría el llamado "taller cerrado" donde la persona empresaria debe contratar a quien propone el sindicato, y por otra el llamado "taller sindicado" donde la contratación la decide la persona empresaria pero los y las trabajadores/as se afilian a los sindicatos presentes en la empresa. La primera opción ha sido asumida por la CNT desde sus inicios y debe seguir siéndolo, llegando incluso a pactarlo en convenios colectivos sectoriales1. Asimismo la CNT debe promover, mediante pacto de empresa o negociación colectiva de ámbito superior (grupo de empresa, sector, territorio, etc), introducir la gestión de una bolsa de empleo con criterios objetivos y controlada por las secciones sindicales de CNT. La segunda opción siempre es factible en tanto la CNT tenga presencia suficiente en la empresa y promueva la afiliación de los nuevos contratados como tarea de los afiliados y las afiliadas ya presentes. También es factible si existen otros incentivos para la afiliación, como por ejemplo la existencia de un convenio de empresa en el que se requiera la afiliación al sindicato para que sea aplicado.

En cualquier caso, el objetivo es ganar terreno a un aspecto fundamental del poder y disciplina laboral impuesto por las empresas capitalistas, que en época de crisis puede ser mucho más discriminatorio si cabe. Asimismo se pueden sustituir los servicios públicos de empleo y sobre todo los privados como las ETT's, que precarizan las condiciones laborales y de vida y dificultan la organización de la clase trabajadora para conseguir mejoras. Esta medida aparte de reforzar la capacidad negociadora permite que el sindicato pueda priorizar la contratación de quien sea la persona más necesitada económicamente y se ajuste a las características del puesto de trabajo. Ello implica recuperar los elementos básicos de solidaridad entre los y las trabajadores/as y la posibilidad de romper paulatinamente con la división que impone el sistema capitalista y la estructuración de los mercados de trabajo capitalistas, entre personas empleadas por un lado y personas en situación de precariedad y de desempleo por otro.

Lo esbozado en el párrafo anterior, se circunscribe al aspecto de entrada al empleo. Respecto a las empresas en crisis, a los procesos de empeoramiento de condiciones de trabajo, estancia en el empleo, y a la salida del empleo y de los mercados de trabajo, se hace necesario implementar por negociación colectiva de empresa o superior, cláusulas de inaplicación de las reformas laborales neoliberales, con medidas de anticipación a los despidos, incremento del control anarcosindical, etc. Estas medidas pueden ser desde periodos de consultas más amplios, la limitación de los motivos por los cuales se establecen causas económicas u otras para implementar los despidos o modificaciones de condiciones de trabajo, la ampliación de los derechos de información y el acceso a los libros de contabilidad, etc. Asimismo se deben implementar propuestas como la de la inversión del derecho de opción hacia los y las trabajadores/as entre readmisión e indemnización en caso de despido improcedente o clausulas de subrogación en caso de cambio

de titularidad de empresa, entre otras. Todo ello puede acotar totalmente el margen de actuación de las empresas capitalistas en cuanto a los despidos y modificaciones, permitiendo a las secciones sindicales defender las posiciones con mayor capacidad de intervención.

Vinculado al aspecto de la oferta de trabajo existen las Asambleas de Parados/as que han renacido en esta época de crisis. Las Asambleas de Parados/as tienen cierta tradición histórica en zonas como la comarca del Gran Bilbao (Bilbo, Barakaldo, Sestao, Erandio, etc.) o en Andalucía. Su funcionamiento se centra en organizarse para conseguir un puesto de trabajo para sus miembros. Internamente desarrollan un sistema de rotación para acceder a un empleo siguiendo una lista preestablecida en base a criterios de necesidad de la personas trabajadora o su familia. El mecanismo es ejercer presión a las empresas para que sea la Asamblea de Parados/as quien suministre la mano de obra que necesite eventualmente la empresa o que se proceda a ampliar la plantilla reduciendo la jornada laboral general. En los años 2009 y 2010 el fenómeno se extendió a presionar a los ayuntamientos o servicios públicos de empleo, para que los empleos que se crearan en base al Plan E fueran cubiertos por los y las trabajadores/as más necesitados, tal como fueron las importantes experiencias desarrolladas por la CNT en Lebrija o Rota. Este tipo de Asambleas de Parados/as se enfocan a buscar empleo en sectores donde la mano de obra no es especializada (manufactura, servicios de distribución, etc) o si lo es, está vinculada precisamente a sectores que reciben inversión pública (construcción). En este sentido existe una limitación en el campo de actuación de las Asambleas de Parados/as con los empleos que sí requieren una especialización concreta. Este vacío, o incluso la misma función de las Asambleas de Parados/as, lo podrían cubrir las secciones sindicales, sindicatos o Federaciones Sectoriales de la CNT, reforzando sus estructuras internas. Por contra, las Asambleas de Parados/as tienen la ventaja que permiten una acción fácilmente unitaria ya que no se pide afiliación sindical previa, aunque sí un compromiso fuerte con la acción colectiva diseñada (paros, concentraciones, etc.). Asimismo pueden tener una mayor vinculación con el territorio, proponiendo e intentando aplicar medidas como la gratuidad de los servicios de transporte y energía para desempleados/as, la disminución de precios de bienes básicos, el impulso de cooperativas de consumo, etc.

Por lo tanto la CNT impulsará asambleas de parados/as propias o participará en las ya constituidas cómo instrumento para conseguir empleo para los afiliados y afiliadas, así como medidas de protección social para evitar la pobreza.

11.2- Reducción de la jornada laboral y reparto del empleo

Como política económica y laboral específica del anarcosindicalismo, se debe implementar la reducción de jornada laboral sin reducción salarial y el reparto del empleo existente. Existen antecedentes en el Estado español de reducción drástica de la jornada laboral por medio de luchas sindicales como la huelga de “La Canadiense” en 1918 (jornada de 8 horas, 48 semanales) o las luchas en el ramo de la construcción de Sevilla en 1936 (jornada de 6 horas. 36 semanales). En este último caso las reivindicaciones horarias no estaban aisladas e incluyan jornada de trabajo, cuantía de los salarios, control de los despidos, desplazamientos, días festivos y paralización de los trabajos, destajos y horas extra, duración del contrato, acción y control sindical, enfermedades y ausencias del trabajo, vacaciones y organización laboral. Los trabajadores de un sector clá-

sicamente desregulado como la construcción, en otro momento histórico, pudieron sostener un pulso a la patronal hasta firmar unas bases con sustanciales mejoras.

En un contexto como el actual, de crisis económica muy dura y con un incremento indecente del paro, las organizaciones obreras están retomando la histórica consigna de reducción de la jornada laboral para atenuar los efectos de este paro salvaje. Si bien la reducción de la jornada laboral y el reparto del empleo son buenas herramientas para reducir el paro, son insuficientes por sí solas. Asimismo la reducción de jornada debería ser lo suficientemente importante para que no fuera compensada por un incremento de la productividad de los mismos trabajadores/as empleados/as. En todo caso los elementos fundamentales a tener en cuenta a la hora de hablar de reparto del empleo se sintetizan e interrelacionan mediante las siguientes variables: trabajo mercantil (asalariado) y trabajo no mercantil (doméstico y comunitario), población activa, nivel de empleo, paro forzoso, jornada laboral (incluyendo transporte), tiempo libre, nivel tecnológico, formación, esfuerzo laboral y productividad, organización del trabajo, producción, nivel de salarios y beneficios empresariales, sectores económicos y actividad concreta a los que se puede referir la propuesta (agricultura, industria o servicios, así como sector privado o público), límites ecológicos al crecimiento económico o la evidente correlación de fuerzas entre clases sociales y las instituciones que las representan (sindicatos, patronales y Estado).

Es necesario un análisis sobre las posibilidades de imponer una reducción de jornada semanal o alternativamente una reducción mensual, trimestral o anual con una distribución semanal en función de las condiciones económico-estructurales de las empresas dónde tengamos presencia. Por otra parte es necesario valorar la opción de si, a la vez que se reduce jornada, es posible reestructurar el empleo de la empresa, eliminando cargos directivos y de supervisión para reducir jornada y ampliar el nivel de empleo productivo, cambiando con ello a nuestro favor las relaciones de poder en las empresas capitalistas. Lo mismo para el aspecto de la financiación de la medida: una reducción de jornada sin reducción salarial supone una carga financiera importante para la empresa que será necesario financiar con beneficios actuales y anteriores, con reducción de los altos salarios de la dirección o con otras opciones a estudiar en cada caso concreto. Por lo tanto, la CNT integrará en las negociaciones colectivas cláusulas de reducción de jornada laboral y reparto del empleo, sin reducción salarial o con reducción salarial de los salarios más altos (especialmente los referidos a los ambitos directivos y ejecutivos de las empresas), con el objetivo de crear empleo, eliminando horas extra, destajos y pluriempleos.

11.3.- Recuperación de empresas y cooperativas autogestionadas

El fenómeno de la recuperación de empresas y la cooperativización no es nuevo. Se dio en crisis anteriores como la de los años 70 y 80 en el Estado español, con importantes experiencias en Cataluña, y se está dando más tímidamente ahora. En Argentina, a raíz de la crisis de 2001 se procedió también al desarrollo de un movimiento parecido que se extendió hasta casi las 200 empresas.

Cuando se plantea la cuestión de la recuperación de empresas es crucial señalar la importancia de la afiliación y práctica sindical previas. Querer cooperativizar una empresa en funcionamiento sin una tradición de lucha sindical, es un salto grande y obliga a reforzar el trabajo para con-

seguir resultados. La praxis sindical enseña a organizarse colectivamente, a establecer plataformas reivindicativas, y a abordar los problemas colectivos de forma que se implique el máximo de trabajadores/as posible. Además, normalmente las secciones sindicales analizan la información económica de la empresa y del sector económico, junto con estudios de mercado para en caso de conflicto laboral estudiar los competidores y los clientes. Esta información y praxis sirve eventualmente para apoderarse de los medios de producción y gestionar una empresa cooperativizada y autogestionada.

Otros aspectos que pueden dificultar los primeros pasos de la cooperativización de empresas son el hecho de actuar dentro de los mercados capitalistas y por lo tanto sujetos a su disciplina. En los procesos de recuperación de empresas se generan a menudo situaciones difíciles propiciadas tanto por los/as proveedores/as en el aspecto de financiación de las materias primas, como con los y las clientes y competidores/as. En general las cooperativas se encuentran con más dificultades para conseguir financiación que las empresas capitalistas. Asimismo, no todas las empresas es posible que sean cooperativizadas a corto plazo. Ya sea por su tamaño o por su inserción en la cadena de valor puede no ser factible recuperar la empresa. Es necesario pues analizar cada caso concreto y sobretodo buscar mecanismos para evitar la destrucción de puestos de trabajo o medidas que supongan una carga perjudicial hacia los trabajadores y trabajadoras.

La recuperación de empresas y el impulso de cooperativas, en los casos donde sea posible, sirve para evitar la destrucción de puestos de trabajo o para crear nuevos puestos cuando los trabajadores y trabajadoras tienen el control de los medios de producción. En todo caso, es evidente que las empresas recuperadas y cooperativizadas permiten mayor flexibilidad a la hora de adoptar medidas de ajuste que no se van a basar prioritariamente en la destrucción de los puestos de trabajo sino en otro tipo de medidas, como por ejemplo aumento de jornada, disminución de salarios, establecimiento de rotaciones o repartimiento de reservas monetarias para aguantar los períodos económicos recesivos. Asimismo las medidas que se aplicasen tendrían carácter temporal para con los/las trabajadores/as afectados/as y serian asumidas y aplicadas de una forma más lógica por parte de los implicados.

En este sentido hay consenso en que la organización económico-productiva de las empresas es mucho más eficiente si los trabajadores y trabajadoras participan en la toma de decisiones. Esta mejor eficiencia se explica por varios motivos. Por una parte existen mayores incentivos al trabajo dado que se tiene un mayor nivel de acceso a la información y la participación de los trabajadores/as. A ello le podemos sumar una disminución de los costes de control y supervisión al eliminar el conflicto entre capital y trabajo. Por otra parte ello implica un incremento de la productividad impulsado también por una distribución igualitaria de los beneficios y unos altos niveles de estabilidad laboral. Se desarrollan pues procesos pedagógicos, técnicos y políticos a la vez, que ayudan a asentar y mejorar dicha eficiencia si la cooperativa se superpone a las dificultades económicas propias de los contextos de crisis.

Este modelo empresarial también tiene ventajas en los países en vías de desarrollo o en contextos económicos depresivos en territorios concretos, caso de muchas comarcas azotadas por el desempleo y la pobreza hoy en día en el Estado español. Por una parte permiten un mayor crecimiento económico y una mayor tasa de inversión. También evitan la polarización de los estratos sociales al restringir las desigualdades de ingresos. Asimismo eliminan la explotación de la

gerencia a la fuerza de trabajo. Por otra parte crean recursos humanos al proporcionar experiencia administrativa y gerencial. Por último fomentan la educación política más allá de la empresa, pues la gente que se siente capaz de gobernar su futuro económico también se sentirá capaz de participar en actividades sociopolíticas.

Por lo tanto, la CNT promoverá siempre que le sea posible, la recuperación y cooperativización autogestionada de empresas en crisis para que sean administradas por los trabajadores y trabajadoras, adoptando esta postura cómo criterio de negociación ante las dirección empresariales o las administraciones concursales. Estas cooperativas se integrarán en las redes de economía alternativa que se impulsen desde la propia CNT.

12. POLITICA SINDICAL Y SOCIAL DE LA CNT: PROGRAMA ECONÓMICO Y SOCIOLABORAL

12.1.- Introducción

Se establece un acuerdo marco de trabajo estratégico y orientación a la acción sindical fundamentalmente, pero también a lo relacionado con las condiciones de trabajo, vida y subsistencia de nuestros/as militantes, en lo referente a la política social. Se trata con ello de fijar algo más que criterios de negociación colectiva en las empresas, sectores o territorio si bien estos se han recogido de anteriores Congresos como el X de Córdoba, y también algo más que una plataforma reivindicativa para exigir cambios al poder institucional, constituido. Es preciso por un lado, dotar de profundidad a la acción anarcosindicalista en las empresas y territorios dónde intervenimos, siendo ambiciosos/as en nuestros planteamientos. Por otro lado debemos dotarnos de una guía de acción autónoma que no nos haga depender de las decisiones de otros, en este caso del poder económico e institucional, y que sirva para marcarnos la agenda y aquello que vamos a implementar, forzando el cambio a dichas instituciones según las necesidades e intereses de las clases trabajadoras en nuestros territorios. Por tanto, tratamos de fijar una orientación clara para nuestras organizaciones y nuestras militantes, así como para la sociedad en general, en cuanto a la política sindical y social de la CNT a implementar en los próximos 4 años. Con ello queremos promover mantener la acción autónoma orientada y vigente en el día a día, desmarcándonos de los ciclos políticos y parlamentarios, así como también de los fenómenos mediáticos.

A ninguna persona militante se le escapa que la CNT, cómo organización finalista y revolucionaria que es, no puede basar su acción en la improvisación o en la implementación de acción que no vaya a la raíz de las contradicciones sociales asociadas a la lucha de clases, a la confrontación con las formas de dominación económica, social y política del sistema capitalista. Asimismo, la CNT no puede dejar de lado prefigurar en su accionar la nueva sociedad que quiere ayudar a construir con el resto de agentes dispuestos a un cambio social radical. Por poner un ejemplo, no es lógico que nuestra organización dedique principalmente sus esfuerzos y tiempo de debate al desarrollo de “campañas” y “movilizaciones”, que si bien es necesario y positivo ha-

cerlas, para una implantación efectiva de la CNT cómo organización con proyecto sindical y social propio, es cualitativa y sustancialmente insuficiente. Haciendo autocrítica, creemos que hace falta mucha mayor profundidad de análisis y acción en las empresas, administraciones y territorios, mucho mayor esfuerzo de concreción en la definición, seguimiento y consecución de objetivos propios y, por supuesto, mucho mayor esfuerzo en el desarrollo de la acción sindical y social bien orientada para el fortalecimiento organizativo y la confrontación con las instituciones del poder capitalista, si lo que realmente se quiere es trascender el "statu quo" y marcar una línea de acción útil tanto para nuestras personas afiliadas y militantes, cómo para el conjunto de las poblaciones del Estado. Desde el X Congreso se ha empezado a asentar una metodología de trabajo sindical y social en esta línea que se debe consolidar y ampliar sustancialmente a partir del XI Congreso, por lo que esta ponencia pretende establecer las bases para ello. Es pues el método de acción colectiva orientado por las ideología y la orientación política, junto con la eficiencia (utilizar de la mejor forma posible los recursos escasos) y eficacia (ir consiguiendo los objetivos prefijados), lo que nos puede hacer avanzar cómo organización revolucionaria. En un marco de crítica y autocrítica, ser eficaz y eficiente es algo que se puede medir y evaluar, y supone una forma de superar el voluntarismo, la improvisación y la falta de valoración de los resultados. Debe servir para avanzar correctamente y subsanar errores, así como para establecer y repartir responsabilidades por la acción (en positivo y en negativo) o por la omisión.

Así pues, se pretende la aprobación de este marco de trabajo e intervención en el XI Congreso, de forma que se ponga en marcha en los plazos indicados en el último epígrafe, siendo valorado, revisado, actualizado, profundizado y mejorado en los siguientes Congresos Confederales.

12.2.- Objetivos de la política sindical y social de la CNT

Debemos partir de la concepción que el objetivo de la CNT es el comunismo libertario, que si bien a día de hoy es evidente que en el corto plazo estas finalidades no se van a llevar a cabo, sin embargo ello nos sirve como guía de actuación, como objetivos en las empresas capitalistas o estatales, cómo forma de articulación y vertebración social, de forma que el Sindicato, la Federación Sectorial y la Sección Sindical puedan adoptar diferentes posturas y grados de actuación según sus fuerzas dentro de una política sindical revolucionaria.

No pretendemos un cambio revolucionario, o mismamente caminar hacía él, con una perspectiva de empeorar las condiciones de trabajo y vida actuales, sino todo lo contrario. Por lo tanto, fijar posiciones a estos niveles es fundamental. Por otra parte las crisis capitalistas y la propia gestión capitalista de la economía y las instituciones de poder social, implican una tendencia a la estabilización sistémica que impide una transformación radical.

Por tanto es necesario que la política sindical de la CNT se confronte a las políticas de estabilización y reestructuración capitalista provocando si es preciso una desestabilización desde la perspectiva de la gestión empresarial y estatal. Esta desestabilización debe conducirnos a una desestructuración y disolución de las instituciones del poder capitalista para, en paralelo, al mismo tiempo, sustituirlas por instituciones económicas y políticas autogobernadas y autogestionadas. La política sindical de la CNT en el corto plazo se sustenta en aplicar posturas de

"máximos", significa marcar una línea con perspectiva de resultados en lo material pero cualitativamente más profunda para el avance social, para enfrentarse y gestionar los retos que imponen las actuales relaciones laborales, económicas y sociales. Por lo tanto, toda acción anarcosindicalista debe estar orientada en su accionar diario a la creación constante de condiciones colectivistas, comunistas y libertarias hoy y en los lugares donde intervenga la CNT.

12.2.1.- Secciones Sindicales, Federaciones Sectoriales

En lo referente a las empresas y administraciones, la actividad de cualquier Sección Sindical pasa por diferentes fases en su desarrollo e implantación, así como también, las Federaciones Sectoriales que agrupan a éstas Secciones Sindicales. En términos generales podemos clasificar estas fases en función de la intencionalidad y capacidad de la Sección Sindical de incidir en los aspectos económicos y laborales de la empresa, así como también, por otra parte, en las materias concretas en las que se incide y los dispositivos que se utilizan. La Sección Sindical es la extensión del sindicato en la empresa y por ello se dota de los mismos principios y finalidades, es decir, la acción directa y la apropiación de los medios de producción con el objetivo de implantar el comunismo libertario.

Se pueden dar diferentes fases en las que se puede encontrar una Sección Sindical, sus objetivos en cada momento, según la profundidad de la política sindical implementada. El grado de profundidad, a corto plazo, irá muy relacionado con el tiempo que lleve una Sección Sindical funcionando en una empresa, así como por el nivel y preparación de la afiliación y militancia para afrontar los objetivos en la misma. La práctica sindical se puede orientar en estas diferentes perspectivas:

- Perspectiva reivindicativa o Incumplimientos de convenio colectivo y otra regulación laboral.

Una actuación en esta perspectiva es la habitual en la mayoría de empresas, puesto que siempre existen incumplimientos de los derechos laborales, sean estos leves o graves. Para hacer frente a este tipo de cuestiones, además del asesoramiento jurídico y económico es necesaria la acción directa para no dejar solo en manos de juzgados e inspección de trabajo la resolución de los incumplimientos empresariales.

o Mejora de convenio colectivo de empresa/administración, sector o territorio

La reivindicación de mejores condiciones económicas, laborales y sociales como los y las trabajadores/as adopta una dimensión superior y un salto cualitativo importante en la medida que tenemos la posibilidad de negociar un convenio colectivo propio. En la mayoría de casos, las reivindicaciones que van a suponer mejoras en diferentes ámbitos de las empresas, también suponen conectar necesariamente con una perspectiva progresiva, de incremento del poder sindical en la empresa, por medio de negociar mayores derechos sindicales de información, consulta, negociación y control. En este ámbito es cuando se dan procesos de negociación, entendidos como métodos de decisión conjunta que suponen incrementar formalmente la posibilidad de participación y decisión obrera. En el proceso de negociaciones se puede llegar a un acuerdo entre los y las trabajadores/as y la parte empresarial o que sea imposible ese acuerdo.

Asimismo, a la vez que existen abiertas vías de negociación, se deben articular estrategias de presión para ir dirigiendo el conflicto laboral hacia los intereses de los y las trabajadores/as y

de las Secciones Sindicales. Los resultados de la negociación dependerán de los recursos y estrategias de los y las trabajadores/as y la parte empresarial frente al otro, en los que el contexto socioeconómico general y particular de cada empresa influirá en la capacidad para introducir u obtener reivindicaciones en el acuerdo final (expansión o recesión, pleno o alto desempleo, crisis sectoriales o ciclos expansivos, etc.).

- Perspectiva progresiva

Una actuación progresiva significa ir caminando hacia una mayor presencia e implantación en la empresa como camino hacia la consecución de las finalidades. Este aspecto pasa por, a la vez que se consigue hacer cumplir a la empresa los pactos colectivos e incluso mejorarlos en los términos que establezca el sindicato, incrementar el poder sindical de control económico y laboral de la empresa. Para que la acción en la empresa sea progresiva es necesario que se incremente la fuerza de los/las trabajadores/as en la empresa y la afiliación a la sección sindical, para conseguir en paralelo mayores cotas de control sindical, más allá de los derechos de información, consulta y negociación. Cuando hablamos de control sindical, nos encontramos en situaciones diversas por las que los grados de este control sindical pueden ser muy variados. Es evidente que a la CNT le interesa incrementar su control en la empresa, en los campos donde le sea posible y como paso previo a una apropiación de los medios de producción. Así pues, los dos grandes grupos de control sindical són: en el proceso de toma de decisión de las empresas y de distribución de los resultados económicos, así como en la organización productiva y del trabajo. A estas modalidades se debería añadir con una sistematización más compleja, la participación en el sector y servicios públicos, pues dicha dimensión introduce el rol de los/las trabajadores y trabajadoras, así como también la perspectiva de las personas usuarias y ciudadanía en general. Este control anarcosindical se puede implementar de dos formas:

o Control Anarcosindical en el proceso de toma de decisión estratégica y operativa de las empresas

En este punto la participación y el incremento del control sindical no tiene que suponer aplicar medidas de cogestión con el capital ni, como se intentó en la socialdemocracia Sueca, que constituya un medio para mantener las propias posiciones de fuerza a nivel sindical mediante una redefinición del alcance del proyecto socialdemócrata. Un ejemplo de incremento del control sindical de toma de decisión importante en la empresa sin que eso signifique una medida de cogestión con el capital, puede ser la posibilidad de gestionar las decisiones de nuevas contrataciones por parte de la Sección Sindical, o como alternativa, que las nuevas personas trabajadoras se afilien a la CNT cuando entran a trabajar en la empresa. En este caso el sindicato puede controlar no solo la salida de trabajadores/as de la empresa oponiéndose a despidos o a flexibilidad de cualquier tipo, sino que también puede tener un control total del factor trabajo al gestionar la entrada y ejercer una influencia indirecta sobre el mismo. El ejemplo crucial respecto al factor capital es la posibilidad de control anarcosindical de las inversiones y del cambio tecnológico que pueda estar sujeto a ellas. El proceso de inversión es fundamental porqué ya sea a corto o medio plazo, acaba por determinar el nivel de empleo necesario para la producción planeada.

Asimismo las empresas introducen sesgos anti-laborales en los procesos de cambio tecnológico, ya sea por una cuestión de ahorro de un factor, el trabajo, siempre susceptible

de conflictividad, ya sea por exigencias del mercado capitalista que imprime la renovación del capital con el fin de incrementar la productividad y reducir los costes de los productos por la vía de reducir también los costes laborales. Es en este marco donde la CNT puede y debe analizar e incidir sobre el tipo de maquinaria, tecnología y procesos productivos que se vayan a implementar, haciendo una valoración y respuesta global tomando en cuenta tanto el nivel de empleo, su calidad (reducir la temporalidad, disminuir la jornada laboral, etc), como aquellos impactos implícitos a nivel ecológico. Asimismo, desde una perspectiva del control de las decisiones de gestión financiera, este aspecto puede ir desde el control financiero de las decisiones de inversión, como más fundamentalmente del control indirecto de la distribución entre salarios y beneficios, siendo la inversión un factor vinculado a los beneficios. Asimismo esto puede incluir decisiones de distribución de beneficios entre los y las trabajadores/as, para dedicarlo por ejemplo a cajas de resistencia de la Sección Sindical en la empresa o para el sindicato.

o Control Anarcosindical en la actividad productiva y la organización del trabajo

Se entiende por control en la organización del trabajo, aquellas medidas que supongan la adecuación de distintas variables a esquemas racionales y que impliquen a su vez una minimización de la siniestralidad laboral y las enfermedades profesionales. Estas variables pueden ser el diseño y definición del producto, los mercados de actuación, los ritmos de trabajo y los descansos, la jornada laboral total, los métodos de trabajo, la formación de cualificaciones y más a medio plazo la formación, o la organización del proceso productivo en general insertando en ello una perspectiva ecológica. Se trata en este punto también, de tener bajo control sindical la inteligencia de producción que los/as trabajadores construyen/as colectivamente sobre los procesos de trabajo (la creación de "conocimiento experto"), movilizando esos conocimientos a favor de los y las propias trabajadoras.

- Perspectiva transformadora y revolucionaria

La CNT adopta en sus acuerdos la toma del control de los medios de producción de las empresas y su puesta en marcha en régimen de autogestión. La CNT no plantea este control empresarial como una finalidad en si misma, sino a su vez como un medio para una transformación revolucionaria de la sociedad de forma que se substituyan las principales instituciones capitalistas y estatales por organismos controlados socialmente, implantando el comunismo libertario. Es necesario separar lo que es un proceso de cooperativización y autogestión de una o varias empresas en el marco capitalista, de lo que supone una revolución social con la transformación del sistema económico y social, finalidad a la que aspira la CNT. Como última fase dentro de un sistema económico capitalista, la toma de los medios de producción se materializa con un proceso de recuperación de la empresa y cooperativización, ya sea aprovechando contextos de crisis empresarial o por medio de la presión sindical y el traspaso de la actividad a los trabajadores. Es preciso tener en cuenta que la patronal tiene en la propiedad su fuente de legitimación y control legal de los medios de producción, sin embargo esto se concreta además con la apropiación de un conjunto de poderes inmateriales (técnicas, culturas, información, etc.) que no pueden ser socializadas mecánicamente y es imprescindible un trabajo en esa línea desde los inicios del funcionamiento de las Secciones indicales. Es por ello que las Secciones Sindicales deben desarrollar previamente, y en aras a la consecución de estos objetivos, un trabajo profun-

do en múltiples materias económicas y laborales que desarrollamos más adelante. Para finalizar es necesario notar que con la cooperativización no se finaliza la acción de la CNT pues en su conjunto persigue la implantación de una economía y sociedad autogestionadas por entero, lo que ha venido a denominarse comunismo libertario.

12.2.2.- Sindicatos y Federaciones Territoriales. Enfoques de política económica y laboral

Por otra parte, en lo referente a la actuación del sindicato a nivel territorial y en su labor de coordinación con la economía alternativa y libertaria, partimos de una necesidad de orientar la política sindical a la defensa e implementación de políticas económicas a la vez progresivas y transformadoras, en esa necesidad de defensa social de la clase trabajadora en el corto plazo y de tránsito a una transformación revolucionaria.

El enfoque de las propuestas de política económica y laboral que pueda realizar la CNT debe marcar distancias con las de corte keynesiano, de reproducción del capitalismo, por la vía de promover instituciones económicas alternativas aquí y ahora, a la vez que incrementando el control sindical y social de las actuales (banca privada, empresas en general, servicios públicos, etc.).

Asimismo, abordando la forma de "deconstruir" la política económica y laboral capitalista, apuntando a paquetes de medidas para una salida social de la crisis, presionando a rentistas y clases ricas. Se trata pues de construir propuestas de política económica y laboral desde abajo en el sentido de articularlas para reorganizar la economía a corto plazo atenuando el ciclo económico para la clase trabajadora.

Aportando algunos ejemplos, podemos hablar de bienes básicos para la vida cómo la vivienda: muchas no se venden y están vacías, el alquiler y la hipoteca són un lastre financiero para las familias y un lastre social, se trata de defender y luchar por la permisividad de su ocupación y su uso por encima de su valor de cambio. Esto obviamente puede tener un efecto positivo en los mercados capitalistas de vivienda presionando a la baja los precios de venta y alquiler, lo que supone comprimir los beneficios de rentistas y capitalistas e implica una orientación a esa "construcción" de una política económica de los trabajadores y trabajadoras en el marco del sistema capitalista. En cuanto a la producción y distribución de alimentos, es preciso comprimir los beneficios del sector y racionalizar la producción para hacer mucho más barato o gratuitos para los/as más necesitados/as, el acceso a ellos.

Con estos dos aspectos cubiertos (vivienda y alimentación), es posible incidir en otros ámbitos como el empleo e ir promoviendo otro tipo de actividad y estructura económica útil socialmente, ampliando poco a poco el foco y la interrelación de esa "construcción" de las políticas económicas, industriales, laborales y sociales.

Respecto a un eventual ejemplo de política de empleo y de tiempos de trabajo –reducción de la jornada laboral y reparto del empleo, sin reducción salarial- se trata de conseguir con ello, varios objetivos en el corto plazo. El primero es incrementar el empleo reduciendo el desempleo que, en un contexto de crisis como éste, es un objetivo de primer orden para la resistencia al impacto de la misma contra la clase trabajadora. Asimismo esta medida permite reforzar la cohesión y conciencia de clase al caminar hacia recomponer la fractura que impone el sistema entre personas empleadas y desempleadas -expulsadas del empleo-. Un segundo objetivo, tam-

bién de primer orden y vinculado al nivel de empleo, es el reparto de la riqueza por la vía de la presión sobre el capital productivo-servicios y rentista-financiero: negarse a reducir los salarios implica que la financiación de la medida irá a cargo de la patronal con los beneficios pasados y/o presentes. De la presión anterior se deriva un tercer objetivo que es el de forzar escenarios para sustituir la empresa capitalista por una gestión cooperativa y autogestionada donde el control del tiempo de trabajo, de la renta y de la inversión -entre otros aspectos- esté en manos de la clase trabajadora. Pueden existir otros objetivos que no estén solo vinculados con la propiedad, la renta y el empleo, como pueden ser una mejor gestión del tiempo para las relaciones sociales, para el contacto y cuidados de la familia (con una redistribución equitativa por género entre trabajo productivo y reproductivo) o también más tiempo para el trabajo comunitario –militante-. Asimismo, una reducción y reorganización de los tiempos de trabajo puede tener efectos positivos en aspectos ecológicos si se ajusta el gasto energético o el nivel de producción y consumo.

Por último, en términos de promover otro tipo de actividad y estructura económica útil socialmente, ampliando aún más el foco y la interrelación de esa "construcción" de las políticas económicas, industriales, laborales y sociales, podemos conectar el ejemplo de la reducción de jornada laboral sin reducción salarial y reparto del empleo, generando sinergias con el impulso en el desarrollo económico comarcal. Este impulso puede venir tanto del gasto e inversión social de cooperativas autogestionadas con nuestros propios proyectos económicos para generar y repartir el empleo, o de gasto e inversión pública con generación de demanda global -o como mínimo de no reducción de la misma-. Asimismo sería necesaria la intervención en los aspectos financieros, tanto para limitar el impacto de la deuda cómo para recuperar del capital financiero las rentas que se deberían destinar a la economía productiva y socialmente necesaria con tendencia a la desconexión de los sistemas de mercado capitalista. Los ámbitos de actuación para ello pueden pasar por la mejora de infraestructuras, tanto económicas como sociales. En este sentido se trata también de explorar las posibilidades en el ámbito agrícola para el abastecimiento de mercados locales, industrial enfocado a la exportación o de servicios, analizando sectores emergentes y nuevos yacimientos de empleo.

Por último sería necesaria la creación de redes de economía alternativa amplias para una planificación social de este desarrollo territorial en coordinación con los sindicatos. Es preciso pues, en esa orientación de la política económica, industrial, laboral y social, abordar el tensionamiento y desestabilización del sistema capitalista tratando de requesbrajarlo por la vía de la desconexión total o parcial en territorios comarcales o provinciales, en ámbito productivo, de consumo y financiero (moneda social). Si no es posible la implantación de un sistema económico y social alternativo en términos comunistas y libertarios en un ámbito estatal, sí debemos promover implantar por medido de estrategias de desconexión económica, modelos autogestionarios en ámbitos territoriales inferiores, tensionando por esa vía el propio funcionamiento de los sistemas capitalistas estatales y europeos. Si el desarrollo del capitalismo va ligado a la sobreexplotación y degradación del medio ambiente dada la lógica que lo guía (crecimiento ilimitado e infinito), desde el punto de vista de la naturaleza es absolutamente ilógico e irracional y es preciso contemplar el rechazo al crecimiento económico tradicional (industrial, desarrollista y de consumo) y poner en su lugar una producción y distribución basadas en las necesidades, teniendo en cuenta estos límites. En todo caso, de poderse aplicar un cambio revolucionario, la econo-

mía y la sociedad deberían organizarse bajo unas premisas ético-morales libertarias, con control democrático, planificación social, satisfacción de las necesidades humanas como guía de la producción y distribución, y en detrimento del lucro privado.

12.3.- Instrumentos para la política sindical y social de la CNT. Recuperar las Comisiones de Defensa Económica y los Consejos de Economía

Para la consecución de los objetivos planteados, tanto a largo plazo cómo a medio y corto con perspectiva prefigurativa, la CNT se dota de diferentes instrumentos -organismos, instituciones-. Por un lado, la principal herramienta de intervención en las empresas y administraciones son las Secciones Sindicales, sean éstas de centro de trabajo, empresa, grupo de empresas, polígono u otro ámbito territorial. También cómo medio de intervención social en las empresas y administraciones la CNT promueve y participa como tal en las Asambleas de trabajadores/as. Por otro lado, las Secciones Sindicales las constituyen los Sindicatos que a su vez se federan en las Federaciones Sectoriales para profundizar en su intervención revolucionaria e implementar tareas propias de su ámbito.

Se recuperan las Comisiones de Defensa Económica, coordinadas por las Secretarías de Acción Sindical y Acción Social de los ámbitos que correspondan (comarcal, provincial, territorial y sectorial) con el encaje y forma orgánica de grupo de trabajo, dónde integrar la coordinación de las Bolsas de empleo de empresas y administraciones -secciones sindicales-, la gestión de las Bolsas Sindicales de empleo de los Sindicatos y Federaciones Sectoriales con la militancia, asimismo donde vehicular reivindicaciones y acciones relacionadas con la alimentación, vivienda y suministros o sanidad, entre otras cuestiones vinculadas con la política social. Entre otras:

- Mapear empresas y administraciones que realicen horas extra o puedan contratar personas trabajadoras, para realizar presión social.

- Reunirse con y presionar a empresas de suministro de agua, gas y electricidad, transporte público, alquiler de vivienda, hipoteca de la misma -bancos y cajas-, etc. para disminuir o eliminar los gastos personales y familiares de los miembros de las asambleas de parados y paradas.

- Impulsar cooperativas de consumo y vivienda en los sindicatos para el abastecimiento de alimentos y vivienda.

- Apoyar huelgas y a la acción sindical de CNT con el objetivo también de ir implantando medidas de control sindical sobre el empleo en las empresas y administraciones.

- Apoyar la recuperación y cooperativización de empresas, así como la defensa de las mismas ante los ataques de la patronal y el Estado. Apoyar la ocupación de tierras para cultivo.

Asimismo, en el ámbito de la gestión económica, la CNT promueve las Empresas Recuperadas y las Cooperativas Autogestionadas estando en proceso de formación la Red de Economía Alternativa y Libertaria, conformada por estas cooperativas autogestionadas de CNT y afines.

El anterior entramado sindical, social y económico bien vertebrado, debe llevarnos a intervenir en el desarrollo socioeconómico comarcal y superior.

Todas estas cuestiones van a requerir el desarrollo de un instrumental metodológico para sentar las bases de la construcción de un método de planificación social de las economías territoriales (comarcales, provinciales), en clave comunista libertaria y autogestionaria, desde el sindicalismo, el cooperativismo y los movimientos sociales.

Para todo ello, es imprescindible la recuperación de los Consejos de Economía en los diferentes ámbitos territoriales (comarcal, provincial, territorial y confederal) para la puesta en marcha de un plan de trabajo para la sistematización y recopilación de datos estadísticos y elaboración de indicadores económicos y sociales necesarios para la negociación colectiva y el control anarcosindical de empresas y sectores, elaboración de documentos de análisis al respecto, etc, manteniendo el espíritu de la ponencia del acuerdo anterior. La conformación del Consejo de Economía Confederal se realizará por convocatoria de reunión Plenaria Confederal por lo menos una vez al año, con asistencia de los responsables de las Federaciones Sectoriales y de las ramas de actividad de las mismas. Las Secretarías encargadas de supervisar y elaborar los informes y documentos de trabajo para el Consejo de Economía Confederal, serán las Secretarías de Acción Sindical y de Formación y Estudios, tanto las Confederales cómo las Sectoriales, con el asesoramiento del Gabinete Técnico Confederal y la Fundación Anselmo Lorenzo cuando así se requiera.

12.4.- Promoción de las Bolsas Sindicales de Empleo

En una dimensión social, de política social, la CNT promueve Bolsas Sindicales de empleo en los Sindicatos y Bolsas Locales de empleo (vinculadas a un control del empleo comunitario local), así como también promueve y participa en las Asambleas de parados/as.

Una bolsa sindical de empleo debe ser gestionada y supervisada por el sindicato. Por lo tanto, en su creación podría adscribirse en su contexto actual a la Secretaría de Acción Sindical tanto por el contenido de dicha secretaría, como por la actuación sindical en ella de afiliados/as parados/as, para ello es necesario que todos los sindicatos tenga creada esta secretaria y funcionando.

La bolsa sindical de empleo estará bajo la responsabilidad de la Secretaría de Acción Sindical con la ayuda de un grupo de trabajo dentro de dicha secretaría, dentro de este grupo de trabajo sería conveniente meter a personas pertenecientes a todas las listas, encargadas de articular la acción contra el desempleo y por lo tanto en conexión e información con el comité local.

Las tareas a desarrollar por las personas responsables de la bolsa serán:

1ª.- Actualizar periódicamente las listas de forma pública, ordenadas en función de los criterios que se hayan establecido.

2ª.- Actualizar periódicamente las vías de empleo posibles por origen de las mismas.

3ª.- Acordar en comisión abierta a todos los afiliados y afiliadas la distribución de los empleos y los criterios tenidos en cuenta.

4ª.- Promover acciones por medio de asambleas de parados de las bolsas en defensa de los intereses de los/as desempleados/as.

5ª.- Coordinarse con bolsas de otros sindicatos.

6ª.- Controlar que se cumplan los acuerdos tomados por la asamblea de las bolsas y del sindicato. Y que las personas expulsadas del sindicato no estén dentro de las bolsas.

La bolsa sindical estará formada por afiliados y afiliadas que se inscriban en ella. Se organizaran listas por criterios de especialidad según tipos de empleo que requieran formación o experiencia específica, y una lista general dirigida a empleos que no requieren formación o experiencia específica.

El orden de la lista general y las listas de especialidad se establecería por criterios de necesidad personal o familiar y por criterios de participación en asambleas y en las acciones realizadas para conseguir el trabajo. Tenemos que hacer entender a los trabajadores y trabajadoras que esto no es una ETT donde me apunto y ya me llamarán, sino que tienen que participar activamente en las acciones y toma de decisiones en asamblea.

Los sindicatos y las secciones sindicales tienen que impulsar y promover la creación de bolsas de trabajo sindicales en todas las empresas que tengan presencia.

Los sindicatos deberán formar grupos de afiliados/as parados/as para que con las tácticas y capacidades de la CNT, puedan presionar a los/as empresarios/as donde no tenemos sección sindical, para que metan a trabajar a las personas de nuestras bolsas.

Forma de actuar:

- La comisión junto con los trabajadores y trabajadoras de las bolsas buscan y localizan a la empresa. Antes de ir físicamente a presionar para implantar nuestra bolsa en la empresa, hay que estudiar las irregularidades que estén cometiendo, de tal modo que los/as trabajadores/as tengan conocimiento puntual de la empresa y sus movimientos.

- Los trabajadores y trabajadoras por estar en una lista de la bolsa que tengan posibilidades de entrar en esa empresa, tendrán que hacer asambleas conjuntas y planificar un calendario de actuaciones para poder implantar las listas de la bolsa en dicha empresa.

- Si se implanta se creará una sección sindical que se coordinará con la bolsa y con el sindicato.

Por último se debería socializar por parte de las federaciones locales las demandas de empleo a las que tengan acceso, de forma que si existiesen puestos vacantes se pudieran cubrir por afiliados y afiliadas a otras federaciones locales.

Tiene que haber un reglamento para todas las bolsas. Reglamento

1. Toda persona afiliada podrá estar en la bolsa y toda persona que quiera estar en la bolsa tendrá que estar afiliada.

2. Toda persona expulsada del sindicato, automáticamente también estará expulsada de la bolsa.

3. Para crear la bolsa hay que tener en cuenta los criterios de asistencias en las asambleas y participación en las acciones y criterios de necesidad.

4. Una vez creada la bolsa los nuevos trabajadores y las trabajadoras pasaran al último

puesto.

5. El trabajador o trabajadora pasará al último puesto de la lista cuando falte a las asambleas y acciones de la bolsa de forma consecutiva más de 3 veces y de forma alterna más de 5 veces en un año, de forma reiterativa e injustificada.

Las acciones a desarrollar por la asamblea de parados y paradas de la bolsa sindical deben estar vinculadas con el sindicato, así como recibir el apoyo explícito del mismo:

- Mapear empresas y administraciones que realicen horas extra o puedan contratar trabajadores/as para realizar presión social.

- Reunirse con y presionar a empresas de suministro de agua, gas y electricidad, transporte público, alquiler de vivienda, hipoteca de la misma -bancos y cajas-, etc. para disminuir o eliminar los gastos personales y familiares de los miembros de las asambleas de parados y paradas.

- Impulsar cooperativas de consumo en los sindicatos para el abastecimiento de alimentos básicos.

- Apoyar huelgas y a la acción sindical de CNT con el objetivo también de ir implantando medidas de control sindical sobre el empleo en las empresas y administraciones.

- Apoyar la recuperación y cooperativización de empresas, así como la defensa de las mismas ante los ataques de la patronal y el Estado, etc.

12.5.- Programa económico y sociolaboral que sustenta la política sindical y social de la CNT

La CNT debe tener propuestas en diferentes materias económicas y laborales, cómo cualquier otra organización. En este sentido este enfoque de programa, que habría que mejorar sin duda, pretende articular por un lado un marco de intervención a corto y medio plazo con perspectiva de incrementar el poder social del anarcosindicalismo (propuestas progresivas y transformadoras), y por otro lado trata de incidir en aquellos aspectos del debate socioeconómico claves en el momento (empleo y desempleo, control de precios, distribución de la renta, finanzas públicas, etc).

Remarcamos en este apartado que la única forma de acabar con la explotación, las clases sociales y las crisis económicas, es acabar con el sistema capitalista. Por lo tanto, todas estas medidas progresivas y transformadoras tienen que ser impuestas a la patronal y a los poderes institucionales del Estado en sus diferentes niveles, según la correlación de fuerzas que tengamos, sin perder nunca de vista el objetivo final de sustituir el capitalismo por un sistema económico basado en la autogestión obrera y social de raíz comunista libertaria. Es indispensable contemplar la posibilidad de promover procesos revolucionarios en la medida en que sirven no sólo como objetivo final sino también para impulsar la investigación y la praxis parcial con el fin de profundizar en esa línea. Sin embargo, siendo conscientes de la correlación de fuerzas actual es conveniente analizar nuestras propuestas en perspectiva inversa: el objetivo sería que con el tiempo podamos proponer y aplicar fundamentalmente un proceso revolucionario, que al no ser posi-

ble a corto plazo, nos empuja a proponer medidas transformadoras y progresivas, de forma que las últimas vayan perdiendo su peso paulatinamente hasta desaparecer junto con el capitalismo y el Estado.

Es preciso que, partiendo de la base del esquema propuesto, se tenga una valoración y sustento empírico al impacto de las propuestas aisladas (por ejemplo el impacto sobre las finanzas públicas de un incremento del IRPF a las rentas altas y un descenso del IVA a los productos de primera necesidad), a la vez que tratar de abordar un estudio de impacto de la coordinación de las propuestas (reducción de la jornada laboral + incremento de impuestos a ricos + inversión en sectores ecológicos = (x) empleo, (y) crecimiento -desarrollo económico-, (z) protección social).

Las medidas propuestas, además, se deben pensar desde una perspectiva general del Estado español, pero deben servir de orientación para una mayor definición en ámbitos sectoriales para plataformas reivindicativas y en ámbitos territoriales provinciales y comarcales. Asimismo, estas medidas, en los aspectos que correspondan, se deben poder defender en empresas y administraciones.

El programa económico y sociolaboral a desarrollar puede expresarse en el siguiente esquema:

1) Libertad sindical

Sin plena libertad sindical y de información a todos los sindicatos no existe verdadera democracia. Por lo tanto proponemos:

a) La derogación de los artículos o leyes que atenten contra la libertad de acción sindical por parte de cualquier sindicato con presencia en el territorio.

b) Desaparición de los Comités de Empresa y sustitución por órganos genuinamente obreros como las secciones sindicales y las asambleas de trabajadores/as.

c) Habilitar a la asamblea de trabajadores/as de empresa y el sindicato como únicos órganos con capacidad de negociación colectiva, tanto a nivel de empresa como a nivel sectorial.

d) La concesión de horas sindicales para los representantes de todas las secciones sindicales, justificándolas siempre como utilizadas para la acción sindical.

e) La creación de la figura del delegado/a sindical sectorial y territorial con competencias para inspeccionar cualquier empresa.

f) Libertad de acceso a las reuniones y a la información del comité de seguridad y salud laboral, así como a toda la información económica y laboral de las empresas.

2) Empleo y desempleo

Las medidas a favor del empleo implican un cambio de regulación laboral favorable a los intereses de los trabajadores y trabajadoras. Asimismo implica el ejercicio de acciones por parte de los sindicatos de clase, encaminadas a reducir el desempleo y a conseguir ejercer un control efectivo sobre la oferta de trabajo. Por ello proponemos:

a) Establecer un solo modelo temporal de contratación: fijo. Eliminación de la subcontratación e integración en plantilla de los/as trabajadores/as subcontratados/as. Prohibi-

ción del prestamismo laboral, eliminación de las ETT's y control de la oferta de fuerza de trabajo por parte de los sindicatos. Organización en los sindicatos de Bolsas de Empleo donde se prime a aquellas personas trabajadoras más necesitados de empleo e ingresos. Que las empresas tengan que recurrir a los sindicatos para contratar a los trabajadores y trabajadoras.

b) Creación de asambleas de parados/as en los sindicatos. Presión desde los sindicatos, sobre la parte empresarial, para que incrementen el número de trabajadores/as de su plantilla en aquellas empresas con posibilidades de hacerlo, previo estudio de dichos sindicatos de la situación económica y posibilidades de expansión de las empresas ubicadas en su zona.

c) Repartir el empleo y el trabajo. Reducción de la jornada laboral semanal sin reducción de salario y sin ningún tipo de modificación por necesidades de la empresa. Repartir el empleo es ante todo repartir el acceso a la fuente principal de renta. Eliminación de horas extraordinarias, destajos y pluriempleos. Promover el reparto equitativo del trabajo productivo, reproductivo y comunitario.

d) Prohibición del despido y búsqueda de alternativas basadas en el reparto del empleo sin o con reducción salarial. En caso de despido improcedente el trabajador/a tiene la última palabra para ser readmitido/a o no. Incremento de la indemnización en caso de despido improcedente y en caso de despido objetivo o procedente.

e) Ante el cierre de empresas: recuperación y autogestión obrera.

f) Confiscación sin indemnización de los grandes latifundios, cotos, montes y dehesas y propiedades no cultivadas directamente y entrega a los sindicatos de campesinos.

g) Cultivo en régimen colectivo de las tierras abandonadas y creación de comunas y cooperativas colectivizadas de consumo para comercializar los productos de la tierra incautada por los/as jornaleros/as.

h) Promoción de cooperativas de consumo y trabajo por medio de los sindicatos.

i) Descenso de la edad de jubilación con un 100% del salario.

j) Incremento del Subsidio de desempleo.

3) Control de precios, productos y servicios

La inflación es provocada siempre por los empresarios, pues son quienes marcan los precios. Por lo tanto proponemos:

a) Control de los precios de productos básicos (alimentación, vivienda, transporte y energía) para que no superen en su conjunto un porcentaje de la renta mínima de los/las trabajadores/as (Salario Mínimo Interprofesional).

b) A la vez, que los productos y servicios tengan el correspondiente label sindical o sello de calidad emitido por el sindicato, sólo asignable a los productos elaborados bajo las siguientes condiciones:

- Que tengan precios asequibles para el resto de los trabajadores y trabajadoras.

- Que no contengan elementos nocivos o de mala calidad para los/as consumidores/as.

- Que sean elaborados por los y las trabajadores/as que disfruten de todos sus derechos laborales.

4) Distribución de la renta

a) Subida del Salario Mínimo Interprofesional.

b) Salarios máximos en un porcentaje respecto del salario mínimo.

c) Subida de la Pensión mínima.

d) Actualización de los salarios y pensiones según el incremento de precios real (lo que implica una modificación en la forma de calcular el IPC). Inclusión en todos los contratos de una cláusula de revisión salarial con el incremento mínimo del IPC real.

e) Subidas salariales lineales en cuantía inversamente proporcional al salario recibido, como medida de tender a la igualación de salarios.

f) Supresión de todos los salarios basados en propinas, primas e incentivos, para establecer un salario fijo y no sujeto a las arbitrariedades de los empresarios o de la economía capitalista. Devolución de este riesgo al empresario.

5) Gasto público e impuestos

Para que la recuperación económica pueda ser una realidad es necesario reducir costes innecesarios, incrementar el gasto público y mejorar su financiación. Por ello proponemos:

a) Reducir todos los gastos militares, policiales, hasta llegar a desaparecer. Reducir los gastos públicos injustificados. Que estas partidas se dediquen a asistencia y reinserción social.

b) Renegociación e impago de los intereses y de la deuda pública ilegitima.

c) Incrementar el Impuesto de Sociedades. Incrementar el control del fraude fiscal con plena información empresarial a los sindicatos.

d) Que los bancos y cajas paguen un impuesto extra y proporcional a los movimientos en cada Estado en los que actúan, para financiar seguros de desempleo, pensiones y políticas sociales.

e) Incrementar el impuesto sobre el Patrimonio. Dicho impuesto seria creciente en función del capital o bienes en posesión.

f) Control y eliminación de los paraísos fiscales. Ilegalización de las SICAV (sociedades de inversión de capital variable, en las cuales están puestos los grandes capitales españoles) y SCIMI (sociedades cotizadas de Inversión en el Mercado Inmobiliario). El capital invertido en ellas pasaría, sin indemnización alguna para sus antiguos propietarios, a la Tesorería General de la Seguridad Social para financiar los subsidios de desempleo, pensiones y demás políticas sociales.

g) Incrementar la tasa de IRPF para las rentas más altas.

h) Incrementar del IVA para los artículos de lujo y eliminarlo a los de primera necesidad.

i) Incrementar el control sobre la evasión fiscal, la economía sumergida y la corrupción. Permitir a todos los sindicatos acceder a plena información de empresas y administraciones, a la documentación de las transacciones y contratos firmados por las administraciones.

6) Desarrollo Económico

a) Movilización forzosa del capital, obligando a la inversión o reinversión en la creación de sectores productivos necesarios para la población, como la agricultura ecológica, ciertos sectores manufactureros o energéticos. Reducción de los sectores asociados con lo militar. Control social de las inversiones para incluir los márgenes ecológicos.

b) Incremento de la inversión en industria y agricultura que estos sectores recuperen peso y se pueda tener una estructura productiva más equilibrada.

c) Incremento de la inversión en transporte colectivo, educación, sanidad y protección social.

e) Dedicar la recaudación de impuestos específicos a la vivienda. Dicho impuesto sería creciente en función del capital o bienes heredados. Con el dinero recaudado, financiación de la adecuación y adquisición de viviendas bajo control sindical.

f) Dedicar un impuesto sobre los beneficios de todas las empresas para crear con lo recaudado un fondo de inversión que, bajo control sindical, se dedique a promover inversiones de interés social con las que complementar las políticas de creación de empleo y de reforma estructural.

Es preciso ampliar y ordenar más propuestas en ámbitos de protección social y género, ecología, estructura de negociación colectiva y ultraactividad, etc. La CNT desarrollará plataformas reivindicativas de carácter anual conforme a las propuestas que aquí se elaboran añadiendo las aportaciones de los Sindicatos en los casos en los que proceda.

12.6.- Formas, plazos de implementación y seguimiento del programa económico y sociolaboral

Una vez aprobado dicho acuerdo marco de trabajo estratégico y el programa económico y sociolaboral en el XI Congreso, se debe empezar a concretar y desarrollar éste por parte del Comité Confederal en las reuniones Plenarias y con apoyo de las diferentes Secretarías del Secretariado Permanente del Comité Confederal, el Gabinete Técnico Confederal y la Fundación Anselmo Lorenzo, recogiendo también las aportaciones que puedan realizar los sindicatos.

Los pasos a dar serán:

1.- Concreción del programa económico y sociolaboral en diferentes aspectos y bajo los siguientes criterios:

a.- Concreción de la cuantificación de las propuestas (dato concreto de Salario Minimo Interprofesional, jornada laboral máxima, etc.), en función de los objetivos predetermi-

nados, los estudios disponibles y la medición en las previsiones de impacto sobre diferentes indicadores del propio programa económico y sociolaboral propuesto.

b.- Fijación de los márgenes de negociación con otras organizaciones sindicales y sociales, con las patronales o empresas y con las instituciones del Estado en sus diferentes niveles.

2.- Establecimiento de diversas rondas de contactos con todas las organizaciones sindicales y sociales implantadas en el ámbito del Estado español para poner en común nuestro programa económico y sociolaboral, en vistas a defender un programa común de ruptura con el neoliberalismo y el capitalismo, para avanzar hacia la autogestión y el comunismo libertario.

Asimismo para plantear el establecimiento de acuerdos estratégicos en vistas a una actuación común desde las secciones sindicales, sindicatos y federaciones sectoriales en cuanto a política sindical –empresas y sectores- y desde los sindicatos en cuanto a política social –desempleo y protección social-. Realizar el mismo tipo de contactos por parte de las Confederaciones territoriales con las organizaciones sindicales y sociales implantadas en sus respectivos ámbitos territoriales.

Todo el proceso del punto 5 se completará en un plazo de un año después de finalizar el XI Congreso.

13. MUJER TRABAJADORA

13.1. Objetivos a corto y medio plazo para mejorar nuestra organización en relación con la mujer trabajadora:

- Introducción transversal de la conciencia de la mayor explotación laboral y vital de la trabajadora en todos los niveles: plataformas reivindicativas, vías de reunión e información del sindicato, comunicados, etc.

- El aumento de afiliación y de participación de las afiliadas en la vida del sindicato como objetivo a conseguir.

- Cuidar la imagen de la organización para que esté libre de estereotipos que dificultan la identificación de las mujeres trabajadoras con el sindicato.

- Uso del lenguaje no sexista.

- Dejar de identificar mujer con reproducción.

- Realizar una estadística de afiliación y militancia desde la Secretaría de Organización en coordinación con los sindicatos.

- Elaborar una encuesta entre la afiliación sobre las dificultades de militancia (horarios de asambleas, plenos, reuniones de trabajo, acciones, etc., encuesta de cargas familiares, horas de especial dificultad para la militancia, etc.) desde la Secretaría de Organización

- Realizar, por parte de la Secretaría de Acción Social, propuestas de medidas concretas para la corrección de desigualdades debiendo ser aprobadas en plenaria para su aplicación, con el objetivo de conseguir, en el seno de cada Sindicato, la igualdad real y efectiva entre mujeres hombres y no meramente formal.

- Señalar soluciones concretas a los problemas detectados, a través de medidas también concretas como puede ser la creación de centros de día y guarderías en todos en los trabajos, dependiendo de la idiosincrasia de la empresa, reclamando recursos públicos, garantizando la financiación y bonificación de éstos a nivel de empresa. En lo correspondiente a los objetivos a medio y corto plazo para mejorar nuestra organización en relación con la mujer trabajadora, la CNT debe asegurar la conciliación entre la afiliación en materia de horarios de asambleas, y todo aquello que pueda resultar un impedimento para realizar la labor sindical.

Así mismo, ante la falta de militancia, deberá tenderse a la proporcionalidad en los cargos de gestión, de la siguiente forma:

– Los cargos de gestión de los sindicatos deberán tender a ser proporcionales en distribución por sexos a la militancia del ámbito que gestionen.

– Los cargos de las secciones sindicales deberán tender a ser proporcionales en distribución por sexos a la misma distribución que exista en la sección sindical.

Otras medidas:

Elaboración, por parte de la Secretaría de Formación y Estudios, de seminarios de formación sindical y general en materia de género.

13.2. Objetivos a corto y medio plazo en nuestras luchas sociales:

Distribución equitativa de actividades no remuneradas entre todos los que conviven.

Abolición de estereotipos en los medios de comunicación de CNT sobre el ejercicio profesional.

13.3. Objetivos a corto y medio plazo en nuestras luchas sindicales:

Se incorporará a la tabla reivindicativa para la acción sindical de la CNT:

Que todos los permisos en el trabajo vinculados al cuidado de los hijos y familiares se hagan extensivos e irrenunciables para ambos padres/madres o cuidadores/as y se disfruten simultáneamente o de forma consecutiva, a elección de los/as trabajadores/as.

Que la aplicación de esta reivindicación no suponga merma alguna a los derechos actualmente reconocidos, se trata de ampliar los permisos, no de repartirlos.

Disminución de jornada.

Servicios comunitarios suficientes (dependencia, infancia, enfermedad, salud, anticoncepción, etc.).

Igualdad laboral sin discriminación por sexo, género, raza, o cualquier condición.

Derecho al trabajo remunerado fuera de la unidad de convivencia, con salario y derechos sociales suficientes para una calidad de vida humana. Abolición de estereotipos en los medios de comunicación sobre el ejercicio profesional.

14. EN EL CAMPO

En los acuerdos del V Congreso este apartado comenzaba señalando la necesidad de "*formar las Federaciones de Sindicatos de Campesinos para que coordinen las luchas concretas frente a los problemas que les mantienen como trabajadores relegados*". Hay que reconocer que poco se ha avanzado en este sentido (excepto casos puntuales como la Federación Campesina de Andalucía en las décadas de 1980 y 1990). Vista la realidad sindical de nuestra actuación en este sector cabe preguntarse por qué cayeron en el "olvido" estas propuestas del V Congreso en relación a lo agrario.

Analizando la situación actual hay diversos motivos por los que no se ha avanzado en este sentido. Los/as trabajadores/as del sector primario han descendido en número sustancialmente a la par que se ha producido el avance de la mundialización y la tecnologización (el Estado, con la excusa de "modernizarnos", ha contribuido activamente a este proceso), y por otro lado la poca implantación actual de nuestra organización en el campo ya que a duras penas mantenemos sindicatos en los núcleos urbanos. Por tanto, estos objetivos cuyo peso principal habría de recaer principalmente en las Federaciones de Ramo de Campesinos/as han ido con el paso del tiempo cayendo en el olvido, por lo que debemos, antes que nada, impulsar la formación de sindicatos del sector que serán los que puedan recuperar y actualizar estas reivindicaciones fundamentales, así como de ir potenciando diferentes iniciativas y proyectos rurales y colectivistas. La realidad es que muchos/as compañeros/as trabajan o han trabajado eventualmente en vendimias, cosecha de la oliva y otros trabajos temporeros como medio de supervivencia y que en Andalucía, sean cuales sean las tendencias, aún quedan medio millón de jornaleros/as del campo.

Además de la situación laboral y sindical de este sector en concreto no hay que olvidar que para todos/as los/as trabajadores/as la producción de alimentos, como necesidad más básica y perentoria, y por tanto el sector agrario, es imprescindible para cualquier cambio social, y aunque no corren buenos tiempos con respecto a la conciencia de clase, sucesos como los que se están dando actualmente en el Estado Griego nos dan una llamada de atención a lo que nos puede acontecer a la vuelta de la esquina en relación a situaciones económicas extremas.

En general

a) La CNT denuncia:

a1.La privatización de la tierra, los recursos naturales y la vida en general como causa fundamental de la pobreza y el hambre así como de la pérdida de biodiversidad y del deterioro del Planeta.

a.2.El acoso sistemático contra las comunidades rurales e indígenas por parte de gobiernos y empresas que pasan por encima de los derechos ancestrales de los/as pobladores/as con el único fin de saciar su interés especulativo de enriquecimiento particular.

a.3.La usurpación por parte de los capitalistas del derecho a la alimentación de las personas y a la soberanía alimentaria de los pueblos.

b) Y se compromete a:

b.1.Seguir fomentando el asociacionismo tanto entre los campesinos y campesinas como entre éstos/as y el resto de los/as trabajadores/as como vía para la mutua ayuda en la defensa ante las agresiones empresariales y en aras de la sustitución del sistema de mercado capitalista (sea libre o intervenido por el Estado) por el comunismo libertario.

b.2.Luchar activamente contra la expansión del capitalismo agropecuario, y sus principales exponentes contemporáneos como los OGM, por los métodos que nos son propios.

b.3.Favorecer el intercambio directo de bienes y servicios entre las colectividades de productores/as agropecuarios/as libremente asociados/as y las iniciativas de consumo responsable, haciendo de la soberanía alimentaria una realidad autogestionada sin el concurso de estados o emporios empresariales.

b.4.La CNT y sus sindicatos se reforzarán hacia este sector tanto en su zona de influencia como en aquellas sin presencia pero con movimientos agraristas organizados que pudieran ser aliados e incluso miembros de la Organización.

b.5.El papel de la CNT pasa también por desenmascarar al capital como primer causante de los flujos migratorios en contraposición a aquellos que escudándose en la defensa de los derechos de los trabajadores autóctonos fomentan la xenofobia y el racismo.

c) Equiparación campo-ciudad

c.1.Abolición inmediata del Régimen Especial Agrario de la Seguridad Social, equiparando a los/as jornaleros/as agrícolas con los/as trabajadores/as de la industria y servicios en el Régimen General por suponer una discriminación totalmente injustificada respecto del principio de igualdad entre trabajadores/as, a la vez que se señala la necesidad de una humana concepción de la Seguridad Social que en coherencia con nuestros principios debe dirigirse hacia formas no estatales y autogestionadas de la salud.

c.2. Creación de las Bolsas Sindicales de Empleo por los Sindicatos Campesinos (en el sentido que le daba el movimiento obrero en sus orígenes a las Bolsas, no en el sentido actual en que se trata de listas de empresas privadas o de la Administración donde apuntarse para que te den trabajo). Estas Bolsas Sindicales gestionarían las condiciones de contratación de jornaleros, para evitar todo tipo de discriminaciones por origen (condiciones de trabajo de los/as trabajadores/as inmigrantes), género (discriminación por salarios y tareas), listas negras y el vergonzoso espectáculo de la contratación en los bares y rotondas de los pueblos por parte de patronos e intermediarios. Combatir y denunciar la perniciosa acción de intermediación de empresas de servicios y ETTs.

c.3. Cultivo en régimen colectivo de las tierras abandonadas y creación y búsqueda de canales de distribución de los productos de la tierra incautada por los jornaleros.

c.4. Reducción de la Jornada laboral (implantadas ya las 6 horas en algún sector del campesinado como el olivar andaluz) y adecuar la jornada a la estación (evitando el exceso de frío o calor). Negativa a la aceptación de horas extraordinarias y de trabajos a destajo por su contribución a la extensión del paro.

c.5. Eliminación o en su defecto control de productos químicos altamente contaminantes y perjudiciales para la salud. Exigir los medios para manipularlos con seguridad.

c.6. Adelantar la Jubilación con una pensión equiparable a la de los demás sectores y que permita una vida digna (Régimen General de la Seguridad Social).

c.7. Exigencia de la implantación general de la equiparación de salarios y tareas entre hombre y mujer.

c.8. Transformación de la estructura del cultivo, de modo que se adapte la forma productiva bajo los criterios de la agroecología aumentando así la calidad de los productos, la mano de obra y el respeto a la naturaleza.

c.9. Comercialización directa y creación en el campo de industrias limpias de transformación y conservas.

c.10. Equiparación de servicios educativos y de salud para acabar con la discriminación en las condiciones de vida con el medio urbano (cierre de colegios y grandes tiempos de transporte para recibir atención que incluso obligan a la mudanza definitiva). En suma, viviendas higiénicas y comunicaciones que acaben con la sensación de ghetto y aislamiento en la que vive el medio agrícola.

c.11. Aumentar la población de las zonas rurales y reducir la población de las ciudades por motivos de mejor calidad de convivencia, menos gasto energético y daño ambiental, así como una mayor salud física.

c.12. Oponerse a las subvenciones agrarias y, mientras existan, que no vayan dirigidas a las grandes explotaciones agropecuarias.

d) Hacia la transformación social

En CNT no podemos perder de vista nuestras finalidades últimas para ir dando desde ya los pasos necesarios que en un futuro hagan posible una auténtica transformación de la vida en sociedad que creemos pasa por recuperar elementos válidos de la ruralidad como:

d.1.La resocialización de todas las tierras concejiles y de manos muertas que les fueron arrebatadas al pueblo por las leyes desarmortizadoras del siglo XIX así como de infinidad de cotos de recreo, campos de golf y de las tierras excedentes de los grandes propietarios entre los que se incluye a las diversas Instituciones del Estado.

d.2.Que las tierras resocializadas sean cultivadas en régimen de colectividad o individual (en cualquier caso sin asalariados) de manera horizontal y en unidades de producción de extensión y entidad suficientes para subvenir a las necesidades del colectivo en un status de vida digno.

d.3.La base de estas formas de producción ha de ser una vida donde lo comunitario y todo lo colectivo supere las formas individualistas actuales sin menoscabo del desarrollo

de la potencialidad y libertad de cada persona.

15. TRABAJO EN PRISIONES

Creemos que las actuales personas presas sufren explotación laboral, trabajos encubiertos forzosos y un régimen de esclavitud encubierta. Si tenemos en cuenta que las mayoría de las personas presas provienen de la clase obrera, como sindicato anarcosindicalista creemos que es importante traspasar ese punto de indefensión total que están viviendo todas esas personas. También es importante tener en cuenta que cuando se asume por la organización la defensa de esas personas es y tiene que ser hasta el final, no dando por perdidas unas causas antes de lucharlas y intentar abrir camino, porque los que están dentro cuando se sienten respaldados es cuando pueden presentar luchas, reclamaciones, laborales, penitenciarias, etc., ya que en la actualidad eso no se está produciendo y por eso las personas privadas de libertad optan por no luchar y callarse ante todos esos abusos, con una represión mucho más brutas de las que la sufrimos en el exterior. Desde la época de la COPEL, posteriormente en comisiones de presos/as y hasta la actualidad, hemos podido comprobar que se consiguen objetivos, por ejemplo, tenemos la lucha de 1982, en la que se consiguió la mini-reforma de código penal y de la ley del enjuiciamiento criminal.

Posteriormente, en el 1992, se consiguió destituir a un juez de vigilancia penitenciaria que se llama José Ramón Manzanares Codesal, en 1993 se consiguió que cotizaran todos los presos de Catalunya y España a la Seguridad Social. Objetivos más pequeños fueros los vis a vis, llamadas tefónicas, TV dentro de las celdas y una asistencia sanitaria mucho más eficiente. Si hoy en día no se mantienen esas luchas es por la falta de apoyo del exterior.

Últimamente se ha podido comprobar que si hay un apoyo fuerte desde el exterior, casos como el de Manuel Pinteño, Joaquin Garcés Villacampa y Amadeu Casellas han dado sus frutos. Estos casos y muchos más no hubieran salido en libertad sin el apoyo del exterior. Como organización anarcosindicalista pensamos que tenemos el deber moral de contribuir figurar a hacer una lucha más cercana a las personas presas hasta la eliminación total del sistema penitenciario.

La CNT se compromete en cuanto a su acción sindical en este ámbito a:

1. Promover la organización de secciones sindicales en los talleres productivos de las cárceles y demás destinos, y tratar su caso como específico, dadas las particularidades del régimen jurídico al que se ven sometidos/as los/as presos/as y los/as trabajadores/as.

2. Contemplar la creación de campañas específicas.

3. Dar voz y apoyar las luchas sociales de los/as presos/as.

4. Procurar contar con abogados/as con conocimientos de derecho penitenciario en los Comités Regionales.

ACCIÓN SOCIAL

1. ANÁLISIS DE LA SITUACIÓN ACTUAL

1.1. Contexto económico

La CNT no ha errado en su análisis sobre la reconfiguración del tejido productivo nacional y mundial. Para la entrada de España en el grupo de cabeza de las economías mundiales eran necesarios profundos ajustes económicos dirigidos a la modernización empresarial amén de una desregularización laboral. Lo segundo fue prioritario desde los Pactos de la Moncloa de 1977 no sólo para la Patronal y el Gobierno sino incluso para los partidos supuestamente obreros y sus correas de transmisión CCOO y UGT. Sin embargo, la modernización de nuestro aparato productivo ha ido dejándose en suspenso de manera que aún en 2010 el Gobierno no ha terminado de concretar las líneas maestras de una serie de reformas que habrían de insertar la economía española en la era del sílice y el conocimiento.

En 1990 aventurábamos que el camino que emprenderían Gobierno, patronal y burosindicatos sería el de la concertación social, con tasas de crecimiento en torno al 5%, mantener el incremento de los beneficios empresariales y conseguir que los aumentos salariales se hagan en base al incremento de la productividad.. El resultado de esta política ha sido una pérdida de poder adquisitivo de la clase trabajadora a la par de un incremento de los beneficios empresariales nunca conocidos en este país.

La bonanza de finales de los 90 y pricipios de siglo ha resultado ser un espejismo fruto de la especulación urbanística y la cultura del pelotazo introducida por los distintos gobiernos y sus privatizaciones a la carta que tanto fomentaron la internacionalización de muchas de las empresas antes nacionales (energía y telecomunicaciones principalmente). Tras el pinchazo de la burbuja inmobiliaria cientos de miles de trabajadores/as asisten atónitos/as a un futuro de desempleo al que han sido condenados /as por una clase política y empresarial corta de miras con la connivencia de los burosindicatos.

Si la huelga general del 14D de 1988 no consiguió paralizar más que temporalmente la política económica del gobierno socialista; las reformas laborales de los 90, también del PSOE, consiguieron introducir las ETTs pese a las huelgas generales de 1992 y 1994. Los años de la bonanza económica lo son también para la paz social, tanto monta monta tanto. De manera que tenemos que esperar hasta 2002 para poder asistir a una nueva huelga general auspiciada por los grandes, esta vez sí, contra un Gobierno del PP. El Decretazo que pretendió liquidar beneficios

relacionados con las prestaciones y subsidios fue recortado fruto de la huelga general del 20J llevándose los trabajadores del campo la peor parte, síntoma de su debilidad en el entramado laboral y sindical español. Esta disminución de la conflictividad sindical no sólo se ejemplariza con los grandes eventos de lucha sino también con las huelgas sectoriales o de empresa que no han hecho más que disminuir desde 1994 si bien no tanto como tras el repunte de la conflictivad laboral tras la muerte del Dictador.

1.2. El modelo sindical

Es en este apartado donde comenzaron nuestros errores de apreciación. Tras presagiar, por enésima vez, el final del modelo sindical basado en las elecciones sindicales hemos asistido no sólo a su consolidación sino incluso a su perpetuación sine die. Pese a la constatación de que el modelo debilita la fuerza sindical los grandes ya no pueden mirar atrás pues su dependencia de la financiación estatal y las liberaciones empresariales es absoluta. Los pequeños, que engrasan el sistema en muchas empresas y sirven de bisagra en algunos sectores, no han sabido o querido ver esta debilidad y se han apuntado al carro, de manera que la carrera electoral no sólo arrastra recursos humanos y materiales sino que acentuada más aún la división de la clase obrera al aumentar el número de concursantes. Mientras, los/as trabajadores/as tornan cada vez más espectadores/as no siendo en muchos casos ni llamados/as a movilizarse, pues para eso están los/as delegados/as sindicales.

La sindicación en España no llega al 20% siendo los/as trabajadores/as representados/as por Comités de Empresa y delegados de personal los menos. La CNT tiene margen para crecer más allá de la gran empresa, es más se trata de la pequeña y mediana empresa donde se dan las condiciones para que el sindicalismo de acción directa que propugnamos arraigue con más fuerza. Muchas de estas empresas son un desierto sindical y en el caso de la hostelería y el comercio presa fácil para nuestras tácticas.

La burocratización de los sindicatos ha dado pie a que se cumplan nuestros peores augurios y si en 1990 veíamos la .apertura de una nueva puerta al uso de prácticas corruptas sin fin. Consecuencia de la cogestión Gobierno-sindicatos de determinados servicios la realidad de dicha década con la estafa de las viviendas PSV (UGT) y en la siguiente con los cursos de formación (MAFOREM de CCOO entre otras) han demostrado que los sindicalistas no sólo se institucionalizan sino que incluso hacen sombra a sus hermanos políticos y empresarios en lo que a corrupción se refiere.

Otra fortaleza de nuestra organización, aparte de la apuntada en la pequeña y mediana empresa, es nuestra estructura de clase. Como ya adelantábamos desde 1990 han surgido una miríada de nuevos sindicatos corporativos y una corporativización de los de clase de manera que son las ramas, más que la estructura territorial, la que absorbe la mayor parte de los esfuerzos de los sindicatos nacionales y autonómicos. Es necesario expandir la conciencia de clase más allá del ámbito anarcosindical o laboral, y transmitir a los movimientos sociales nuestros principios organizativos de lucha de clases.

Llevamos 20 años diciendo que hemos definido claramente . nuestros principios, tácticas y finalidades y nos hemos dotado de una estructura organizativa perfectamente concretizada. Sin em-

bargo esto no ha desembocado en un paso adelante para aumentar nuestra inserción entre la clase obrera. Ya en Bilbao dijimos que nos encontrábamos, en el mejor de los casos, en la misma situación que en el año 1983. Si bien nuestra situación actual no es mejor que entonces hemos conseguido parar la tendencia a la baja y estamos experimentando un repunte de nuestra actividad en grandes empresas, amén de sectores como hostelería y comercio donde ya hemos demostrado sobradamente nuestra eficacia. Tras Ferroser, sentamos a negociar a otras multinacionales como Clece o Mercadona.

Sin embargo no debemos autoengañarnos; hemos de reconocer que se trata de granos de arena en un desierto sindical, que si bien está dando sus frutos, sobre todo en la última empresa citada, aún dista mucho para poderse decir que tengamos una implantación sectorial mínimamente solvente. Nuestro fuerte sin embargo es la amplia distribución por el territorio que nos confiere de una capacidad de respuesta solidaria no igualada posiblemente por ninguna otra central española, las cuales, debido a su estructura centrípeta, están abandonando no ya sólo las zonas rurales sino incluso cualquier localidad más allá de las capitales de provincia.

1.3. El anarcosindicalismo en plena globalización Económica

La progresiva internacionalización de la economía, la desregularización generalizada y la desestructuración del movimiento obrero es reponsabilidad directa de empresarios/as, políticos/as y sindicalistas profesionales, en ese orden, sin embargo la pasividad del anarcosindicalismo es cosa nuestra.

La liberalización acelerada que vivimos tras la caída del Muro de Berlín nos ha conducido a un atolladero del que no sabemos si habrá salida desde el sistema. A las crisis ecológica y política que ya apuntaban maneras a finales del s. XX se ha unido hace dos años la peor crisis económica desde el Crack de 1929. Los pronósticos más alarmistas hablan de no retomar el crecimiento bien entrada la década en los países más desarrollados (España a la cola) mientras las potencias emergentes saldrán reforzadas. La sangría de la clase media que esto supone aquí puede encontrar su contrapunto en un acceso al consumo de grandes masas de población en el sudeste asiático y Sudamérica. África no aparenta recuperación posible y su papel seguirá siendo, de manera indefinida, el de proveedor de materias primas y mano de obra barata.

1.4. Represiva

El fin de la política de bloques ha supuesto una reconceptualización geoestratégica abandonando las potencias la idea de guerra entre estados hacia el conflicto desde abajo. El terrorismo tal como se ha definido en este proceso de cambio ha servido para dar un enemigo ante el que el aparato militar y represivo pueda seguir justificándose una vez finalizada la guerra fría. La nueva definición de terrorismo incluye a todos los que, organizados o individualmente, no sólo intenten el cambio del estado de las cosas sino incluso se lo planteen estando a las puertas de lo que Orwell llamó crimental. La criminalización de las ideas ha comenzado a nivel internacional por los/as musulmanes/as y nacional por los/as nacionalistas/as vascos/as.

El poder sabe que no basta con la represión para acallar a sus detractores/as por lo que fomenta

la consolidación de alternativas blandas bien criminalizando sólo a parte del movimiento (yihadistas en el primer caso, izquierda abertzale en el segundo) bien encumbrando a la alternativa. Este fenómeno no es nuevo, mucho menos para nosotros quienes lo sufrimos desde la primera oleada represiva durante la I Internacional, pero ha de mantenernos alerta pues tras el globo sonda del triángulo anarquista mediterráneo de principios de 2000 podríamos volver a ser blanco perfecto a sus políticas de justificación represiva.

A nivel militar se camina hacia ejércitos profesionales que satisfagan las necesidades de alta especialización del nuevo y sofisticado parque armamentístico, con unidades de intervención rápida que puedan apagar en apenas días episodios de conflictividad en cualquier parte del Planeta. Recupera el ejército, por tanto, labores represivas hacia la población no en detrimento de las policías sino como complemento a éstas e incluso a la seguridad privada que ha proliferado consecuencia de la mayor polarización social desde la década de 1970.

1.5. Ideológica

La clase política que ha tomado el bastón de mando de la generación que heredó la victoria de la II Guerra Mundial se ha fraguado en las universidades que bulleron en la década de los 60 y 70. La nueva izquierda de entonces ha devenido en neo-conservadores del s. XXI. La evolución ideológica no sólo ha sido personal sino que ha llevado al campo de la derecha tradicional las armas de la izquierda. La protesta, la desobediencia civil, la contrapropaganda, etc. No sólo se han hecho habituales entre los conservadores sino que incluso han tomado la delantera en su utilización. El abuso de términos fácilmente manipulables como libertad y su lucha contra el estado totalizante apoyados en un fuerte aparato de propaganda privado y estatal ha convertido al despreciado pensamiento único de finales del siglo pasado en una nimiedad comparado con la ideología neoconservadora del nuevo milenio. La izquierda asumió las reglas del juego que estableció la derecha y cuando empezaba a dominarlas se encuentra con que ésta rompe la baraja y ataca con sus mismas armas estando la primera totalmente desarmada. La apuesta política iniciada a finales del s. XIX de mano de Marx ha demostrado ser desastrosa, tanto en su vertiente leninista como socialdemocráta, así como su vertiente consejista que ha evolucionado a movimientos autónomos para la clase trabajadora sin ninguna referencia ideológica, ni siquiera organizativa, más allá de lo que sale en televisión. Las elecciones han supuesto la burocratización y espectacularización de la acción política. Fenómeno que se está reproduciendo a nivel sindical si no hacemos nada por remediarlo desde el anarconsindicalismo.

2. VÍAS PARA LA ACCIÓN SOCIAL

2.1. Relaciones con otras organizaciones en el ámbito social

La práctica anarcosindicalista y libertaria ha incluido y vinculado siempre las luchas sociales y culturales con las luchas económicas y sindicales de los/as trabajadores/as. Muchos de los actua-

les movimientos sociales se pueden rastrear en el movimiento libertario de principios del siglo XX, donde las cuestiones sociales se vinculaban con el movimiento sindical de forma natural a través de una rica red de ateneos , escuelas, colectivos e iniciativas de todo tipo sostenidas por y vinculadas a los sindicatos de CNT.

La influencia de las ideas libertarias está en el germen de los movimientos sociales que han ido surgiendo desde los años 60 y 70 , y han influido en las prácticas y propuestas de buena parte de los movimiento social anticapitalistas en todo el mundo. Movimientos como el antimilitarismo, el ecologismo radical o el movimiento okupa cuentan con evidentes conexiones con nuestros principios y tácticas. No es difícil rastrear prácticas y modos libertarios en las formas organizativas y en los discursos de otros movimientos sociales.

De igual forma la explotación capitalista se extiende más allá de las relaciones laborales o de la explotación humana a través de la extracción de la plusvalía. La destrucción del medio natural, la xenofobia, la desigualdad, y la sobreexplotación en las relaciones mercantiles hacia los países que denominan del tercer mundo (incluyendo el propio ser humano como una mercancía), la pérdida de biodiversidad genética, como la cosificación de los animales, entre otras, no pueden ser ignoradas por ninguna organización que aspire a un cambio radical y revolucionario de sociedad.

Observamos a pesar de ello, cierta autoexclusión de la CNT de los movimientos sociales en iniciativas y campañas donde deberíamos tener mayor implicación.

Por ello, defendemos que el anarcosindicalismo tiene que implicarse con fuerza en las cuestiones sociales, y participar y debatir con los movimientos sociales. Debemos ser capaces de generar un análisis que partiendo de nuestros principios, siguiendo nuestras tácticas y buscando nuestras finalidades, sin embargo pueda conectar con la gente joven que rechaza la afiliación a cualquier organización y el trabajo militante, o con otros colectivos sociales.

Vivimos una situación social donde las nuevas formas de trabajo, la precariedad y la temporalidad hacen que el lugar de trabajo no sea para muchos trabajadores, un espacio de socialización o de politización, o que ni siquiera sea percibido como el objetivo de lucha prioritario, incluso para aquellos/as trabajadores/as más concienciados/as con los problemas de la sociedad capitalista.

Hablamos de las luchas vinculadas con la defensa del territorio, de carácter ecológico y/o social, o contra la dominación en general, concretadas en la crítica a la exclusión, la lucha por los derechos sociales, las luchas contra el autoritarismo, el fascismo y la xenofobia, las luchas contra el patriarcado. Sería necesario tener en cuenta las nuevas formas de creación y apropiación cultural , el ensayo de nuevas formas de relacionarse , de producir y consumir, las experiencias de autogestión, ya que conforman un movimiento del que debemos participar, al que podemos aportar y del que podemos aprender.

Debemos ser capaces de integrar la lucha sindical con estas cuestiones sociales desde enfoques complementarios, huyendo de la confrontación entre lucha sindical y lucha social , estableciendo conexiones entre las reivindicaciones más clásicas o sindicales . . de los trabajadores , vinculadas al salario y las condiciones de trabajo, y aquellas reivindicaciones más globales de cuestionamiento del sistema capitalista desde distintas perspectivas (ecológico, patriarcal, militar, etc).

Creemos que debemos buscar las formas de evitar nuestra autoexclusión de las cuestiones sociales, reafirmando nuestra personalidad como organización y nuestro mensaje de transformación social revolucionaria antiestatista y anticapitalista.

Las grandes organizaciones del siglo pasado con capacidad de incluir la mayor parte del movimiento social e impulsar ellas solas procesos revolucionarios (sindicatos, partidos, etc) han dejado paso a múltiples iniciativas , colectivos y organizaciones que trabajan desde distintas perspectivas, tendiendo a organizarse en redes, en campañas, o reivindicaciones concretas.

Debemos hacerlo aportando nuestra visión de clase a estas cuestiones, incidiendo en la necesidad de cambios revolucionarios globales y no meras reformas, y trabajando sobre la necesidad de conseguirlos desde la autoorganización, el apoyo mutuo y la acción directa y no desde el acceso al poder o atajos políticos.

Esto es una realidad en la que no deberíamos tener problemas para actuar, precisamente desde nuestros principios libertarios, federalistas y de respeto de la autonomía, deberíamos ser capaces de participar e influir desde nuestra perspectiva y con nuestras tácticas. Todo ello sin caer en el plataformismo donde no se respeten nuestras prácticas de horizontalidad, asamblearismo, autogestión, solidaridad, apoyo mutuo, y acción directa.

Evidentemente esto supone trabajar con quienes no compartiendo el 100 % de nuestros planteamientos podamos compartir análisis o reivindicaciones concretas, con quienes podamos acordar unos mínimos en los objetivos y en las formas de trabajar, defendiendo siempre nuestros principios y tácticas, fundamentalmente con el ejemplo. Todo esto sin ser ingenuos y sin perder de vista que los objetivos últimos de determinadas organizaciones corresponden a intereses antagónicos a los objetivos de nuestra organización, y teniendo en cuenta que el fin no justifica los medios. Creemos que en la relación con otros colectivos e iniciativas se debe respetar la autonomía de los sindicatos en su respectivo ámbito surgiendo de estos las propuestas y campañas, construyendo el trabajo con otros colectivos de abajo hacia arriba desde la base.

Como propuestas específicas por ahora proponemos:

- La realización de conferencias de sindicatos en los distintos ámbitos en los que analizar y debatir sobre la acción social de la CNT y la ideonidad, o no, de la participación en distintas campañas, así como nuestro posicionamiento frente a la vinculación de estos análisis con la práctica sindical y las organizaciones que no contradigan nuestros principios, tácticas, y finalidades.

- Utilizar nuestra estructura para la agilización en los mecanismos de comunicación y difusión de las distintas campañas y actividades que en este ámbito desarrollan los sindicatos de la CNT.

- Impulsar campañas específicas que puedan ser asumidas por la CNT, como podrían ser la objeción fiscal u otras.

- Todas estas iniciativas deberán partir de las propuestas de los sindicatos.

2.2. Educación

Actualmente en lo relativo a la educación la realidad que se presenta es un sistema de enseñanza gestionado por el Estado, las instituciones privadas capitalistas y las órdenes religiosas, siendo sus centros educativos donde está escolarizada la práctica totalidad de la infancia.

Es evidente que todos aquellos procesos que se están dando en la actualidad con relación a la educación consistente en privatizaciones y otras formas elitistas (ejemplo es la enseñanza privadaconcertada) con un alto componente competitivo y mercantilista, tendrán nuestra frontal oposición.

Aunque desde CNT rechazamos el sistema de enseñanza oficial, no podemos obviar que dentro de ella hay determinadas experiencias con connotaciones libertarias (asamblearismo en el aula, luchas antiautoritarias, movimientos críticos, etc.) gestionadas por algunos trabajadores desde dentro del sistema, y que sin ser la solución, sí que hacen aportaciones hacia una pedagogía libertaria. Hemos de ser consciente sin embargo que la práctica asamblearia en diferentes niveles educativos no tiene porqué significar que se potencie la autonomía del individuo. Existen casos de formas de asamblearismo no horizontal en las cuales se da potestad a los alumnos para elegir en asamblea algunos aspectos de su educación, como por ejemplo la secuenciación de contenidos, sin permitirles

decidir cuáles serán éstos. Hay corrientes críticas que presenta al profesor como una especie de vanguardia. No debemos apoyar todas las pedagogías críticas, sino las pedagogías con un fuerte contenido libertario. La pedagogía crítica engloba teorías del marxismo y esto tiene repercusión en la forma de considerar la educación dentro de un contexto social y de reproducirlo, como hemos dicho, en el aula.

La CNT como asociación, tiene como objetivo la transformación de las estructuras sociales vigentes y el establecimiento del comunismo libertario. Considera contradictorio que nuestros niños y niñas tengan que acudir a la escuela oficial siendo educados en valores ambiguos, egoístas, rígidos, competitivos e indolentes. De esta manera no tienen la oportunidad integral (el contexto familiar y social también es educativo) de ser educados libremente y en consonancia con valores libertarios. De no ser así se ve truncada en gran medida su proyección ética en el futuro. Por tanto, en el terreno educativo, promoveremos cuando existan las condiciones y posibilidades adecuadas la creación, apoyo y mantenimiento a proyectos pedagógicos afines destinadas a los/as hijos/as de los/as trabajadores/as. En su defecto cada sindicato puede ponerse en contacto con los proyectos pedagógicos libertarios que pudieran desarrollarse en sus proximidades con la intención de apoyarlos en la medida de sus posibilidades.

Además de los ejemplos de escuelas libertarias más conocidos y que fueron un referente histórico hasta el final de la Revolución Social y que han sido posteriormente reproducidos en los últimos tiempos hay que tener en cuenta que existen también otras propuestas pedagógicas libertarias e incluso algunas que difieren del concepto de escuela incluso en el sentido físico; sustituyéndolo por la adaptación de los espacios comunes dotándoles de herramientas de aprendizaje adecuadas a cada edad y desde una perspectiva de aprendizaje vivencial integral.

Son también de especial interés los proyectos autogestionados en relación a la educación de adultos así como fomentar la creación de Ateneos Libertarios donde autoformarnos y donde

profundizar en las diferentes temáticas. Esto permite proyectar nuestras ideas hacia el exterior por un lado y por otro potenciar, de cara a los sindicatos, que tomemos nuestros acuerdos de una forma más eficaz.

2.3. Sanidad

Con la lucha del movimiento obrero se extienden los sistemas de protección y prevención para trabajadores/as y sus familias. La CNT desde su inicio ha ejercido un papel concienciador, tanto de la importancia de la articulación de los recursos de investigación, educativos, preventivos y asistenciales necesarios, como de la participación y autorresponsabilidad en materia de salud y seguridad.

2.3.1 Introducción

Entendemos como trabajadoras y trabajadores de la salud desde el personal de administración y servicios hasta el facultativo. Los/as trabajadores/as de la salud no son sólo personal sanitario tal y como se pretende desde el enfoque corporativista. 0Todo obedece a un programa de deterioro, desprestigio y desmantelamiento de los sistemas públicos de salud, con el fin de:

- Dirigir a los sectores más acomodados hacia los seguros privados.

- Privatizar aquellas partes del sistema, de los procesos o de aquellos pacientes que sean más rentables.

- Mantener en lo público aquello menos rentable.

- Pasar la gestión de centros públicos a empresas privadas, (con el soporte de la Ley 15/97).

-Volver a un sistema de beneficencia para mano de obra precaria, personas sin empleo e inmigrantes sin papeles que deja a millones sin cobertura.

Para trabajadoras/es de la salud, la privatización significa destrucción de las anteriores condiciones laborales, incluso reduciendo sus salarios con la complicidad de los sindicatos mayoritarios, a la vez que se da una fragmentación por profesiones a causa de los sindicatos corporativistas. Se disminuyen los presupuestos, se introduce la competencia con incentivos y se aumenta el poder de las mutuas.

2.3.2 Determinantes de la salud

El principal productor de enfermedad es la desigualdad interna de las sociedades. El estrés crónico, el aumento de la ansiedad al desaparecer las viejas formas de vida comunitaria, la individualización de las causas del malestar y el aumento de los riesgos físicos y psicosociales en el mundo laboral es una constante que solo ha mejorado con una fuerte influencia del movimiento obrero organizado, potenciando otros valores de vida como la amistad, la comunidad, la cooperación y rechazando la competencia, el consumismo y el individualismo.

Además podemos encontrar otros factores como la industria química, la contaminación atmosférica, el ruido, las industrias del tabaco, el alcohol y la alimentación, las farmacéuticas y la prevención engañosa.

2.3.3 ¿Cómo intervenir en el campo de la salud?

- Teniendo claro que la salud es un derecho, no un negocio.

- Apoyando un sistema público y universal de salud que no dependa de intereses privados.

- Entendiendo que es un problema europeo siendo necesaria una lucha solidaria y coordinada.

- Teniendo en cuenta la compra de profesionales médicos con incentivos para rentabilizar recursos.

En la salud nos va la vida. El sistema actual pretende deshacerse de la gente prescindible para la producción y el consumo, y anular a los que entorpecen el negocio y que además pueden generar una revolución social.

2.3.4.- La lucha debería tener claros los siguientes puntos:

2.3.4.1. "Sanidad para todos/as". ¿Qué significa?

- Sanidad Universal: Atención sanitaria integral y gratuita para toda la población, independientemente de su situación, con los mismos derechos o cartera de prestaciones.

- Oposición al repago de cualquier tratamiento o servicio prescrito (fármacos para enfermedades crónicas, tratamientos hospitalarios, dietas especiales, transporte no urgente, etc.).

- Rechazo de la división entre derechos sanitarios "básicos", "accesorios" y "complementarios", ya que son la base de la supresión paulatina de las prestaciones o de su gratuidad.

- Denuncia de las campañas de lavado de cerebro a la población para convencernos de que la atención sanitaria no es un derecho básico, así como acostumbrarnos a la idea de que para recibir asistencia hay que estar asegurado, promoviendo la contratación de aseguradoras privadas. También sirven para dividirnos, señalando y culpabilizando a los más vulnerables y necesitados de asistencia sanitaria, pensionistas y enfermos crónicos, con la idea de que "nos salen muy caros a los demás" y por tanto deben pagar parte de su atención ("repago"). De esta forma se trata de hacerles responsables de una supuesta y nunca demostrada "insostenibilidad del sistema". En ocasiones incluso, infiltrando principios xenófobos que se transfieren a la convivencia diaria.

2.3.4.2.- Gestión Pública del Sistema Sanitario

- Defender que las empresas tienen que quedar fuera de la sanidad.

- Acceder a información independiente del tipo de estudios o tesis que comparen los resultados, incluso de muerte, con la misma situación del paciente, entre centros públicos y privados con ánimo de lucro.

- Entender que en los modelos privados hay menor número de trabajadores/as por cama, al tiempo que se incentiva a los profesionales (sobretodo médicos) para que reduzcan el gasto, lo cual no nos garantiza que estén tomando la decisión más adecuada.

- Extender la preocupación por la privatización, no sólo de los servicios "sanitarios" (medicina, enfermería, análisis, etc.), sino de los inadecuadamente llamados "no sanitarios"

(limpieza, cocinas, esterilización, cafetería, lavandería, eliminación de residuos, mantenimiento,etc.). Hay estudios relativos al efecto de la privatización de la limpieza en la incidencia de infecciones en los centros.

- Desmontar la ingenuidad de pensar que se puede mantener la calidad de la asistencia y la independencia de las decisiones con la privatización, pues la guía es el ánimo de lucro para los accionistas de las empresas sanitarias. Sus beneficios económicos perjudican seriamente nuestra salud.

- Saber que la salud como negocio lleva nuestro dinero para sanidad directamente a los bancos, aseguradoras, constructoras, etc.

- Señalar el cinismo de las formaciones políticas que facilitan y justifican esta mercantilización, atacando cuando es otra formación la que lo hace. Igualmente, señalar la ambigüedad deliberada en que se mueven nuevas formaciones sindicales y políticas, negándose a apoyar reivindicaciones sencillas, claras y no corporativas.

- Oponernos a que se pague con nuestro dinero a los centros privados por realizar lo rentable, reduciendo el presupuesto de los centros públicos que, con menos medios tienen que atender a los pacientes y procesos más costosos y complejos.

- Denuncia y rechazo frontal de los nuevos modelos de privatización como el PFI o UGC:

PFI: Son las siglas en inglés de Iniciativa de Financiación Privada. Mucho más caro que el modelo público, a pesar de beneficiarse de privilegios excepcionales, en detrimento de los públicos que antes existían en la zona para no tener competencia.

UGC: Consiste en ceder la gestión de los centros sanitarios públicos, o algún servicio a los propios profesionales, que podrán llegar a constituir microempresas (Unidades de Gestión Clínica), con los mismos objetivos lucrativos e igualmente inaceptable, pues el ahorro se consigue escatimando recursos.

2.3.4.3.- Utilización de los recursos públicos al 100 por 100

Con la excusa de las listas de espera se nos deriva a centros privados para las operaciones sencillas y las pruebas rentables (resonancias magnéticas, TAC, etc.). Iba a ser puntual, pero es una fuga de nuestro dinero hacia las empresas privadas. A pesar de la voluntariedad de las presiones, gran parte de los y las pacientes prefieren esperar para ser atendidas en un centro público. En 2012 había 600.000 pacientes en espera quirúrgica. Todas las comunidades ocultan sus datos. El sistema público tiene los medios para atender adecuadamente a la población, pero no se utilizan, entre otros motivos porque hay gestores de centros públicos con intereses privados. Además se estima que la formación de un/a médico cuesta casi 200.000€ al contribuyente, despilfarrados con la reducción de plantillas a que se somete al personal sanitario.

¿Cómo utilizaríamos estos recursos?

- Creación de un turno de tarde para pleno rendimiento de especialidades y equipos de alta tecnología, quirófanos, etc, con otra plantilla, no con sobresueldos.

- Establecimiento de ratios adecuadas profesional/paciente.

- Desaparición de horas extras.

- Imposibilidad de desempeñar dos puestos de trabajo en el sector público.

- Un sistema de incompatibilidades serio que impida que quien trabaje en la sanidad pública tenga intereses en la privada.

2.3.4.4.- Por un sistema sanitario verdaderamente público y directamente democrático:

participación real de la población en su gestión, sin intermediarios. La opacidad facilita la corrupción y las famosas puertas giratorias. Políticos, empresarios, cuadros sindicales y supuestos expertos se lucran de los recursos públicos y convierten nuestra salud en su negocio. Significaría:

- Recuperar el sentido del término público.

- Derecho de cualquier persona a información y decisiones sobre lo que le atañe a nivel personal, por ejemplo, opciones terapeúticas.

- Derecho personal y colectivo a participar en la información y decisiones en los recursos sanitarios públicos que le corresponden. Ello requiere mecanismos legales que lo garanticen, pero no nos valen los típicos mecanismos a través de los famosos agentes sociales, elecciones, etc.

- También requiere un proceso de concienciación y de cambio de mentalidades, incidiendo en la importancia del lenguaje.

2.3.4.5.- Prepararse para la autogestión

Significaría:

- Fomentar la cultura de la autonomía personal en la salud, frente a la dependencia del Sistema Nacional de Salud.

- Ir manejando la posibilidad de tener que suplir o complementar atención, que ciertos colectivos pueden perder, con nuestros propios recursos.

- Plantear la Organización como una comunidad en la que reduzcamos, al menos, internamente los riesgos para la salud, físicos y psicosociales de nuestros miembros.

- Desarrollar nexos con grupos de aquí o de otros países, beneficiándonos mutuamente del conocimiento y experiencias, tanto de lucha como autogestionarias, en el campo de la salud.

2.3.4.6.- Muerte Digna

Teniendo como reivindicación de la salud el derecho sobre el final de nuestras vidas, decidir sobre la propia muerte debe reconocerse como una realidad incuestionable. Si buscamos vivir en las mejores condiciones debe asumirse la libertad de decidir sobre la propia muerte, más aún si las condiciones de salud y sufrimiento se hacen inaguantables.

Los que han dirigido nuestra educación y forma de pensar:

1.- Nos muestran una cosmovisión en la que dios tiene propiedad sobre la vida y la

muerte.

2.- La muerte es más plena cuanto más se nutre de sufrimiento.

Por contra proponemos que la buena muerte sea un derecho reconocido, al igual que la conquista de una buena vida. La muerte digna debe ser asumida como un derecho vital de la persona.

2.4. Economía colectivista y proyectos autogestionados

Creación de iniciativas autogestionadas de producción-consumo que pertenezcan a los sindicatos.

2.4.a. En cuanto a la producción

Partiendo del análisis los proyectos de tipo auto-empleo o cooperativas de producción hay un símil que puede ilustrar bien su comprensión: un trabajador asalariado ha de servir a las condiciones que le impone el patrón; al trabajar en régimen de autónomo no te liberas ya que las condiciones te las impone el mercado y al Estado (seguridad social, leyes relativas al sector, hacienda, jubilación, cuotas de producción forzosa, subvenciones en determinadas condiciones,...). Lo mismo sucede en una cooperativa de producción: de puertas adentro puede ser muy horizontal pero de puertas afuera ha de someterse a las condiciones del mercado, y por tanto al capital. En consecuencia puede generarse una subclase empresarial o una auto-explotación voluntaria.

Para poder dotar a este tipo de proyectos de producción de un potencial emancipador de acuerdo a nuestros principios, tácticas y finalidades es necesario cerrar el ciclo producción-consumo sin que el instrumento de intercambio sea el mercado (lo que en el concepto confederal de comunismo libertario Isaac Puente llama medio o signo de cambio). Esto implica que los proyectos productivos partan de los propios sindicato y no de fuera de estos y que además tengan carácter colectivista, que no de cooperativa.

El concepto del cooperativismo es una transformación o denigración del concepto del colectivismo, como idea originaria de socialismo humanista vertido y concretado en los principios de constitución de la I Internacional, de cuyos principios la C.N.T y el anarquismo en general son herederos. La terminología cooperativa de producción y consumo empleada en la mayoría de los acuerdos de los sindicatos que las apoyaron, hacen a continuación matizaciones de funcionamiento y fines, que nos dan pie para identificarlas con el contenido colectivista propio del movimiento anarcosindicalista. Por lo que se adoptó como definición para todos los casos el término COLECTIVIDAD DE PRODUCCIÓN Y CONSUMO. Por lo tanto rechazamos el cooperativismo como finalidad, cuya dinámica lleva a la integración en la sociedad capitalista creando nuevos/as empresarios/as o una autoexplotación voluntaria en beneficio del mercado y del Estado.

Las colectividades de producción y consumo que actualmente se puedan crear no tienen que ser consideradas como medio directo y absoluto para alcanzar la emancipación de los/as trabajadores/as. Estas pueden servir como medio indirecto para aliviar nuestros problemas adquisitivos y por otro lado llevar a la práctica unas realizaciones en las que se demuestre la capacidad de au-

toorganización de los/as trabajadores/as, eliminando intermediarios/as, almacenistas, especuladores/as, etc.

Estas colectividades de producción-consumo no son ni proyectos de autoempleo ni cooperativas sino que el trabajo sale adelante por la participación voluntaria de los componentes de la colectividad.

Las colectividades de producción y consumo, según lo actualizado de congresos anteriores, se dividen en dos apartados:

a) Casos de industrias a colectivizar por cierre patronal, abusos, etc. en las que se tendría muy en cuenta las condiciones en que son dejadas y la dependencia de otras industrias en lo relativo al suministro y/o distribución de productos.

b) El otro caso, según las ponencias, lo ocupan las Colectividades de Producción Agrícola consideradas como parte importante del apartado de alternativas al problema agrario.

Las bases de organización de Colectividades están dadas en función del sentir mayoritario de los sindicatos, que coinciden en principio en su implantación agrícola, como posibilidad más viable actualmente. Este sistema de organización, fines, etc., es adaptable a cualquier tipo de Colectividad de Producción y Consumo que en un futuro pueda crearse dentro de la sociedad.

A falta de un estudio exhaustivo sobre la historia y características técnicas del movimiento cooperativo, se precisar una orientación de tipo general para el funcionamiento de estas Colectividades de Producción y Consumo.

Ante la estructura económica capitalista, los/as anarcosindicalistas promovemos las Colectividades de Producción y Consumo, aunque no como medio absoluto para alcanzar la emancipación de los/as

trabajadores/as. Considerando que su funcionamiento será en base a no ser confundido en ningún momento con el sistema de cooperativas oficiales que tienden a reproducir el concepto de pequeño/a empresario/a.

La estructuración general atenderá a lo siguiente:

• Partirá de pequeños núcleos (sindicatos, Federaciones Locales, etc.) para extenderse a los ámbitos naturales (comarca, provincia, región, etc).

• Su estructura será aquella que no pueda ser controlada ni asimilada por el sistema.

• Su coordinación será federalista, manteniendo la autonomía de los núcleos.

• Su régimen de funcionamiento será autogestionario.

• Su finalidad no será lucrativa, o sea que los beneficios serán invertidos en la colectividad y en el sindicato.

• Los titulares de las Colectividades de Producción y Consumo, serán los sindicatos, Federación Local, etc. y no la organización como entidad.

• Se utilizará la vertebración orgánica, para el desarrollo, apoyo e implantación de las Colectividades de Producción y Consumo.

La CNT no puede, con la fuerza actual de la organización, abarcar todo, y debe tener claro a qué apostar y cómo apostar. Pensamos viable empezar en el ámbito agrario, sin detrimento de otros sectores, por lo anteriormente expuesto y por requerir una menor correlación de fuerzas para acceder a la toma de los medios de producción.

Los proyectos que creen los sindicatos deben servir para integrar en la lucha anarcosindical viviendo experiencias que potencien más la idea de la necesidad de revolución, propaganda por el hecho que sirva para apoyar la lucha anarcosindical (cobertura de necesidades en casos de crisis económica, ayuda a represaliados, apoyo a huelgas...).

2.4.b. En cuanto al consumo

Frente a la comercialización capitalista debemos luchar por la eliminación inmediata de los/as intermediarios/as. Potenciar canales de comercialización alternativos a los capitalistas. Intentar utilizar al máximo la estructura sindical para esa distribución. Esto debe lógicamente venir acompañado de una red de colectivos o cooperativas de consumo colectivizadas que se abastezca de estos productos y les dé salida, dando así un ejemplo de organización como consumidores/as. (V Congreso, punto 8.7.3b) Posibles líneas alternativas).

El modelo de cooperativa de consumo se viene conociendo con el nombre de GAKs (Grupos autónomos de consumo). En los proyectos cooperativos que únicamente se basan en el consumo se potencia al pequeño (o no tan pequeño) empresario más ecológico, más equitativo, más justo, pero empresario al fin y al cabo. El concepto de GAK puede ser entendido también en parte como una adaptación o contextualización del label sindical. Pensamos que crear GAKS en los sindicatos sería un paso adelante en la práctica, pero solo en el sentido en el que producción y consumo son las dos caras de la misma moneda y por tanto es necesario incidir en ambas.

Sin embargo tenemos bastantes reticencias pues vista la evolución real que han tenido los grupos de consumo en las zonas donde más se han desarrollado (Madrid, Cataluña, Andalucía, etc) vemos un paso atrás en la claridad y comprensión de la cuestión cooperativa vs colectivismo con respecto al V congreso.

Entendemos que los GAKs nunca han de ser un objetivo de la CNT, sino una táctica dentro de la situación actual, al no poder abastecer y coordinar la producción y el consumo a través de las federaciones de ramo. Para responder a nuestros principios, tácticas y finalidades ha de dirigirse dicha herramienta nuevamente hacia el colectivismo, superación del intercambio a través del mercado buscando reducir al mínimo el dinero en favor de acuerdos basados en una satisfacción de las necesidades planificada y participativa.

Por ello se podrian adaptar los GAKs a los principios, tácticas y finalidades de la CNT. Por supuesto no solo el nombre, que podría ser el de Grupos Confederales de Consumo, sino definir su objeto y funcionamiento. De la misma manera que los proyectos de producción han de cerrar el ciclo hacia el consumo los proyectos de consumo han de caminar hacia la colectivización de los medios de producción.

A través del GAK se pueden establecer pactos con los productores presentándose diferentes opciones de relación según el caso, llegando a acuerdos en los que progresivamente se asuma la producción y consumo de forma compartida. Pero a través del consumo también se pueden establecer conflictos de lucha exigiendo determinadas condiciones, como demuestran casos histó-

ricos dentro del anarco-sindicalismo como las huelgas de consumo del pan, boicots ante el abuso de los tenderos o huelgas de alquileres.

2.4.c. Cuestiones a considerar para los proyectos económicos dentro de la CNT. Hacia la construcción de una alternativa económica al mercado y al estado

Creemos que las cuestiones de este calado ha de ser resultado del debate y las aportaciones del conjunto de la organización en referencia a los proyectos económicos dentro de la CNT, siendo conscientes de que no alcanzaremos el comunismo libertario sino a través de la revolución social. A modo de ejemplo cuando hablamos de economía hablamos de la satisfacción de necesidades partiendo de los recursos que disponemos, por tanto el objetivo de la actividad económica no tiene por qué ser de carácter monetario. Es decir, puede realizarse un proyecto productivo en relación a la edición de libros u otros materiales dirigido a su venta, pero también puede realizarse con el propósito de dotar a los sindicatos de los materiales que consideráramos necesarios.

2.4.c.1. Una economía colectiva. Frente al individualismo, una de las características esenciales del Capitalismo. Todas las demás bases han de construirse desde esta lógica de lo colectivo. Esta opción no ha de menoscabar el respeto por la persona y el libre desarrollo de su personalidad y creatividad en convivencia con la de las demás.

2.4.c.2. Consenso en cuanto a los principios básicos: Sentar unas bases claras que queden reflejadas por escrito, que no haya que discutirlas constantemente y que no den lugar a infinitas interpretaciones. Esto implica el profundizar sobre las cuestiones básicas del proyecto hasta llegar al consenso. Es necesario un conocimiento mutuo previo entre las personas que quieren formar parte del proyecto.

2.4.c.3. Cubrir necesidades básicas como objetivo: Partir de un estudio de las necesidades básicas (materiales y no materiales) a cubrir ya que la planificación ha de ir en base a estas. Planificar implica no solo el qué y el cuándo, sino el quiénes y el cómo y por tanto una formación previa sobre los conocimientos y habilidades prácticas necesarias. Cubrir las necesidades básicas implica la renuncia de necesidades superfluas (sean las propias de los integrantes o de otros en caso de que se produzca para fuera).

Es fundamental para que las planificaciones se adapten a la realidad y se vaya aprovechando la experiencia acumulada hacer evaluaciones periódicas. No sólo han de evaluarse las actividades planificadas respecto de sus objetivos a corto plazo sino también ver en qué grado lo realizado se aproxima a los principios, tácticas y finalidades de la CNT y su repercusión en la actividad del sindicato. Por último es necesario re-planificar siempre en función de los resultados de las evaluaciones.

2.4.c.4. Autogestión: La independencia respecto de toda forma de poder es consecuencia de una actitud que debe estar presente en todo proyecto alternativo al sistema dominante: estar constantemente en contra del poder. La toma de decisiones ha de hacerse en asambleas por quienes forman parte del proyecto. Pero el asamblearismo no está exento por sí mismo de formas de poder. Para poder decidir en igualdad es necesario disponer de formas de comunicación en las que todo el mundo tenga acceso a la información. No hay horizontalidad cuando las decisiones son en igualdad pero la participación no, ya que unas personas deciden lo que tienen que hacer

otras. Autogestionar no es sólo decidir, también es hacer. Aunque cada cual ha de participar en la toma de una decisión en la medida en que ésta le afectará en cuestiones fundamentales, la última palabra la tendrá el sindicato.

2.4.c.5. Aprendizaje permanente: El grado de experiencia y conocimientos afecta a todas las demás bases planteadas: desde cómo se toman las decisiones hasta nuestra relación con el medio. Es fundamental crear espacios para el aprendizaje colectivo, o mejor aún que se facilite durante el desarrollo mismo de las actividades la posibilidad de aprender (para ello ha de ser tenido en cuenta en la planificación de esas actividades) y llevado a todos los campos de manera trasversal.

2.4.c.6. Actividad no especulativa: Cualquier actividad de intermediación con carácter lucrativo es contraria a la acción directa y no tiene carácter económico sino especulativo por tanto CNT nunca ha de participar de ello. (El transporte sí es actividad económica).

2.4.c.7. Estabilidad independiente del crecimiento: a diferencia de lo que ocurre en el Capitalismo, no debe requerir un crecimiento constante para sobrevivir. Para ello hay que eliminar la obsesión por el crecimiento cuantitativo y pensar más en la multiplicación de las iniciativas y su federación así como en el crecimiento cualitativo en cuanto a llevar a la práctica los principios básicos.

2.4.c.8. Acceso a los medios de producción: los medios de producción no son sólo materiales, sino también los conocimientos, las relaciones, etc. Una economía alternativa no puede basarse en tomar los medios de producción tradicionales del desarrollismo capitalista para simplemente ponerlos en otras manos (por ejemplo, no tendría sentido autogestionar las necesidades energéticas ocupando una central nuclear). Hay medios de producción que es preciso re-apropiarse, pues están en poder de las clases dominantes, y otros que hay que re-tomar porque han sido desvalorizados y condenados al olvido. Así hay que cambiar la correlación de fuerzas para tomar el control de los recursos naturales, pero otros medios de producción como son el conocimiento de la naturaleza o la capacidad de auto-organización precisan de grupos de aprendizaje colectivo para recuperar conocimientos campesinos seculares adaptados a las realidades locales y la memoria histórica de las

luchas de nuestra organización

2.4.c.9-Preferencia por el uso de tecnologías simples. La tecnología empleada no debe generar nuevas necesidades ni dependencias. En el grado de eficiencia (resultados obtenidos entre recursos utilizados) hemos de incluir en los resultados los efectos no deseados y el tipo de organización social que reproduce y en recursos utilizados no atender solamente al momento de su utilización sino de la encadenación/acumulación de costes reales anteriores. Es fundamental la recuperación de conocimientos válidos en cuanto a autonomía y eficiencia de otras épocas y culturas e idear (que no idealizar) diferentes formas de producir. El empleo de otras tecnologías ha de ser tras un estudio razonado de sus repercusiones y no se excluye el uso de las mismas.

2.4.c.10. Relación equilibrada con la naturaleza: empieza por tener en cuenta el coste ecológico real de lo producido. Por un lado, el consumo de materias primas y energía de todo el proceso debe respetar la capacidad de regeneración de los recursos naturales que emplea. Y por otro lado, ser conscientes de los efectos no deseados y el deterioro que nuestra actividad económica

genera a la autorregulación del sistema natural. El sistema natural ha de ser recuperado, entre otros motivos, porque en última instancia de él proviene todo lo necesario para la vida y su reproducción.

2.4.c.11. Interacción con el contexto social. Un proyecto no puede estar encerrado sino transcender al resto de la sociedad. Asimismo, dado que el Capitalismo no es sólo un sistema económico sino que la dominación se extiende en todos los aspectos de la vida social es necesario insertar esta lucha económica en los procesos más amplios de lucha que mantenga la CNT.

2.4.c.12. La tendencia natural en base a nuestros objetivos es la de ir prescindiendo de la relación con el mercado capitalista.

2.4.c.13. Tomar parte en redes económicas de apoyo mutuo. Es muy difícil que un proyecto aislado pueda cubrir todas sus necesidades. Por ello es imprescindible en el futuro la coordinación de los mismos a través del ámbito y cauces orgánicos así como crear alianzas con otros proyectos, federaciones, personas y grupos afines extendiendo el apoyo mutuo.

2.4.c.14. Influencia de lo no económico en lo económico. Lo económico no es todo. Hay cuestiones que afectan a la Economía que no pueden resolverse desde lo económico. Sin un cambio a nivel cultural, de valores, de conciencia y de formas de relacionarnos no será factible ninguna alternativa de calado. De cara a un bienestar personal y colectivo tiene que haber equilibrio también entre lo que se piensa, lo que se siente y lo que se hace.

2.4.c.15. La excepción no hace la regla. Hay veces que en la práctica no queda más remedio que no cumplir alguna o varias de las bases anteriores. Estas decisiones no tienen por qué afectar al futuro del proyecto si se toman de manera bien consciente y con conocimiento del sindicato. Por tanto no han de sentar precedente ni pasar a convertirse en algo habitual. Además es imprescindible que se acompañen de un compromiso de buscar otras soluciones coherentes con los principios de la organización para las próximas veces en que se presenten de nuevo dichas situaciones. Esto es especialmente importante cuando se plantea empezar de una manera para poco a poco pasar a hacer las cosas como realmente queremos.

2.4.c.16. Que funcione: es decir, que vaya cumpliendo con los objetivos que se marque la organización. Cuando no funcione no hay que desanimarse, sino estudiar si el fallo está en que falla la propia formulación del proyecto (bases, planificación) o bien si lo que falla es su desarrollo.

PATRIMONIO

1. EL FONDO DE PATRIMONIO HISTÓRICO CONFEDERAL.

El fondo de patrimonio histórico confederal estará formado por:

1. Todos los fondos correspondientes a recuperaciones del patrimonio histórico confederal incautado por el estado tras el golpe de estado de 1936 por cualquiera de los conceptos: cuentas corrientes, solares y edificios, imprentas, colectividades, etc. También se incorporarán a dicho Fondo los intereses correspondientes a las cuentas y fondos bancarios en los que están depositados. De la misma forma se sumarán las cantidades resultantes de la venta o alquiler de locales u otros bienes del propio patrimonio histórico.

2. El Fondo de Solidaridad, conformado por las aportaciones de aquellos sindicatos que hacen uso de locales del patrimonio histórico confederal conforme a los compromisos adquiridos cuando se acordó el uso del mismo. Estas aportaciones no otorgan ningún derecho sobre el local confederal, más allá del uso acordado en pleno confederal, y en ningún caso son asimilables a un alquiler o a la devolución de un préstamo.

3. El Fondo de Compra de Locales, conformado por la parte reservada en pleno confederal del total del Fondo de Patrimonio para la compra de locales. Podrá dotarse con nuevos ingresos al Fondo de Patrimonio Confederal, resultado de nuevas recuperaciones frente al estado, con los intereses generados por las cuentas bancarias donde los fondos están depositados, y con el Fondo de Solidaridad.

4. El Fondo de Alquileres, conformado por la cantidad reservada en pleno confederal para ayudas al alquiler para sindicatos de la Confederación. Podrá dotarse con nuevos ingresos al Fondo de Patrimonio Confederal resultado de nuevas recuperaciones frente al estado, con los intereses generados por las cuentas bancarias donde los fondos están depositados, y con el Fondo de Solidaridad.

2. CRITERIOS DE UTILIZACIÓN DE LOS FONDOS DE PATRIMONIO HISTÓRICO

Los fondos del Patrimonio Histórico serán utilizados en orden prioritario para:

1. Facilitar la devolución de todo el patrimonio histórico: con este fin se mantendrá el fondo destinado a esta finalidad adaptando, en pleno confederal, su cuantía en función de las necesidades y previsiones.

2. Compra de locales: Se destinará a este fin la cantidad presupuestada en el Fondo de Compra de Locales. La adquisición de locales se realizará mediante los siguiente criterios y mecanismos:

1. Los sindicatos federados a la CNT podrán solicitar al Comité Confederal que proceda a la compra de un local para uso del sindicato solicitante en su localidad. De igual forma se puede solicitar una ayuda al alquiler, una opción que será prioritaria en caso de sindicatos de nueva creación y/o escasa afiliación.

2. La Secretaría de Patrimonio recopilará las distintas solicitudes, y la disponibilidad de los distintos fondos del Patrimonio Histórico Confederal y elaborará anualmente un informe que se estudiará en Plenaria Confederal, a fin de determinar si existe disponibilidad para atender las solicitudes.

3. De existir disponibilidad, y acordarlo así el Comité Confederal, se convocará la Comisión de Patrimonio que estará compuesta por la Secretaría de Patrimonio confederal y por las secretaría de patrimonio de las distintas confederaciones regionales o territoriales. Dicha comisión estudiará todas las solicitudes, admitiéndolas o rechazándolas, y priorizando su atención en función de los siguientes criterios:

1. Tendrán prioridad en la adjudicación las F.L que ocupando un local de P.H. y, debido a que haya sido compensado, ese local se haya perdido.

2. En segundo lugar, tendrán prioridad en la adjudicación las federaciones locales que tengan fuerte actividad sindical, medida ésta en numero de secciones sindicales, número de sindicatos, número de personas afiliadas, conflictos en los que se ha participado últimamente, actividad sindical permanente en diversos ramos o empresas, etc.

3. El tercer criterio a tener en cuenta será la situación geográfica, es decir, aunque no se tenga una fuerte actividad sindical que sea importante para el mantenimiento de la CNT en esa zona, bien porque haya sido y esté siendo un foco de irradiación de la organización, bien porque la federación local en cuestión sea el único punto de contacto con una zona amplia en la que no existe CNT.

4. En cuarto lugar, las federaciones locales que, por la gran cuantía de la hipoteca o alquiler que pagan, supongan especial gasto para la organización. Aquellas federaciones locales que pagan hipotecas o alquileres pequeños, o que disfrutan de locales del Patrimonio Acumulado deberán dejar paso a otras federaciones locales con mayores necesidades.

5. Y por último, Federaciones Locales de lugares de importancia adminis-

trativa o que sean lugar habitual de reuniones orgánicas o de actos confederales, etc.

4. Estos criterios se aplicarán por la Comisión de Patrimonio, analizando los datos de las solicitudes de las Federaciones Locales o Sindicatos y escuchando las aportaciones que las diferentes Secretarías Regionales de Patrimonio hagan. La Comisión de Patrimonio podrá solicitar la documentación al respecto que considere y rechazar aquellas solicitudes que se considere que no aportan información suficiente, o incurren en falsedades, no cumplen con los requisitos, o han incumplido compromisos anteriores.

5. En cualquier caso serán requisitos para que se tengan en cuenta la solicitud de un sindicato los siguientes:

1. El sindicato debe tener una antigüedad en la organización, de forma activa, de al menos dos años.

2. El sindicato debe estar al día en el pago de cotizaciones, tener debidamente legalizados estatutos y CIF del sindicato adaptados a los últimos acuerdos de congreso.

3. El sindicato debe participar de forma activa en los comicios de la organización, habiendo participado en al menos el 50% de los plenos y plenarias de su ámbito en los últimos dos años.

6. Las solicitudes de compra de locales:

1. Las solicitudes deberán incluir, además de los datos correspondientes al sindicato y su actividad según los criterios establecidos con anterioridad, una estimación de coste de la adquisición de uno o varios locales adecuados a la actividad del sindicato en dicha localidad y las características del mismo. Esta estimación, de aprobarse la solicitud, será el máximo que la CNT gastará por todos los conceptos en la adquisición de un local en dicha localidad.

2. Deberán ir acompañadas de un compromiso de aportación anual al Fondo de Solidaridad, que deberá ser de al menos de un 1% anual del coste estimado del local.

3. Ayudas al alquiler de locales.

Se podrá destinar el Fondo de Ayudas al Alquiler a la concesión de ayudas a Sindicatos y Federaciones Locales para el alquiler de locales de hasta el 80% del coste del alquiler y por un máximo de 3 años prorrogable otros tres.

Las solicitudes de ayudas al alquiler:

1. Deberán incluir, además de los datos correspondientes al sindicato y su actividad según los criterios establecidos con anterioridad, el importe mensual de la ayuda al alquiler que se solicita y el importe total del alquiler previsto.

2. Deberá incluir un informe de la actividad sindical del sindicato, afiliación, situación económica y presupuesto anual del mismo que justifique la solicitud de la ayuda.

3. El contrato de alquiler será firmado por el sindicato de la Federación Local, limitándose el Fondo de Alquileres a aportar semestralmente la ayuda concedida.

4. El sindicato deberá aportar copia del contrato de alquiler a la Secretaría de Patrimonio, así como recibos del pago mensual del alquiler. El incumplimiento de este compromiso implicará la suspensión de la ayuda al alquiler acordada.

4. Préstamos para compra de locales.

1. Se podrá destinar parte del fondo de compra de locales a préstamos a sindicatos o Federaciones Locales que vayan a adquirir un local. Dichos préstamos sólo generarán como interés el IPC correspondiente, pudiendo suscribirse por un máximo de 25 años y por un 80% del precio de compra del local.

2. Exigirán la firma de un contrato de préstamo entre la CNT y el sindicato o Federación Local receptor.

3. Serán acordados en pleno confederal a solicitud del sindicato o Federación Local correspondiente y previa propuesta de la Comisión de Patrimonio.

5. Mantenimiento del patrimonio confederal.

Se dotará un Fondo de Contingencias para el mantenimiento de locales confederales.

1. A dicho Fondo se podrán presentar solicitudes para el mantenimiento extraordinario de los locales de patrimonio confederal, por parte de los sindicatos que hacen uso del mismo.

2. Dichas solicitudes deberán estar justificadas por averías, desperfectos graves, reparaciones, etc que exijan un gasto extraordinario. Dichas solicitudes serán dirigidas a la secretaría de Patrimonio confederal, que recopilará toda la documentación.

3. Si el importe es inferior a 3000 € el CC podrá autorizar el pago, debidamente justificado.

4. Para cantidades superiores a 3000 €, la aprobación deberá hacerse en pleno confederal.

5. En caso de urgencia, por la gravedad de los desperfectos o el peligro que supongan para los ocupantes u otras personas, etc., el CC podrá acordar gastos por encima de dicha cantidad que deberán ser ratificados en un posterior pleno confederal.

6. Estas solicitudes deberán contemplar un compromiso de aportación extraordinaria del sindicato al Fondo de Solidaridad confederal para ser estudiados.

7. El CC podrá acordar el cierre de un local de patrimonio confederal por cuestiones de insalubridad, peligro para los ocupantes u otras personas. El sindicato afectado podrá recurrir dicha decisión ante un pleno confederal.

6. Otros

En último caso, y cuando los criterios anteriores sean cumplidos, dotar a la organización de los medios adecuados para potenciar su estructura y actividades, así como para la puesta en práctica de cuantos proyectos autogestionarios la Organización considere acorde con sus finalidades, incluyendo los que ya en anteriores congresos se definieron (imprentas, diarios, emisoras, distribuidoras, ...).

3. LA COMISION DE PATRIMONIO Y LA TOMA DE ACUERDOS PARA LA ASIGNACIÓN DE FONDOS DE PATRIMONIO

1. La Comisión de Patrimonio está formada por la Secretaría de Patrimonio del SPCC y las correspondientes secretarías de patrimonio de las confederaciones regionales o territoriales. Es presidida y convocada por la Secretaría de Patrimonio Confederal.

2. Tiene como función, estudiar, informar y priorizar, en función de los acuerdos, las solicitudes de uso de los fondos de patrimonio histórico confederal, ya sea para la compra de locales, alquiler, préstamos, mantenimiento, etc. Sus informes se presentarán a un pleno confederal que tomará el acuerdo definitivo al respecto, pudiendo introducir las modificaciones que consideren.

3. La Comisión de Patrimonio, una vez analizadas las solicitudes de alquiler, préstamo o compra, recabada la información necesaria y desestimadas aquellas que no cumplan con los requisitos, procederá a ordenarlas según los criterios establecidos, conformando con ellas una propuesta de distribución de fondos que será distribuida a los sindicatos y que deberá ser aprobada en pleno confederal.

4. Si, una vez aprobada, la disponibilidad de los correspondientes fondos fuera inferior al total de solicitudes aprobadas por el pleno confederal, quedarán las últimas en espera, asignándose automáticamente por la Secretaría de Patrimonio conforme se doten de nuevo presupuesto a los fondos correspondientes.

1. En el acuerdo de Pleno Confederal se especificará claramente:

1. A qué federaciones locales se les adjudica la ayuda al alquiler, o para cuáles se acuerda la compra de un local en su localidad.

2. La cantidad máxima que se dedica a esta finalidad.

3. En el caso de compra de un local, el compromiso de aportación al Fondo de Solidaridad que se asume.

4. En el caso de ayuda al alquiler, importe total del alquiler al que se vincula la ayuda.

5. Qué sindicatos quedan en lista de espera, por si hay renuncias o dilaciones superiores a 6 meses en la utilización del dinero.

2. Cualquier cambio en las condiciones del acuerdo deberá ser validado en un nuevo pleno, especialmente en relación a cambios en el compromiso de aportación al fondo de solidaridad.

4. EJECUCIÓN DE ACUERDOS CONFEDERALES DE PATRIMONIO

4. 1. Compra de locales:

La compra de locales se llevará a cabo de la siguiente forma:

1. El sindicato o Federación Local de la la localidad donde se ha acordado la compra de local buscará en coordinación con la Secretaría de Patrimonio un local que se ajuste a sus necesidades y al presupuesto acordado.

2. Una vez encontrado, se procederá por parte de la Secretaría de Patrimonio a la supervisión del mismo, de su situación legal, precio de compra, obras necesarias, etc.

3. Previo informe a la Comisión de Patrimonio y al Comité Confederal se procederá a la compra del mismo por parte de la Secretaría General de la CNT o persona a la que otorgue poderes.

4. Corresponderá al sindicato o Federación Local, en todo caso, el pago del IBI correspondiente, debiendo domiciliar el pago del mismo.

5. Corresponderá a la Secretaría de Patrimonio Confederal custodiar toda la documentación original relativa al local, y en concreto las escrituras del mismo.

6. En el caso de que el local adquirido necesite de obras de adaptación o mejora y estén incluidas estas en el presupuesto aprobado, la contratación de las mismas corresponderá a la Secretaría de Patrimonio por delegación de la Secretaría General. Corresponderá al sindicato el seguimiento de las mismas e informar de la conclusión y puesta en actividad del local.

7. Es obligatoria la contratación de un seguro que correrá a cargo del sindicato que haga uso del local.

4.2. Alquiler de locales:

La ayuda al alquiler se llevará a cabo de la siguiente forma:

Una vez aprobada la ayuda el sindicato o Federación Local procederá a la firma del contrato de alquiler, enviando copia del mismo y del primer recibo a a la secretaría de Patrimonio, momento a partir del cual la Tesorería confederal, previo visto bueno de Patrimonio, procederá al ingreso en la cuenta del sindicato de la ayuda correspondiente a los primeros seis meses de alquiler. Con posterioridad se abonarán los siguientes semestres, previo envío a Patrimonio de un certificado de estar al corriente de pago con la propiedad.

4.3. Préstamos para compra de locales.

Para la otorgación de un préstamo a una Federación Local o Sindicato para la compra de un local sindical, una vez tomado el acuerdo, la Secretaría General confederal suscribirá un contrato de préstamo con el sindicato correspondiente, donde se recogerá el importe del mismo, plazo

de devolución e importe de abono anual, e interés del mismo (IPC) y causas de resolución. Una vez comprado el local, el sindicato deberá enviar copia de las escrituras a la Secretaría de Patrimonio.

4.4. Compra y alquiler de segundos locales.

En casos excepcionales y suficientemente justificados es posible adjudicar más de un local a una sola FL o sindicato. Sólo podrían solicitarse fondos para un segundo local cuando se esté cumpliendo correctamente el compromiso de devolución ya contraído o se hubiera devuelto por completo.

4.5. Venta de locales de patrimonio.

Se podrá proceder a la venta de un local de patrimonio confederal, previo acuerdo de pleno confederal, en el caso de que:

1. Dicho local no esté siendo usado por un sindicato de la CNT. En el caso de Núcleos Confederales la venta se decidirá por acuerdo de pleno confederal.

2. El sindicato que lo usa haya incumplido, por más de un año, sus compromisos respecto al uso, mantenimiento, gastos, aportaciones de solidaridad, etc., y así lo establezca un pleno confederal. Corresponde a la Secretaría de Patrimonio informar a la Comisión de Patrimonio y al CC de esta situación, a efectos de la posible inclusión en el orden del día de un pleno confederal.

3. El local se encuentre en mal estado, no teniendo el sindicato que lo usa capacidad para asumir su mantenimiento y optando un pleno confederal por la venta.

4. El sindicato que lo usaba haya sido desfederado de la CNT.

5. La venta de un local del patrimonio confederal exige, de igual forma, un acuerdo de pleno en dicho sentido.

6. En cualquiera de los supuestos anteriores, se incluirá de forma automática un punto en el orden del día de un pleno confederal.

7. La gestión de la venta corresponde a la Secretaría de Patrimonio que podrá delegar o no la misma en la regional correspondiente o en sindicatos cercanos. En todo caso la firma del contrato de venta corresponde de forma indelegable a la Secretaría General de la CNT.

8. La gestión de cualquier local confederal que no esté siendo usado por acuerdo de pleno por un sindicato de la CNT corresponde en todo caso a la Secretaría de Patrimonio Confederal, que debe disponer de las llaves y acceso al mismo, así como de toda la documentación del local. Patrimonio podrá delegar o no la gestión cotidiana del local y su mantenimiento en la regional correspondiente o en un sindicato cercano.

4.6. Otros.

La disposición de Fondos del Patrimonio confederal para otros fines exige la aprobación previa de un pleno confederal.

5. ARCHIVO DE PATRIMONIO CONFEDERAL

El SPCC mantendrá actualizado un archivo del Patrimonio Confederal que contendrá, al menos:

1. Censo de locales del patrimonio confederal:
    1. Información catastral del local.
    2. Planos
    3. Escrituras Originales
    4. Copias Recibos IBI
    5. Copia del Seguro de Responsabilidad Civil
    6. Facturas de obras o reparaciones
    7. Llaves (En caso de no estar siendo utilizado o haber sido reclamadas por cualquier motivo)
    8. Contabilidad de aportaciones al Fondo de Solidaridad del sindicato que lo usa
2. Censo de ayudas al alquiler:
    1. Copia de contratos de alquileres
    2. Copia de recibos
    3. Justificantes de estar al corriente
    4. Contabilidad de ayudas entregadas
3. Censo de Préstamos para la compra de locales:
    1. Contratos de préstamo
    2. Copia de escrituras u otra documentación que justifique el préstamo (tras obras adaptación)
    3. Contabilidad de devoluciones del préstamo

Es obligación y responsabilidad de los sindicatos aportar toda la documentación necesaria a este archivo y colaborar con la Secretaría de Patrimonio en su mantenimiento y actualización, de la misma forma deberán informar a Patrimonio de cualquier incidencia relacionada con el local que usan, con el alquiler o con el préstamo correspondiente. La negativa a colaborar en di-

cho mantenimiento deberá entenderse como una falta de responsabilidad en la conservación del patrimonio confederal y un incumplimiento grave de los acuerdos de la CNT.

COMUNICACIÓN

1. IDENTIDAD GRÁFICA

1.1. La CNT contará con un manual de identidad gráfica con el objetivo de unificar la imagen general del sindicato.

1.2. La aplicación de este manual será flexible en el uso en banderas, pancartas y pegatinas.

1.3. Las siglas AIT no se usarán junto al logotipo CNT.

1.4. Se limitará el símbolo de Heracles y el León de Nemea a los usos relacionados con la Memoria Histórica y actos funerarios.

2. COMUNICACIÓN INTEGRAL

La CNT apuesta por las nuevas tecnologías adaptando sus medios de comunicación a la era digital. Para ello se creará una Comisión de Comunicación Integral, que se encargará de la edición en formato digital, de las redes sociales y de la edición en formato papel. Ésta dependerá de la Secretaría de Comunicación del SPCC. Por tanto, se establecen las siguientes pautas a seguir en materia de comunicación:

2.1. Edición en formato digital

Trabajo de redacción y coordinación: actualización diaria de web con publicación de noticias de elaboración propia, de las noticias enviadas por los sindicatos, así como la coordinación con colaboradores habituales. Es decir, el trabajo que ya se venía haciendo para la edición en papel trasladado a la edición digital diaria. Lo fundamental es que la web tenga dinamismo y que las cuestiones importantes se reflejen al momento (huelga, conflictos importantes, represión a militantes, etc.).

Método de trabajo: Habilitar una nueva web adaptada al formato periodístico. Su estructura podría ser la siguiente:

-Noticias destacadas

-Vídeo o imagen destacada

-Columna central

-Columna sindicatos

-Columnistas

-Laboral

-Agenda

-Viñetas

-Columna RSS

-CNT en Prensa

-FAL

-Resto de secciones, banners, campañas, documentos, etc.

2.2. Edición del periódico en formato papel

La Comisión trabajará en coordinación, redacción y maquetación. El objetivo de este periódico es distribuirlo en la calle, completamente gratuito. Para ello se harán tiradas para todas las regionales en función de afiliación, pero se podrían valorar tiradas especiales. En el Periódico *CNT* se incluirá además de contenidos propios, lo más destacado de la web.

2.3. Gestión y responsabilidades en las redes sociales

La gestión de la web y redes sociales es responsabilidad del SPCC, encargándose este de supervisar el trabajo de la Comisión de Comunicación, que contará con la figura de community manager o gestor de RRSS. Sus funciones serán las siguientes: gestión de las cuentas oficiales del sindicato, difusión de contenidos, supervisión de la imagen online del Sindicato y seguimiento del impacto de las publicaciones difundidas a través de las redes.

2.4. Viabilidad económica del proyecto del Periódico *CNT* en papel

La partida económica correspondiente al Periódico *CNT* vendrá reflejada en la Normativa Orgánica.

2.5. Economía del Periódico *CNT*, saldo histórico, deudas, etc.

Al pasar a ser gratuito, no se saldarían automáticamente las deudas existentes hasta el momento. Los sindicatos deberían seguir pagando sus deudas con el Periódico *CNT.* Las cuentas, caja y economía seguirían estando separadas de la caja confederal, siendo responsabilidad de la Comi-

sión de Comunicación.

2.6. Transición del trabajo y adaptación a la NO

Se creará una comisión de trabajo compuesta por el Secretariado de Prensa y Comunicación del SPCC y de los SPCR que pongan en práctica el acuerdo mediante un plan de trabajo en los siguientes terminos:

1. Creación de la Comisión de Comunicación Integral.

2. Transferir las competencias en materia económica del último equipo gestor a la mueva Comisión de Comunicación integral.

3. Nuevo diseño de la web.

4. Periodicidad del Periódico *CNT* en papel (tirada, gastos de impresión y envíos a cada sindicato, suscripciones). Aprobación del presupuesto restringido a las cuotas confederales.

5. Esquema y contenidos en papel.

6. Elaboración de un primer borrador. Plazo: lo antes posible.

Tras las reuniones que dicha comisión crea oportunas se incluiría para la siguiente Plenaria Confederal un protocolo de trabajo que, de aprobarse, sería el protocolo vinculante para uso de la web, gestión en redes sociales y periódico en papel. Posteriormente, podría modificarse en cualquier

PCRR.

El plan de trabajo debería desarrollarse y ponerse en práctica en un máximo recomendable de 5 meses tras el Congreso, para inaugurar la nueva web y periodicidad del periódico para el 1.ª de mayo de 2016.

3. MODELO DE RADIOTELEVISIÓN COMÚN

La CNT propone un modelo de radiotelevisión común (pública) destinado al interés general o común, esto es, de carácter fundamental para el desarrollo sociocultural de la población, por el que se exteriorice el derecho humano inalienable de expresar, recibir, difundir e investigar informaciones, ideas e opiniones.

Este será un modelo productivo horizontal, asambleario y transparente, completamente desvinculado de cualquier control político (parlamento), con un sistema organizativo que atienda y

que respete las necesidades de toda la comunidad.

Es una red de radiotelevisiones comunes en la que todas ellas puedan conectarse, unas con otras, y generar contenidos de interés general o local, según los intereses de la ciudadanía, con control directo de la clase trabajadora.

3.1. Marco jurídico

Crear un nuevo marco jurídico en el que el servicio común no esté integrado en las convenciones que rigen las sociedades de capital. La radio televisión pública, en este caso, tiene una naturaleza diferente y una rentabilidad social que no puede ser medida en términos estrictamente mercantiles.

Crear organismos reguladores y de control (consejos de los medios de comunicación comunitarios) que se encarguen de fiscalizar y verificar los compromisos asumidos por los prestadores de los servicios de comunicación audiovisual y radiodifusión en los aspectos técnicos, legales, administrativos y de contenidos (contenido infantil, etc.). Garantizarán el derecho de acceso de la ciudadanía y colectivos sociales a los medios de comunicación, utilizando un criterio que responda a la equidad, no a la representatividad, y velarán por la autonomía del servicio común con respecto al poder político, la religión y los grupos de presión económica (empresas). Se encargarán de fomentar el acceso equitativo a la información y a procurar el empoderamiento de las personas a través de la alfabetización mediática e informacional. Se articularán los mecanismos necesarios para comprometer y asegurar la participación en estos órganos de control, de la sociedad.

Estatuir una convención general de medios que recoja la regulación del sector.

3.2. Producción de información y programas

-Garantizar la elaboración, desarrollo y aplicación de un plan de producción propia. El entramado de radiotelevisiones comunitarias se nutre de los centros que lo componen. Las productoras externas únicamente podrán vender el formato, pero no participar en la producción ni en el desarrollo. No se podrá, por parte de los medios de comunicación comunes, comprar productos enlatados. Este plan de producción será revisable periódicamente.

-Crear tantos grupos de trabajo como sean necesarios, compuestos por trabajadores y trabajadoras, para generar y canalizar propuestas de programas por parte de las trabajadoras y trabajadores y la ciudadanía. Se encargarán también de fomentar la creación y desarrollo de ideas de producción y nuevos formatos dentro de parámetros del árbol social.

-De manera transversal a ese plan, elaborar un historial, que vendrá dado por el nuevo modelo de radiotelevisión pública, de temáticas de preocupación social y un calendario mensual de emisión, que plasme el tiempo que periódicamente se dedicará en la parrilla a la emisión de estos programas.

-Nueva planificación de la programación y los contenidos. Los avances digitales nos permiten una ordenación diferente y racional de la programación en canales locales, generales y temáticos y tratar muchos más temas de interés social en profundidad. Entendemos que si hay un canal temático de noticias, toda la emisión de informativos se tendría que concentrar en ese canal y no desperdigarse por el resto de canales.

-Creación de códigos deontológicos para el tratamiento de la información por parte de las/los

profesionales, asumiendo el compromiso de su aplicación. Se elaborará por las/los profesionales de la comunicación del medio y tendrá la condición obligada signatura al comienzo de la vida laboral en este servicio común. Será revisable periódicamente y su incumplimiento podrá devenir en sanciones.

-Desvinculación de los informativos y programas del share. Articular otro mecanismo de audiencia y seguimiento social mediante las asociaciones de consumidoras y consumidores y usuarias y usuarios de la rtv pública.

-Desvincular los informativos de la agenda-setting por considerarse que mediante este establecimiento de temas de discusión, se comunica solo lo que interesa y se le oculta a la comunidad lo que puede resultar perjudicial para el mantenimiento del statu quo de la clase gobernante y el capital. Se calcula que el 80% de la información que las agencias ponen en circulación está generado por los departamentos de relaciones públicas o gabinetes de comunicación del gobierno, partidos políticos, instituciones públicas, corporaciones y empresas.

-Desarrollar la capacidad de elaborar y contrastar información con recursos propios, centros locales en el territorio cercano y con apoyo mutuo internacional, colaboración con otras unidades informativas fuera de la península ibérica.

3.3. Organización interna y participación de las trabajadoras y trabajadores y la ciudadanía

Construir un servicio de radio y televisión común completamente autónomo, que suponga una desvinculación de cualquier control político (parlamento).

-Suprimir los Consejos de Administración, por ser órganos políticos que no reflejan todos los

aspectos de las sociedd.

-Transparencia total en la gestión de la empresa, la cual pondrá a disposición de trabajadoras y trabajadores y de la ciudadanía información relativa al funcionamiento interno.

-Participación de trabajadores y trabajadoras y de la ciudadanía en la gestión y toma de decisiones de la empresa. Reducción drástica del organigrama de administración. A las trabajadoras y trabajadores revertirá más responsabilidad además de los recursos que por la supresión de cargos de responsabilidad y direcciones se liberen, transformándose preferentemente estos recursos en mejoras materiales. Desarrollo de un convenio colectivo que afecte a todas las personas que trabajen en el medio (incluyendo asesoras/es, directoras/es de programa, presentadoras/es, etc.), con limitaciones salariales por arriba y por abajo, caminando hacia un modelo productivo horizontal. Un convenio que recoja la regulación sobre todo sueldo y plus a fin de acabar con aquellos sobre los que no hay control democrático; que facilite la progresión profesional y personal de las personas y en el que se conceda primacía a la creación y el desarrollo del talento por encima de la notoriedad.

3.4. Financiación

Esta reestructuración debe estar ligada a una auditoría de la deuda por parte de la comunidad. Transparencia total en la gestión de la empresa con cuentas y actuaciones a disposición de la ciudadanía.

El servicio de comunicación común es universal, pero no gratuito, igual que otros servicios a la comunidad, tales como la educación, el transporte, el alumbrado, el agua o la sanidad. Por ello, la financiación suficiente y estable de este medio de información común debe realizarse en un principio a través de cuotas y colaboraciones económicas (poniendo tope a estas últimas) por parte de la comunidad.

No obstante, se caminará hacia una actividad autogestionaria por parte de la empresa y las trabajadoras y trabajadores que consiga, por los medios que contemplen mayor operatividad y eficiencia, ingresos que supongan un equilibrio con el importe de las cuotas. Se desarrollarán medios de financiación sobre los que existirá un control democrático, que demuestren ser compatibles con el modelo confederal y que no interfieran con la libertad en el ejercicio esencial de la comunicación (ingresos de los institutos de enseñanza asociados a la radio televisión, sellos discográficos, alquiler de instalaciones, fondos por gravámenes que deban pagar los/as licenciatarios/as, comercialización de productos audiovisuales, etc.).

Al plantear la no competencia por la audiencia y apostar por los nuevos formatos de servicio público, queda excluida toda publicidad.

Un Tribunal de Cuentas de ámbito confederal verificará anualmente, haciendo públicos sus informes, el buen funcionamiento, la gestión y, en general, los aspectos económicos de los medios comunitarios.

3.5. Organización territorial

Todas las radiotelevisiones comunes se convierten potencialmente en centros de emisión y de producción, con intereses generales y locales.

Los contenidos de las emisiones comunes se nutrirán de la producción o de la necesidad de producción, del entramado de medios de comunicación comunitarios, de menor o mayor tamaño, en régimen de colaboración y de apoyo mutuo. Atendiendo a contenidos quizá más amplios o de interés más general.

Generación de emisiones comunes también en canales temáticos, desde este punto de vista, no sería incompatible con el modelo confederal, por ejemplo, un canal infantil, cultural, de filmoteca, etc.

A la vez, todos los medios de comunicación comunitarios deberían tener una ordenación y un espacio en el espectro de transmisión que la tecnología permita. Los operadores comunes podrían perder su licencia si así lo determinan los órganos reguladores por no cumplir con el servicio común.

AIT E INTERNACIONALISMO

1. AIT

La AIT es, desde hace años, inoperante como vehículo de implantación del anarcosindicalismo y el sindicalismo revolucionario a nivel internacional. Es incapaz de ir más allá de la solidaridad más elemental en algunos conflictos sindicales, la cual es muy valiosa, pero para la que no es necesaria la estructura de la AIT. Ésta queda muy lejos de los objetivos a los que deberíamos aspirar para una coordinación internacional. El contraste entre la realidad de la AIT, y la infraestructura y burocracia que la misa implica, ha reforzado los aspectos más excluyentes, la conflictividad interna y el control ideológico. Todo lo anterior exigía desde hace años un replanteo de su funcionamiento y proyecto de trabajo.

El replanteamiento debe tener en cuenta el papel de la CNT como organización dentro de la AIT, y el funcionamiento interno de la propia AIT. Estas dos cuestiones deberían basarse en lo siguiente:

1.1. Composición

• Las Secciones serán aquellos grupos que tengan como mínimo 100 personas afiliadas y soliciten ser considerados como tal en un Congreso de la AIT.

• Las Iniciativas Anarcosindicalistas serán los grupos que, queriendo ser secciones de la AIT, no tengan el número suficiente de afiliación. Estos grupos contarán con voz pero no voto. Podrán pasar a ser secciones cuando acrediten que cumplen el mínimo de afiliación y comiencen a cotizar a la Internacional. Este paso no requerirá de un acuerdo de Congreso, sino que será informado en cualquier comicio orgánico de la AIT.

• "Amigos de la AIT" serán aquellos grupos que, al margen de su número de integrantes, pidan su condición de "Amigos de la AIT". Su estatus sera el mismo que el actual y para pasar a ser Secciones o Iniciativas Anarcosindicalistas tendrán que presentar la consiguiente petición a un Congreso.

1.2. Cotización

La cuota que deberán pagar las Secciones integrantes de la AIT será de un importe no mayor de

0,10€ por persona afiliada y mes.

1.3. Sistema de votación

Tabla de voto ponderado según afiliación

De 100 a 500 1 voto

De 501 a 1.000 2 votos

De 1.001 a 5.000 3 votos

De 5.001 a 10.000 4 votos

Por encima de 10.000 5 votos

1.4. Legalización

Se hace necesaria la legalización de la Internacional para defender a ésta del uso indebido de sus siglas por parte de otros sindicatos no adscritos que sólo busquen el prestigio de las mismas sin practicar el anarcosindicalismo o el sindicalismo revolucionario. Las cuentas de la organización deben dejar de estar a nombre de personas particulares y deben pasar a estar a nombre de la propia AIT, evitando tener que confiar a ciegas en la integridad moral de cada Secretaría que gestiona estos fondos.

1.5. Autonomía, apertura y dinamización

Creemos urgente revertir la dinámica excluyente de la AIT y la política de control interno de las relaciones de las secciones, y trabajar hacia una política mucho más abierta y flexible. Basándonos siempre en la acción directa como método de lucha, pero con capacidad de desarrollar un amplio abanico de contactos internacionales con trabajadores y trabajadoras organizadas en distintos sectores y conflictos, lo que solo puede redundar en el fortalecimiento de la capacidad de trabajo internacional del anarcosindicalismo y el sindicalismo revolucionario y, en definitiva, en la capacidad de la CNT de ser una referencia a este nivel.

Es imprescindible contar a nivel internacional con la capacidad de realizar campañas abiertas, donde puedan participar una pluralidad de organizaciones e iniciativas de trabajadores y trabajadoras en campañas concretas. Además de otras más propias de una organización internacional con mayor nivel de cohesión; esto solo puede repercutir en el fortalecimiento de la AIT.

Las secciones tienen autonomía para tener relaciones puntuales en el transcurso de sus conflictos.

En el trabajo internacional habrá que usar siempre el nombre de la sección junto al acrónimo de la internacional (AIT). De esta forma se podrá limitar el uso interesado del nombre de cualquier sección para promoción de entes externos. Cualquier tipo de contacto será realizado con la mayor lealtad y transparencia posibles.

1.6. Formación sindical

Se hace imprescindible el trabajar profundamente en planes de formación sindical y materiales concretos que se puedan hacer, dentro de la inconcreción que supone la diversidad de legislaciones laborales y realidades socio-laborales que hay en el mundo.

1.7. Formación e intercambio de experiencias

La CNT promoverá la realización de conferencias de militantes sobre acción sindical en la AIT proponiéndolo en el comicio que se considere oportuno. Estas conferencias de militantes serán bianuales en base a propuestas de debate tramitadas por las secciones y estarán encaminadas a debatir sobre las diferentes experiencias de acción sindical en los centros de trabajo. A ellas se invitará a los integrantes de la AIT y a cualquier otro grupo que se considere oportuno invitar. Al margen de esto y haciendo uso de su autonomía, la CNT promoverá este tipo de conferencias de forma abierta si lo considera oportuno.

La CNT promoverá dentro de la AIT la realización de jornadas de acción abiertas en base a experiencias anteriores, con el fin de que ésta y sus secciones sean el motor de la respuesta obrera y social contra el capitalismo.

1.8. Proyecto de expansión internacional

Aparte de mantener las actuales estrategias de contacto con organizaciones ya constituidas y con realidad sindical y social que tengan interés en pertenecer a la Internacional, utilizar las actuales secciones sindicales de la CNT que tengan más peso y cuyas empresas tengan presencia en el extranjero, del mismo modo que otras secciones de otros países pueden hacer lo mismo en la medida en que vayan teniendo implantación sindical.

Se trataría de que el Delegado o Delegada de la Sección Sindical, la Secretaría de Acción Sindical, la de Jurídica y la de Exteriores del SPCC se coordinen para entablar contactos con los trabajadores y las trabajadoras de otros países e ir incentivando procesos de organización y lucha que partan de casos y objetivos concretos, y que puedan con el tiempo superar el ámbito de la empresa y consolidar organizaciones amplias que desarrollen el anarcosindicalismo y sindicalismo revolucionario en todas sus vertientes.

1.9. Simplificación de procesos internos

Se hace necesario simplificar los procesos internos, hacerlos claros e inequívocos. Desde CNT se trabajará mediante diferentes propuestas concretas para clarificar funciones y metodologías en la AIT.

Para materializar las cuestiones previas, proponemos impulsar un proceso hacia la refundación de una internacional del anarcosindicalismo y el sindicalismo revolucionario. Para ello se acuerda que tras el Congreso:

• Se detengan de forma inmediata las cotizaciones a la AIT.

• Se convoque desde la CNT una conferencia internacional con aquellas secciones de la AIT interesadas en un proceso de refundación de la AIT en base a las propuestas antes indicadas.

• Se proponga en dicha conferencia, y en caso de ser viable, abordar la celebración de un congreso de refundación de una internacional del sindicalismo revolucionario, consensuando la toma de decisiones en el mismo en base a las propuestas anteriores con las secciones participantes.

• Corresponderá a un pleno extraordinario de la CNT establecer las propuestas y acuerdos concretos, con base en los acuerdos de Congreso que se tomen sobre el tema, teniendo en cuenta la capacidad de alcanzar consensos con otras secciones y conformar una organización con capacidad de resultar atractiva a la mayoría de la afiliación de la AIT a la vez que a secciones de distintos territorios y realidades sociales, económicas y políticas.

• Este Congreso internacional deberá además establecer formas de funcionamiento y relación que permitan un trabajo ágil y flexible a nivel internacional, con pleno respeto a los más elementales principios libertarios, estableciendo y fortaleciendo, prioritariamente, los marcos de relación más cercanos a nivel europeo y mediterráneo.

2. INTERNACIONALISMO

Por el carácter internacionalista y de clase de nuestra organización, consideramos que es necesario trabajar más sobre el internacionalismo y el conocimiento de los problemas políticos, sociales y económicos de otras partes del mundo, además de mantener relaciones con organizaciones cercanas ideológicamente de esos territorios.

Valoramos que este tema en la organización ha estado muy olvidado y poco se ha trabajado en este sentido a nivel confederal, sino más bien en determinados sindicatos. Cierto es que la cantidad de trabajo por desarrollar en el sindicato es un impedimento para abordar las problemáticas políticas de otros territorios del mundo, pero dado el carácter de la CNT, es necesario hacer un esfuerzo para desarrollar este trabajo en la medida de nuestras posibilidades. Tendiendo puentes de solidaridad con organizaciones cercanas en cuanto a planteamientos políticos y en lo ideológico; posicionarnos y solidarizarnos como organización ante conflictos y problemas de estos territorios y así reivindicar ese carácter internacionalista de una manera más práctica y activa.

Muchos movimientos o frentes de liberación tienen un carácter nacionalista o estatista. Como anarcosindicalistas, no compartimos esa defensa o creación de nuevo estado, pero eso no impide poder apoyar luchas de pueblos oprimidos como el palestino o el saharaui. La lucha por la liberación de un pueblo no tiene porque ser a través de partidos ni tener como fin la construcción de un Estado, y como muestra tenemos la lucha del YPG kurdo, que de su antiguo marxis-

mo ortodoxo ha virado a una propuesta libertaria desde el confederalismo democrático, creando alternativas al estatismo desde propuestas de base, horizontales y antipatriarcales.

Por otro lado, es importante como organización sindical intentar tener conexión o información en temas laborales y sindicales de esos pueblos. No es algo demasiado ambicioso, sino más bien intentar ofrecer una información sobre temas laborales o sindicales dentro de esos países que puedan ser interesantes para nuestra afiliación y así poder conocer más de cerca la realidad sindical y los conflictos laborales de estos países o territorios, además de para solidarizarnos con esas luchas nos pueden aportar una información muy valiosa de cara a la acción sindical.

Por todo esto:

• La CNT apoya la lucha por la libertad de pueblos como el kurdo, palestino, indígenas latinoamericanos, zapatista o saharaui; en contra de los Estados y fronteras impuestas por el colonialismo.

• La Anarcosindical exige el cumplimiento estricto de los derechos humanos y así como el respeto a los derechos sociales y políticos, pudiendo posicionarse políticamente ante conflictos o luchas de estos pueblos.

• La formación política, económica y social más acorde con nuestros principios, tácticas y finalidades para dar cabida a los derechos y luchas de estos pueblos son aquellas que huyen del estatismo como marco de referencia, como el confederalismo democrático kurdo u otras. Favoreciendo los contactos y relaciones con organizaciones o colectivos que adopten este posicionamiento ideológico o principios similares a la Anarcosindical y el comunismo libertario.

• Se apoyarán campañas e iniciativas de apoyo a estas luchas, como las del Kurdistán; o de denuncia de situaciones o conflictos que afecten políticamente a estos pueblos, como la ocupación militar israelí de los territorios palestinos, la ocupación y aislamiento del pueblo saharaui por Marruecos, o las diferentes guerras o conflictos de tipo imperialista que afecten a pueblos y regiones del mundo.

• Se apoyará el trabajo de denuncia y solidaridad con los trabajadores y las trabajadoras inmigrantes, refugiados y refugiadas políticas, económicas, sociales y ambientales, la denuncia de las leyes de extranjería, de los controles fronterizos y de las muertes que provocan.

Annex 11

NZCTU
Te Kauae Kaimahi

Constitution

as approved at Biennial Conference
25-26 October 2023

NEW ZEALAND COUNCIL OF TRADE UNIONS
union.org.nz

New Zealand Council of Trade Unions *Te Kauae Kaimahi* Inc.

Table of Contents

1. NAME, OBJECTS AND POWERS

1.1. Name

1.1.1. The name of the Society shall be The New Zealand Council of Trade Unions Te Kauae Kaimahi Incorporated hereinafter referred to as the NZCTU.

1.2. Preamble

1.2.1. The NZCTU exists to unite democratic Trade Unions, to enable them to consult and co-operate with each other for the common good, and to help achieve the agreed aims and objects of the NZCTU by acting in unison and in accordance with democratic majority decisions.

The NZCTU recognises as a Trade Union, an organisation established by workers that has as its objective the development of collective activity among its members relating to their relationship with their employer; and that performs all the functions of representing, negotiating, and servicing those members within the workplace and agitating for the economic, social, and political rights of its members and their families; and which governs itself with explicitly democratic procedures.

1.2.2. The NZCTU declares that wage and salary earners, and the unions which represent them, have certain basic rights which are recognised in international declarations:

(a) the right to useful employment, to social security, to social justice, human rights and equal opportunity.

(b) the right to organise and to form and join Trade Unions.

(c) the right to bargain collectively with the employer.

(d) the right to strike.

1.2.3. The NZCTU will:

(a) recognise Te Tiriti o Waitangi 1840 as the founding document of Aotearoa/ New Zealand; He Wakaputanga o Te Rangatiratanga o Nu Tireni (Declaration of Independence of New Zealand) 1835 as the precursor to Te Tiriti; the United Nations Declaration on the Rights of Indigenous Peoples 2007; and be guided in its Tiriti relationship by Te Takawaenga (relationship accord).

(b) uphold the principles of democracy, including the democratic means of changing Governments.

(c) champion the cause of peace and human freedom.

(d) oppose and combat totalitarianism and aggression in any form. It pledges solidarity and support to all working people deprived of their rights as workers and human beings by oppressive regimes.

1.2.4. The NZCTU declares that all workers should enjoy equal rights and opportunity at the workplace, within Trade Unions, and in society at large.

1.3. Objects

1.3.1. The objects of the NZCTU shall be:

(a) to promote and protect the economic, social, industrial, political and educational interests, and civil rights of the working people of New Zealand including the right to useful and secure employment.

(b) to promote economic policies which lead to growth, high employment, and a stable economy, and to work for a more equitable share of the national income and production, and the provision of services for social use and not for private profit.

(c) to achieve and maintain a united organisation for all workers and Trade Unions in New Zealand, for the purpose of promoting unity and mutual assistance in seeking to achieve the objectives and policies of the NZCTU and to give every assistance to the individual affiliates of the NZCTU.

(d) to collaborate with and assist workers' organisations in other countries and to affiliate with appropriate international bodies as determined by the NZCTU.

(e) to promote the basic rights and principles referred to in Section 1.2 (Preamble) of this constitution.

(f) in pursuing its objects, the NZCTU shall have regard to the need to:

(i) co-ordinate research on behalf of the union movement.

(ii) prepare, submit and advocate reports and papers on industrial, political, social, educational and economic legislation.

(iii) establish a media research/liaison capability.

(iv) engage in and foster educational and publicity work with the object of increasing the knowledge and

understanding of national and international problems confronting affiliate members.

(v) to initiate and co-ordinate national campaigns with the participation of affiliates.

(vi) if required by an implicated affiliate, co-ordinate all possible support in industrial and other disputes; and

(vii) encourage and assist unions to form membership coverage patterns which ensure:
- the maximum membership of workers in unions.
- the maximum unity of workers in the workplace.
- the most effective bargaining structures.

1.4. Powers

1.4.1. The NZCTU shall have power, by such means as it thinks fit to take all action it considers appropriate to advance the NZCTU's objects and policies.

1.4.2. Without in any way limiting the generality of clause 1.4.1, the NZCTU shall have all necessary powers for establishing and conducting its administration and organisation including the powers:

(a) to own and maintain such premises, facilities, and resources.

(b) to receive, borrow, invest, or expend such monies.

(c) to enter into such commercial and other arrangements.

(d) to make such donations or contributions.

as are deemed necessary; and through the office of Secretary/Treasurer

(e) to employ such staff.

(f) achieve or advance the objects or policies of the NZCTU; or

(g) are incidental matters of organisational or administrative convenience.

2. MEMBERSHIP

2.1. Eligibility

2.1.1. Membership of the NZCTU shall be open to any genuine Trade Union upon written application to and acceptance by the National Affiliate Council of the NZCTU and the members shall be known as the affiliates of the NZCTU.

2.2. Conditions of Membership

2.2.1. Membership of the NZCTU shall in no way affect the autonomy and independence of individual affiliates, subject only to the principle that majority decisions taken in democratic votes within the NZCTU then become the policy of the NZCTU.

2.2.2. No affiliate to the NZCTU may be directed by the NZCTU to take industrial action, or any other action.

2.2.3. Affiliates shall refer any disputes or grievances between affiliates to the national NZCTU bodies as appropriate.

2.2.4. Affiliates shall pay, when due, all capitation fees and other monies owing to the NZCTU.

2.3. Political Affiliations

2.3.1. The question of affiliation to political parties is a matter for individual unions themselves to determine. The NZCTU shall not affiliate to or make financial contributions to any political party.

2.4. Withdrawal of Membership

2.4.1. Three months' notice in writing shall be given to the NZCTU by any affiliate proposing to withdraw from the organisation and opportunity will be given for an officer of NZCTU to be heard by the affiliate before any decision is taken to withdraw.

2.4.2. No withdrawal shall take place by any affiliate unless that affiliate has settled all outstanding debts to the NZCTU; provided that should such debts not be honoured, the Finance and Administration Committee (see section 7 Finance and Administration Committee) shall be empowered to take any appropriate action in their recovery.

3. FINANCIAL AND ADMINISTRATIVE MATTERS

3.1. Financial Year

3.1.1. The financial year of the NZCTU shall be from 1 April in each year to 31 March of the following year.

3.2. Capitation

3.2.1. An annual capitation fee shall be determined by the Biennial Conference or in non-conference years by National Affiliate Council no later than 31 October. The Conference may in addition to or in lieu of a fee establish a mechanism to adjust the fee.

3.2.2. Notwithstanding that the capitation fee is an annual one, affiliates may, in lieu of paying the full amount at the beginning of the financial year, pay capitation by four quarterly instalments, instalments to be paid at the beginning of each quarter, or by monthly automatic transfer.

3.2.3. Any new affiliate which affiliates during a financial year shall not be bound to pay the full year's capitation but shall pay capitation for each quarter during which it is affiliated.

3.2.4. Capitation shall be based on the number of fee-paying members calculated as the effective full-time equivalent of members and/or the equivalent of members paying the full rate of union subscription. This calculation may be made on membership levels at 1 January or on a forecast of average membership over the twelve month period from 1 January.

Membership calculations may be revised and capitation adjustments made at the end of the twelve-month period according to the actual average membership over the period, provided the adjusted membership is not less than 90% of the membership at the beginning of the period.

3.2.5. The Finance and Administration Committee may, on application from individual affiliates, approve variations to capitation levels arising from any changes in forecasts of average membership, from transfers of members between unions, or in recognition of special circumstances.

3.2.6. Where an affiliate is three months overdue in meeting its capitation obligations, that affiliate shall be deemed to be unfinancial and shall not be entitled to take part in the business or activities of the NZCTU unless given dispensation by the National Affiliate Council.

3.3. Financial Report

3.3.1. The Finance and Administration Committee shall present to the National Affiliate Council:

(a) Audited copies of the Income and Expenditure Accounts and Balance Sheets.

(b) A Financial Report, or Reports on the past year.

(c) A Financial Report and Budget for the forthcoming year; and

(d) A recommendation on capitation.

3.3.2. National Affiliate Council will report on the above to Biennial Conference. The August meeting of the National Affiliate Council will also hold the Annual General Meeting.

3.3.3. The Finance and Administration Committee shall present to the Council, for recommendation to the Biennial Conference:

(a) Audited copies of the Income and Expenditure Accounts and Balance Sheets of the previous two years.

(b) A Financial Report, or reports, on the past two years.

(c) A Financial Report and Budget for the forthcoming two years.

(d) A recommendation on capitation fees for the next two financial years for endorsement.

3.4. Trustees

3.4.1. The NZCTU shall have three trustees:

(a) one of whom shall be appointed by virtue of being the National Secretary/Treasurer of the NZCTU.

(b) two of whom shall be elected by the Biennial Conference.

3.4.2. The National Affiliate Council shall recommend two persons to the Biennial Conference to be the trustees referred to in clause 3.4.1(b).

3.4.3. Where a casual vacancy arises in respect of the trustees referred to in clause 3.4.1(b), the National Affiliate Council may appoint a replacement, such appointment to be effective until the next Biennial Conference.

3.4.4. Subject to clause 8.4.1, the trustees shall hold office until they die, resign, or until their successors are elected.

3.4.5. The NZCTU's bank accounts shall be operated by the National Secretary/Treasurer and the signatories shall be:

(a) the National Secretary/Treasurer; and

(b) one of the President, Vice-Presidents, or a trustee referred to in clause 3.4.1 (b), or a non-trustee Finance and Administration Committee member, or a staff member as designated from time to time by the Finance and Administration Committee.

Provided that should the National Secretary/Treasurer be unavailable the signatories shall be:

(c) the President and one of the Vice-Presidents; or

(d) any two of the President or Vice-Presidents, or the Trustees, or a non-trustee Finance and Administration Committee member, or a staff member as designated from time to time by the Finance and Administration Committee.

3.5. Auditor

3.5.1. A qualified Auditor shall be appointed by the National Affiliate Council who shall conduct an annual audit of the books and accounts of the NZCTU, and the National Secretary/Treasurer shall submit all books and vouchers for that purpose.

3.6. Payment for NZCTU Business

3.6.1. Any officer, or other person empowered to perform work for the NZCTU shall be paid such sum for their services, and reimbursement of reasonable expenses incurred, subject to the approval of the Finance and Administration Committee.

3.7. Seal

3.7.1. The NZCTU shall have a seal which shall be kept by the National Secretary/Treasurer. It may be affixed to all official letters and documents of the NZCTU but shall not be affixed to other documents except pursuant to the resolution of the National Affiliate Council.

3.7.2. Signatories to accompany the seal shall be those outlined in clause 3.4.5.

3.8. Delegation of Powers in Legal Proceedings

3.8.1. In any legal proceedings, the National Affiliate Council may, if it thinks fit, authorise any NZCTU officer or employee, or any lawyer or other person, to appear on behalf of the NZCTU.

4. CONFERENCES

4.1. General

4.1.1. The NZCTU shall hold a National Conference once every two years, normally in October, for a maximum of five days, such conference to be known as the Biennial Conference. Notice of such conference shall be received no later than 6 months prior to that meeting.

4.1.2. The Biennial Conference shall be the supreme authority of the NZCTU and shall determine the policy of the NZCTU.

4.1.3. The Tiriti relationship shall be the first item of business on the biennial conference agenda and the Vice-President Māori and Te Rūnanga o Ngā Kaimahi Māori (Te Rūnanga) Co-Convenors reports prioritised.

4.1.4. The Biennial Conference or the National Affiliate Council shall have power to call special conferences as and when required.

4.1.5 An opportunity shall be provided at conferences for the National Women's Council, Out @ Work, National Young Worker's Council (Stand Up) and National Komiti Pasifika, National Kaimahi Whaikaha and National Ngā Manu Kanorau to present their views.

4.2. Representation at Conferences

4.2.1. The Conference shall consist of delegates from financial affiliated unions on the basis of the following maximum entitlement:

Up to	-	1000 members	-	2 delegates
1001	-	2500 members	-	3 delegates
2501	-	5000 members	-	4 delegates
5001	-	7500 members	-	6 delegates
7501	-	10000 members	-	8 delegates
10001	-	15000 members	-	10 delegates
15001	-	20000 members	-	15 delegates
20001	-	25000 members	-	20 delegates
25001	-	30000 members	-	25 delegates
30001	-	40000 members	-	30 delegates
Over	-	40000 members	-	35 delegates

4.2.2. Affiliated unions shall determine their delegate representation at Conference in accordance with their own rules and/or policy subject to the requirements in 4.2.1, and subject also to the requirement that delegates be a member, hold office in, or be an employee of an affiliated union.

4.3. Voting at Conferences

4.3.1. The system of voting at Conferences on all except procedural issues shall be by simple card vote. Each affiliated union shall be allocated a card voting strength based on the declared membership of the union for which capitation has been paid.

4.3.2. A card vote shall only be taken where such a vote is called for after a vote of voices or a show of hands.

4.3.3. On purely procedural matters, voting shall be on the basis of one delegate one vote.

4.4. Remits to Biennial Conference

4.4.1. The National Secretary/Treasurer of the NZCTU shall call for remits for the Biennial Conference no less than six months prior to the date of the Conference, and affiliates shall forward remits to be received by the National Secretary/Treasurer not less than four months prior to the date of the Biennial Conference.

4.4.2. The National Affiliate Council of the NZCTU shall appoint such remit committees as it thinks fit. The role of the remit committees shall be:

(a) to receive and consider all remits.

(b) to receive written or verbal submissions from affiliates in respect of all remits.

(c) to make recommendations to affiliates in respect of remits.

(d) to advise affiliates of any Finance and Administration Committee report on the implications of any remit which raises a question of expenditure.

4.4.3. Not less than three months prior to the date of the Biennial Conference, the National Secretary/Treasurer of the NZCTU shall forward to all affiliates:

(a) copies of all remits received by the due date; and

(b) a notification of a time when remit committees will sit to consider written and verbal submissions from affiliates.

4.4.4. Not less than six weeks prior to the date of the Biennial Conference, the National Secretary/Treasurer of the NZCTU shall forward copies of the remit committees' recommendations to all affiliates.

4.4.5. Late remits on policy may be forwarded to the National Secretary/Treasurer of the NZCTU at any time prior to or during the Biennial or Special Conference if the matter is urgent and compliance

with the above time frame is not practicable. Affiliates forwarding late remits shall endeavour to give as much notice as possible and the National Secretary/Treasurer shall, if practicable, circulate late remits to all affiliates for their consideration prior to Conference.

4.4.6. Where any policy or constitutional remit raises a question of expenditure, the Finance and Administration Committee shall report on the implications giving as much notice as possible.

4.4.7. Recommendations of National Affiliate Council shall have the same status as the report of the remit committee and shall, where possible, be distributed no less than six weeks prior to the date of the Biennial Conference.

4.4.8. Late recommendations maybe forwarded to the conference by National Affiliate Council if the matter is urgent and compliance with the above time frame is not practicable.

4.5. Special Conferences

4.5.1. Special conferences of affiliates can be called from time to time by the National Affiliate Council and shall have the power to form policy on the specific issues for which the meetings have been called.

4.5.2. Special conferences of affiliates shall deal only with the subject matter which has been advised to affiliates in the notice calling the meeting.

5. NATIONAL AFFILIATE COUNCIL

5.1. General

5.1.1. The National Affiliate Council shall be empowered to make day to day decisions between Conferences.

5.1.2 The National Affiliate Council is a signatory with Te Rūnanga to Te Takawaenga.

5.1.3. The National Affiliate Council shall meet up to five times annually. Special meetings of National Affiliate Council may be called by the Council, the President or National Secretary/Treasurer. In each year in which a National Conference is not held, the August meeting of the National Affiliate Council will be the general meeting of the NZCTU. Notice to that effect shall be given no later than 4 weeks before the meeting.

5.1.4. The system of voting at National Affiliate Council on policy and financial issues may be by simple card vote. Each affiliated union

shall be allocated a card voting strength based on the declared membership of the union for which capitation has been paid.

5.1.4.1 Voting in ballots on representation may be exercised on declared membership for which capitation has been paid as follows:

Up to	-	5,000 members	1 vote
5,001	-	10,000 members	2 votes
10,001	-	20,000 members	3 votes
20,001	-	30,000 members	4 votes
more than		30,000 members	5 votes

5.1.4.2 A card vote shall only be taken where such a vote is called for after a vote of voices or a show of hands.

5.1.5 On all matters other than policy, financial or representation as provided for above, voting shall be by simple majority of those attending the meeting(s).

5.2. Composition of National Affiliate Council

5.2.1. The National Affiliate Council shall consist of:

(a) The four officers of the NZCTU

(b) A representative of each affiliate.

(c) Te Rūnanga, Women, Young Workers (Stand Up), Pacific Island and LGBTIQ+, Kaimahi Whaikaha (workers with disabilities) and Ethnic Community (Asian/Melaa) Worker, representatives noted in clauses 9, 10,11, 12, 13, 14 and 15.

5.2.2. Fifty percent plus one of members of National Affiliate Council shall represent a quorum.

5.3. Appointment to National Affiliate Council

5.3.1. Each affiliate shall appoint a representative to the National Affiliate Council by advising the National Secretary/Treasurer in writing not less than twenty-one days before the opening of the Biennial Conference.

5.3.2. Any person who is a member, an office holder or an employee of an affiliated union may be appointed to represent that affiliate. Selection of representatives shall be according to the rules of the affiliate.

5.3.3. Appointment to the National Affiliate Council shall be for a two year term except that the appointing affiliate may replace their

representative at any time by giving twenty one day's notice to the National Secretary/Treasurer of the NZCTU.

5.3.4. Representatives for Women's Council, Te Rūnanga, Young Worker's Council (Stand Up), Komiti Pasifika, Out @ Work, Kaimahi Whaikaha (workers with disabilities) and Ethnic Community (Asian/MELAA) Workers are to be appointed within the terms of this section.

5.3.5. An affiliate, the Women's Council, Te Rūnanga, Young Worker's Council (Stand Up), Komiti Pasifika, Out @ Work, Kaimahi Whaikaha (workers with disabilities) and Ethnic Community (Asian/MELAA) Workers may appoint a proxy for a specific meeting or meetings. Such appointments are to be advised to the National Secretary/Treasurer before the beginning of the meeting(s).

6. NATIONAL OFFICERS

6.1. General

6.1.1. The President, two Vice-Presidents and National Secretary/Treasurer, shall be Officers of the NZCTU, elected for four-year terms at Biennial Conference. The President and National Secretary/Treasurer shall be full-time officers. The two Vice-Presidents shall be honorary officers. Pursuant to the NZCTU recognition of Te Tiriti o Waitangi one of the Vice Presidents shall be a Māori person. The four officers shall be entitled to one vote each at Biennial Conference.

6.1.2. Any person who is a member of an affiliated union, holds office or is an employee in an affiliated union may be nominated by any affiliate for any of the four officer positions in the NZCTU.

Te Rūnanga will also be able to nominate any person who is a member of an affiliated union, holds office or is an employee of an affiliated union for the position of Māori Vice President.

Any such nomination will be agreed at Te Rūnanga Biennial Hui except in the event of a casual vacancy in which case the nomination will be endorsed at a meeting of Te Rūnanga.

6.1.3. Nominations for the position of officers of the NZCTU shall be called for by the National Secretary/Treasurer in writing and all affiliates shall be notified, not less than forty clear days prior to the date set for the closure of the nominations, setting out the position(s) up for election. Any nominations shall be in writing and carry the signature of the nominee agreeing to such a nomination.

6.1.4 The officers shall be elected at the Biennial Conference of the NZCTU for a four-year term and, subject to rule 8.4.1, hold their positions until

they die, resign or until their successors are elected, and they shall be eligible for re-election notwithstanding the provisions of clause 6.1.2.

6.1.5. The President, Vice-Presidents and National Secretary/Treasurer may speak and vote on all matters at meetings of the National Affiliate Council, and all Conferences of the NZCTU; providing that where the President has exercised a deliberative vote and there is an equality of votes, the President shall have a casting vote.

6.2. Duties of the National Officers

6.2.1. General

The responsibilities of the four officers include:

(a) advancement of the objects of the constitution nationally and internationally.

(b) provision of affiliate and public leadership in respect of NZCTU campaigns and activities, and

(c) acting as spokespeople promoting the objectives of the NZCTU.

6.2.2. President

The President shall preside over meetings of the National Affiliate Council, Finance and Administration Committee, and Conferences of the NZCTU at which the President is present.

The President shall:

(a) enforce strict observance of this Constitution,

(b) give impartial decisions on all matters placed before the meeting,

(c) chair all decision making with the power to delegate facilitation of other parts of any meeting, and

(d) shall perform such other work as pertains to this office.

6.2.3. Vice-Presidents

The Vice-Presidents shall render all necessary assistance to the President, and in the absence of the President, shall have all the powers and duties (where applicable) of the President. The Vice-President Māori shall render all necessary assistance to the President including work relating to Te Rūnanga o Ngā Kaimahi Māori.

6.2.4. National Secretary/Treasurer

The National Secretary/Treasurer shall be responsible for the efficient and effective operation of the office and staff and the allocation of resources to deliver the work programme and for servicing the constitutional structures, and shall:

(a) keep true and complete minutes of all meetings of the National Affiliate Council, Finance and Administration Committee, all Conferences and meetings of the NZCTU.

(b) be empowered to call meetings of the National Affiliate Council, receive, transmit and answer all correspondence, summon meetings, and perform such other duties as the National Affiliate Council, and Conferences of the NZCTU shall from time to time direct.

(c) collect all fees and/or levies payable to the NZCTU and shall, as soon as possible thereafter, pay same into the NZCTU's bank account/s.

(d) compile and maintain a register of all Affiliates, giving their dates of joining or withdrawal as the case may be.

(e) prepare an Annual Report and Balance Sheet on behalf of the National Affiliate Council for endorsement by the National Affiliate Council, for subsequent presentation to the Biennial Conference.

(f) prepare and forward reports on any matter affecting the NZCTU as shall from time to time be directed by the National Affiliate Council, Finance and Administration Committee, or any Conference of the NZCTU.

(g) make available to the President and/or Vice-Presidents and/or Auditor at all times, all books, accounts, and vouchers pertaining to the business of the NZCTU.

(h) pay all legal liabilities of the NZCTU and generally perform all such other work as is required from this office.

6.2.5. On the retirement, resignation or succession of the incumbent National Secretary/Treasurer, the National Secretary/Treasurer shall be allowed fourteen days from the date of the retirement, resignation, or when the successor is declared elected, as the case may be, to make available to the successor all books, papers and other property of the NZCTU.

6.3 KAUMĀTUA

6.3.1 In accordance with the objects of this constitution and in particular object 1.2.3 which recognises Te Tiriti o Waitangi as the founding document of Aotearoa/ New Zealand, the NZCTU Te Kauae Kaimahi will recognise Kaumātua with experience in the union movement to provide advice and counsel to the NZCTU leadership and Te Rūnanga.

6.3.2 Te Rūnanga will identify two suitable Kaumātua for these roles.

6.3.3 The recognition of Kaumātua will be done by a consensus decision of the NZCTU officers and the Co-Convenors of Te Rūnanga.

7. FINANCE AND ADMINISTRATION COMMITTEE

7.1. Duties of the Finance and Administration Committee

7.1.1. The Finance and Administration Committee will:

(a) receive financial reports from the National Secretary/Treasurer.

(b) advise on financial and administrative matters affecting the NZCTU budget.

(c) process applications to the Organising Activity Fund and make recommendations for funding allocations to National Affiliate Council.

(d) may assign specific responsibilities to the Officers, and

(e) report at least six monthly to National Affiliate Council on these matters.

7.2. Membership of the Finance and Administration Committee

7.2.1. Six members of the Finance and Administration Committee will be appointed by the Biennial Conference through the election of the four officers and two trustees.

7.2.2. Two additional members of the committee will be appointed by, and from, National Affiliate Council members at its first meeting after each Biennial Conference.

8. ELECTIONS

8.1. Ballots

8.1.1. Voting in ballots conducted by the NZCTU shall be on the basis of voting entitlements at the Biennial Conference as set out in clause 4.3.1.

8.1.2. Voting in ballots at the Biennial Conference shall be by exhaustive ballot until the successful candidate(s) attain(s) a majority vote.

8.1.3. All ballots shall be conducted by the duly elected returning officer and official scrutineer.

8.2. Casual Vacancies

8.2.1. Should any casual vacancy occur in any National Office (other than a temporary vacancy arising from extended leave, which is dealt with at clause 8.2.3), the remaining Officers shall call for nominations in accordance with this constitution; provided however that the vacancy does not occur less than two months prior to the closing of nominations normally called for the vacancy concerned.

8.2.2. All such casual vacancies shall be filled by **ballot** of all affiliates conducted under a preferential voting system, the successful candidate being elected to complete the term of the person holding the office prior to the vacancy occurring.

8.2.3 If a National Officer takes an extended period of leave of more than three months (eg, for sickness, parental, and/or family leave), the National Affiliates Council of NZCTU shall call for nominations from affiliates to fill the position for the length of the leave. Nominations will be open for three weeks. After the nominations have closed and if more than one nomination has been received then there will be a card vote of affiliates.

8.3. Scrutineer and Returning Officer

8.3.1. The Biennial Conference shall elect a scrutineer and a returning officer.

8.3.2. Clauses 6.1.2, 6.1.3 and 6.1.4 shall, with appropriate modifications, apply to the election of the scrutineer and returning officer provided that should a position for any reason be unfilled at the time of a Conference, nominations shall be called from the floor.

8.4. Removal of Officials

8.4.1. Any holder of a position that is subject to election at the Biennial Conference who is not performing his/her duties in a manner satisfactory to the National Affiliate Council may at a Special Conference convened for that purpose under clause 4.5.2, be removed from their office by a two-thirds majority vote of the Conference.

9. REPRESENTATION OF WOMEN

9.1. National

9.1.1. A National Women's Conference shall be held once every two years. The Women's Conference will consist of delegates and observers from affiliated unions on the basis of their numbers of women members on the same basis as for National Conference. Remits passed at this Conference, or in the event of Conference being held in a different year to NZCTU Biennial Conference, remits passed at a designated Women's Council meeting taking place in the year of NZCTU Biennial Conference, shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

9.1.2. The NZCTU will incorporate a Women's Council consisting of members endorsed by their union. The National Women's Council shall consist of one-woman representative from each affiliated union, to be advised to the National Secretary/Treasurer in writing not less than twenty-one days before the opening of the Women's Conference.

9.1.3. The Council shall meet at least once a year, with further meetings to be determined by the Council.

9.1.4. Two representatives of the Women's Council shall be entitled to attend meetings of the National Affiliate Council and Biennial Conference, with voting rights.

9.2. Local Women's Councils

9.2.1. Local Women's Councils can be formed under the same terms as Local Affiliate councils in section 13 Local Affiliate Councils.

10. REPRESENTATION OF MĀORI

10.1. National

10.1.1. Te Rūnanga

The NZCTU will incorporate Te Rūnanga consisting of members endorsed by their union. Te Rūnanga will consist of at least one representative from each affiliated union, to be advised to the Secretary in writing not less than twenty-one days before the opening of Biennial Hui. Te Rūnanga will determine who else will attend, as is consistent with tikanga Māori. Te Rūnanga will meet at least once, and usually four times per calendar year, with further meetings determined by Te Rūnanga.

10.1.2. National Affiliate Council

Two representatives of Te Rūnanga, usually Co-Convenors of Te Rūnanga, will be entitled to attend meetings of the National Affiliate Council, with voting rights (See 5.3 Appointment to National Affiliate Council.). The Tiriti relationship shall be the first item of business on the National Affiliate Council agenda with the Vice-President Māori and Te Rūnanga Co-Convenors reports prioritised.

10.1.3. Biennial Conference

Ten representatives of Te Rūnanga will be entitled to attend Biennial Conference of the NZCTU, with voting rights. During the report from Te Rūnanga to the Biennial Conference, standing orders will be suspended and tikanga Māori protocol followed.

10.1.4. Tiriti Relationship Group

The NZCTU will incorporate a Tiriti Relationship Group consisting of Te Rūnanga representatives (Vice-President Māori, Co-convenors, and 2 Te Rūnanga members) and NZCTU (President, Vice-President, Secretary, and 2 National Affiliate Council members). Decisions shall be made by consensus. The Tiriti Relationship Group will meet after the quarterly National Affiliate Council meeting to discuss kaupapa of common interest, giving effect to Te Takawaenga, and advancing the Tiriti relationship. Te Takawaenga shall be reviewed at the Biennial Hui and Biennial Conference biennially.

10.1.5. Biennial Hui

A National Hui for Māori delegates shall be held once every two years. The Biennial Hui will consist of observers, and delegates from affiliated unions on the basis of their numbers of Māori members on the same basis as for Biennial Conference. The Biennial Hui shall

establish a long-term strategic plan (e.g., 3 or 5 years), and develop the two-year workplan for Te Rūnanga. The Vice-President Māori, Te Rūnanga Co-Convenors, and Te Rūnanga shall ensure that the strategic plan and workplan are implemented. Remits passed at this Hui, or in the event of Hui being held in a different year to NZCTU Biennial Conference, remits passed at a designated Te Rūnanga meeting taking place in the year of NZCTU Biennial Conference shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference. The Co-Convenors of Te Rūnanga shall be appointed by the Māori delegates at the Biennial Hui. Selection of Co-Convenors shall observe gender balance where wāhine and tāne are nominated.

10.2. Local Rūnanga

10.2.1. Local Rūnanga can be formed under the same terms as Local Affiliate Councils in section 14 Local Affiliate Councils.

11. REPRESENTATION OF PACIFIC ISLAND WORKERS

11.1. National

11.1.1. A National Fono for Pacific Island delegates shall be held once every two years. The Fono will consist of observers, and delegates from affiliated unions on the basis of their numbers of Pacific Island members on the same basis as for Biennial Conference. Remits passed at this Fono, or in the event of Fono being held in a different year to NZCTU Biennial Conference, remits passed at a designated Komiti meeting taking place in the year of NZCTU Biennial Conference, shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

11.1.2. The NZCTU will incorporate a Komiti Pasifika consisting of members endorsed by their union.

The Komiti Pasifika will consist of a representative from each affiliated union to be advised to the Secretary in writing not less than twenty-one days before the opening of the Fono.

The Komiti will meet at least once a year, with further meetings determined by the Komiti.

11.1.3 Two representatives of Komiti Pasifika will be entitled to attend meetings of the National Affiliate Council and Biennial Conference, with voting rights. (See 5.3 Appointment to National Affiliate Council.)

11.1.4 Matua roles (male and female), for cultural guidance to Komiti Pasefika, shall be appointed by Komiti Pasefika at the Biennial Fono, upon recommendation by Komiti Convenors.

11.2 Local Komiti

11.2.1 Local Komiti can be formed under the same terms as Local Affiliate Councils in section 17 Local Affiliate Councils.

12 REPRESENTATION OF YOUNG WORKERS (STAND UP)

12.1 National

12.1.1. A Young Workers (Stand Up) Conference shall be held once every two years. The Young Workers (Stand Up) Conference will consist of delegates and observers from affiliated unions on the same basis as for National Conference. Remits passed at this Conference, or in the event of Conference being held in a different year to NZCTU Biennial Conference, remits passed at a designated Young Worker's Council (Stand Up) meeting taking place in the year of NZCTU Biennial Conference, shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

12.1.2. The NZCTU will incorporate a Young Worker's Council (Stand Up) consisting of members endorsed by their union. Young Worker's Council (Stand Up) shall consist of at least one young worker from each affiliated union, to be advised to the National Secretary/Treasurer in writing not more than twenty-eight days after the closing of the Young Workers (Stand Up) Conference.

12.1.3. The Council shall meet at least once a year, with further meetings to be determined by the Council.

12.1.4. Two representatives of the Young Worker's Council (Stand Up) shall be entitled to attend meetings of the National Affiliate Council and Biennial Conference, with voting rights.

12.2. Local Young Workers (Stand Up) Councils

12.2.1. Local Young Worker's Councils (Stand Up) can be formed under the same terms as Local Affiliate Councils in section 14 Local Affiliate Councils.

13 REPRESENTATION OF LGBTIQ+ Workers

13.1 National

13.1.1 Out@work is the NZCTU network for lesbian, gay, bisexual, transgender, intersex, takatāpui, fa'afafine and queer workers (LGBTIQ+). An Out @ Work Council Conference shall be held once every two years. The Out @ Work Conference will consist of delegates and observers from affiliated unions on the same basis as for National Conference. Remits passed at this Conference, or in the event of Conference being held in a different year to NZCTU Biennial Conference, remits passed at a designated Out @ Work Council meeting taking place in the year of NZCTU Biennial Conference, shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

13.1.2 The NZCTU will establish an Out @ Work Council consisting of members endorsed by their union. The Out @ Work Council shall consist of one LGBTIQ+ worker representative from each affiliated union, to be advised to the National Secretary/Treasurer in writing not less than twenty-one days before the Biennial Conference.

13.1.3. The Council shall meet at least once a year, with further meetings to be determined by the Council.

13.1.4. Two representatives of the Out @ Work Council shall be entitled to attend meetings of the national Affiliate Council and Biennial Conference, with voting rights.

13.2 Local Out @ Work Councils

13.2.1 Local Out @ Work Councils can be formed under the same terms as Local Affiliate Councils in section 17 Local Affiliate Councils.

14. REPRESENTATION OF KAIMAHI WHAIKAHA (WORKERS WITH DISABILITES)

14.1 National

14.1.1. A Kaimahi Whaikaha (Workers with Disabilities) Conference shall be held once every two years. The Kaimahi Whaikaha (Workers with Disabilities) Conference will consist of delegates and observers from affiliated unions on the same basis as for National Conference. Remits passed at this Conference, or in the event of Conference being held in a different year to NZCTU Biennial Conference, remits passed at a designated Kaimahi Whaikaha (Workers with Disabilities) Council meeting taking place in the year of NZCTU Biennial Conference, shall

be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

14.1.2. The NZCTU will incorporate a Kaimahi Whaikaha (Workers with Disabilities) Council consisting of members endorsed by their union. The Kaimahi Whaikaha (Workers with Disabilities) Council shall consist of one worker with disability representative from each affiliated union, to be advised to the National Secretary/Treasurer in writing not less than twenty-one days before the opening of the Kaimahi Whaikaha (Workers with Disabilities) Conference.

14.1.3. The Council shall meet at least once a year, with further meetings to be determined by the Council.

14.1.4. Two representatives of the Kaimahi Whaikaha (Workers with Disabilities) Council shall be entitled to attend meetings of the National Affiliate Council and Biennial Conference, with voting rights.

14.2. Local Kaimahi Whaikaha (Workers with Disabilities) Councils

14.2.1. Local Kaimahi Whaikaha (Workers with Disabilities) Councils can be formed under the same terms as Local Affiliate councils in section 14 Local Affiliate Councils.

15. REPRESENTATION OF ETHNIC COMMUNITY (ASIAN/MELAA) WORKERS

15.1 National

15.1.1. A Workers of Ethnic Community (ASIAN/MELAA) Workers Conference shall be held once every two years. The Ethnic Community (ASIAN/MELAA) Workers Conference will consist of delegates and observers from affiliated unions on the same basis as for National Conference. Remits passed at this Conference, or in the event of Conference being held in a different year to NZCTU Biennial Conference, remits passed at a designated Ethnic Community (ASIAN/MELAA) Workers Council meeting taking place in the year of NZCTU Biennial Conference, shall be forwarded to the Secretary of the NZCTU when remits are called for the Biennial Conference.

15.1.2. The NZCTU will incorporate a Ethnic Community (ASIAN/MELAA) Workers Council consisting of members endorsed by their union. The Ethnic Community ASIAN/MELAA) Workers Council shall consist of one worker of diverse cultures representative from each affiliated union, to be advised to the National Secretary/Treasurer in writing not less than twenty-one days before the opening of the Ethnic Community (ASIAN/MELAA) Workers Conference.

15.1.3. The Council shall meet at least once a year, with further meetings to be determined by the Council.

15.1.4. Two representatives of the Ethnic Community (ASIAN/MELAA) Workers Council shall be entitled to attend meetings of the National Affiliate Council and Biennial Conference, with voting rights.

15.2. Local Workers of Ethnic Community (ASIAN/MELAA) Workers Councils

15.2.1. Local Workers of Ethnic Community (ASIAN/MELAA) Workers Councils can be formed under the same terms as Local Affiliate councils in section 14 Local Affiliate Councils.

16. STANDING COMMITTEES

16.1. The Biennial Conference of the NZCTU is empowered to appoint standing committees to advise the National Affiliate Council on specific issues or to co-ordinate the activities of particular interest groups.

16.2. Standing committees will report to successive Biennial Conferences and their continuation will be determined by Biennial Conference.

17. LOCAL AFFILIATE COUNCILS

17.1. Role of Local Affiliate Councils

17.1.1. In any locality, at least five affiliated unions may determine to establish a Local Affiliate Council for the purposes of advancing the NZCTU constitution and work programme through education initiatives and organising activities.

17.2. Establishing a Local Affiliate Council

17.2.1. Affiliates determining to establish a Local Affiliate Council must apply to the National Affiliate Council outlining:

(a) geographic location.

(b) purpose.

(c) structure of the Local Affiliate Council; and

(d) rules, standing orders or terms of reference by which, the Local Affiliate Council will operate.

17.2.2. Approval to establish a Local Affiliate Council by National Affiliate Council will require an indication of:

(a) funding arrangement or commitments for resourcing from affiliates; and

(b) a work programme which reflects the strategic plan of the NZCTU nationally.

17.3. Responsibilities of Local Affiliate Councils

17.3.1. Once National Affiliate Council has given approval, the Local Affiliate Council shall:

(a) nominate a Local Affiliate Council convener who may.

(i) maintain networks.

(ii) circulate NZCTU and affiliate information.

(iii) call meetings as needed.

(iv) arrange for co-ordination of local campaigns and education programmes; and

(v) form committees or groups as required for campaigns and local organisation; and shall.

(b) with advice from and approval of the National Secretary/Treasurer; open a bank account with two signatories (one of whom must be the convener).

(c) forward copies of minutes, reports and bank accounts to the National Secretary/Treasurer; and

(d) ensure decisions for expenditure have prior approval of no fewer than four representatives of affiliate unions.

17.3.2. Participation in Local Affiliate Councils shall be by members, officers or employees of affiliated unions, specifically recognised to represent those affiliates.

17.3.3. Local Affiliate Councils are not able to enter into any contracts, including employment contracts, in their own right.

17.3.4 Any Local Affiliate Council recognised by the National Affiliate Council shall have the ability to seek funding for specific activities from the Organising Activity Fund in terms of section 14.

18. ORGANISING ACTIVITY FUND

18.1. Funding

18.1.1. Annually the Biennial Conference or National Affiliate Council shall, when establishing the NZCTU budget, allocate an amount to be designated as the Organising Activity Fund.

18.1.2. Allocation of this funding shall be determined by the National Affiliate Council, on advice of the Finance and Administration Committee.

National Affiliate Council can determine:

(a) either to make a seeding grant to a Local Affiliate Council, for which expenditure is to be accounted to the National Secretary/Treasurer at the completion of the project; or

(b) can determine that the National Secretary/Treasurer will reimburse accounts on receipt of invoices rendered by the Local Affiliate Council.

18.2. Application for Funding

18.2.1. Local Affiliate Councils, National Sector Groups including Te Rūnanga may make application to the Organising Activity Fund for the purpose of local activity and education to promote the constitution and work programme of the NZCTU.

18.2.2. Applications should include:

(a) a written application with a stated purpose, outcome and time frame.

(b) a budget of proposed expenditure and information on other funding sources which may be contributing to the project; and

(c) names of affiliate representatives, with appropriate affiliate endorsement, who are accountable for any funding received.

18.3. Unused funds

18.3.1. On completion of any proposal for which funds were allocated, any remaining funds shall be repatriated to the national NZCTU office, and any funds not drawn shall return to the Organising Activity Fund.

19. AMENDMENTS TO THE CONSTITUTION

19.1. The Constitution of the NZCTU can only be amended by majority vote at Conferences and only after prior circulation among all affiliates of any remit proposing such an amendment.

20. MATTERS NOT PROVIDED FOR

20.1. Any matter not provided for in this Constitution, or by decisions of the Conference/s shall be decided by the National Affiliate Council subject to ratification at the next Biennial Conference.

21. STANDING ORDERS

21.1. No discussion shall take place except on a motion or an amendment. It shall be competent for any delegate to demand a motion in writing before any discussion takes place.

21.2. A delegate having moved a motion may, with the consent of the seconder and the meeting, withdraw it without a vote being taken.

21.3. When a question is before the meeting no motion shall be received unless:

(a) to adjourn consideration for a given period.

(b) to lie on the table.

(c) to refer to a committee or amend.

(d) to proceed to next business.

(e) to move "That the question be now put". If this motion is carried, the mover of the original motion may reply and then the motion will be voted upon. No further amendments or motions are to be considered before the said motion is voted upon.

of which (b) and (d) shall be put without further discussion.

21.4. Only one amendment upon any motion shall be taken and decided at a time, and should any amendment be carried, it shall become the substantive motion to which further amendments, one at a time, may be proposed and decided upon until the matter under consideration is finally disposed of.

21.5. No delegate shall propose more than one amendment to any one motion, and no delegate shall speak more than once to any motion or amendment, except the mover of the motion who shall have the right of reply; but a delegate having spoken to a motion previous to an amendment being moved, may speak on such amendment, except that if the mover of the motion speaks to any amendment s/he shall forfeit his/her right to reply.

21.6. An amendment altering the intention of a motion shall be in order, but not one destroying the intention or relating to a different topic.

21.7. All delegates shall stand when speaking and address the presiding officer.

21.8. Not more than two consecutive speakers shall be allowed to speak for or against any question.

21.9. When two or more delegates shall rise at the same time to speak, the chairperson shall decide between them.

21.10. When the question of "order" is raised, the delegate speaking shall resume his/her seat until the point is decided. The delegate raising the point of order shall state such point concisely; the chairperson shall then give the ruling without discussion.

21.11. When a delegate is speaking, no other delegate shall interrupt except to raise a point of order, or ask the chairperson's permission to explain, which explanation shall only be in reference to a misunderstanding.

21.12. In the event of any delegate being dissatisfied with the ruling of the chairperson, s/he may move that it be disagreed with. The chairperson shall thereupon vacate the chair, and the vice-president shall fill the position; in the absence of the vice-president then such delegate as the meeting shall appoint. The mover and chairperson shall respectively state their reasons, whereupon a vote shall be taken, the result of which shall not be appealed against, and shall be accepted by the chairperson, who shall thereupon resume the chair.

21.13. Should any delegate persist in defying the ruling of the chair, the chairperson shall ask the meeting to vote on the question of expulsion from the meeting, without any motion being moved.

22. DISSOLUTION

22.1. Should the NZCTU, by two-thirds majority vote at a Biennial or Special Conference, resolve to dissolve itself, then the assets of the NZCTU shall be disposed of in such manner as the Conference, by majority vote, shall decide.

23. REGISTERED OFFICE

23.1. The registered office of the NZCTU shall be Level 3, 79 Boulcott Street, Wellington or such other address as National Affiliates Council may from time to time determine.

Appendix one

CHARTER OF AFFILIATION TO NZCTU

This charter is appended to the Constitution of NZCTU but is not part of the Constitution.

(See also section 2.2 of the constitution: Conditions of Membership.)

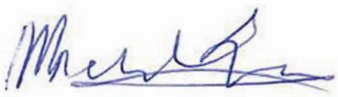
Draft charter still to be developed and confirmed by National Affiliate Council

SIGNATURES

Signed by these three members of the Society.

Richard Wagstaff

Date: 2-2-2024



Melissa Ansell-Bridges

Date: 2-2-2024

Stephanie Mills

Date: 2-2-2024

Annex 12


12º CONGRESO CONFEDERAL
ACTUAR PARA
AVANZAR
Pase lo que pase
CCOO

Estatutos

Edita: Secretaría de Comunicación
de la Confederación Sindical de CCOO

Diciembre de 2021


12º CONGRESO CONFEDERAL
ACTUAR PARA
AVANZAR
Pase lo que pase
CCOO

ÍNDICE

DEFINICIÓN DE PRINCIPIOS

Los principios en que se inspira el sindicalismo de nuevo tipo de la Confederación Sindical de Comisiones Obreras (CS de CCOO) son:

Reivindicativo y de clase

CCOO reivindica los principios de justicia, libertad, igualdad y solidaridad. Defiende las reivindicaciones de los trabajadores y las trabajadoras; en su seno pueden participar todos los trabajadores y trabajadoras sin discriminación alguna. Se orienta hacia la supresión de la sociedad capitalista y la construcción de una sociedad socialista democrática.

Unitario

La CS de CCOO mantiene de forma prioritaria el carácter plural y unitario que desde su origen la caracterizó, y se propone, como objetivo fundamental, la consecución de la unidad sindical orgánica dentro del Estado español, mediante la creación, en el menor plazo posible, de una confederación que sea expresión libre y unitaria de todos los trabajadores y trabajadoras. Proceso unitario cuyas formas definitivas no podemos prefigurar en la actualidad, y en esta dirección la CS de CCOO se compromete a:

a. Promover toda iniciativa que se encamine a favorecer la unidad de acción de las centrales sindicales representa-

tivas y de clase, tendiendo a que esta unidad de acción adquiera formas cada vez más estables.

b. Promover y generalizar la construcción de formas unitarias de representación de los trabajadores y trabajadoras, a partir de las asambleas y los organismos que los propios trabajadores y trabajadoras elijan democráticamente.

Democrático e independiente

La independencia de la CS de CCOO se expresa y garantiza, fundamentalmente, por medio del más amplio ejercicio de la democracia y de la participación de los trabajadores y trabajadoras en la vida interna del sindicato.

Las asambleas de afiliados y afiliadas, el funcionamiento democrático de todos los órganos de la CS de CCOO y el respeto a sus decisiones tomadas por mayoría son las bases de esta independencia, lo que nos caracteriza como sindicato asambleario. La CS de CCOO asume sus responsabilidades y traza su línea de acción con independencia de los poderes económicos, del Estado y de cualquier otro interés ajeno a sus fines, y también de los partidos políticos.

Participativo y de masas

Considerando que la conquista de las reivindicaciones sociales y políticas de los trabajadores y trabajadoras exige protagonismo directo, la CS de CCOO se propone organizar a la mayoría a fin de incorporarles a la lucha por su propia emancipación.

CCOO promoverá en todas sus estructuras la participación de la diversidad social existente entre la clase trabajadora.

Feminista. De mujeres y hombres

La CS de CCOO tiene entre sus principios impulsar y desarrollar la igualdad real y efectiva entre mujeres y hombres, así como combatir la discriminación por razón de sexo.

Para ello, CCOO asume incorporar la transversalidad de género en todos los ámbitos de la política sindical, promover y desarrollar acciones positivas en las relaciones laborales y en las condiciones de trabajo; así como garantizar la representación paritaria de mujeres y hombres en todos los niveles del sindicato

Sociopolítico

Además de reivindicar la mejora de las condiciones de vida y de trabajo de todos los trabajadores y trabajadoras, asume la defensa de todo aquello que les afecte como clase, en la perspectiva de la supresión de toda opresión y explotación, especialmente si ésta se produce contra menores.

Asimismo, la CS de CCOO ejercerá una especial defensa de las reivindicaciones de las mujeres, jóvenes, personas con otras capacidades, de la salud laboral, del medio ambiente y del pacifismo, con el fin de eliminar cualquier forma de discriminación basada en el sexo u orientación sexual, la edad, la morfología física, psíquica o sensorial, el origen étnico, las convicciones políticas y/o

religiosas, así como por cualquier otra condición o circunstancia personal o social.

La CS de CCOO, consecuente con la defensa que históricamente mantiene de los derechos nacionales y autonómicos de los pueblos de España:

Reconoce el derecho de autodeterminación de aquellos pueblos que lo deseen ejercitar, a través de los mecanismos establecidos en la Constitución para su reforma.

Apoya la plena consolidación de las autonomías nacionales y territoriales, así como la plena solidaridad entre ellas.

Y se define a favor del Estado federal.

La CS de CCOO defenderá en su práctica sindical los principios de solidaridad entre los trabajadores y trabajadoras, y en su funcionamiento interno se regirá por un espíritu solidario entre las diversas organizaciones de la CS de CCOO, adoptando una estructura organizativa consecuente con la realidad plurinacional del Estado español.

La CS de CCOO desarrolla su actividad en el marco legal de la Constitución Española y lucha por su desarrollo progresivo, respetando la misma como expresión de la voluntad democrática del pueblo español, que en su día la aprobó.

Internacionalista

Ante la esencia internacionalista de la clase trabajadora, la CS de CCOO afirma lo siguiente:

a. Se establecerán y reforzarán las relaciones solidarias con todos los sindicatos de clase democráticos y representativos del mundo, a todos los niveles y con independencia de su afiliación a las confederaciones o federaciones mundiales existentes.

b. La CS de CCOO colaborará con las organizaciones sindicales internacionales y actuará en favor de la unificación del sindicalismo mundial.

c. De igual manera, la CS de CCOO se compromete a mantener de forma activa la solidaridad con los pueblos que luchan por las libertades democráticas y/o por el socialismo, y con las personas refugiadas y las trabajadoras y trabajadores perseguidos por el ejercicio de sus derechos sindicales y democráticos.

d. Potenciará la coordinación de los órganos de representación sindical de las empresas multinacionales.

Pluriétnico y multicultural

La CS de CCOO se compromete a luchar por la igualdad real y efectiva entre mujeres y hombres para las trabajadoras y los trabajadores inmigrantes y emigrantes en el acceso a los derechos laborales, sociales y políticos. Se compromete a luchar por la igualdad de condiciones, la participación de las trabajadoras y trabajadores inmigrantes en la actividad sindical y su representación en todos los ámbitos de la estructura sindical.

La CS de CCOO combatirá contra el racismo y la xenofobia, y cualquier tipo de discriminación por motivos de procedencia, nacionalidad, creencia y cultura; promoverá en los centros de trabajo y en la sociedad los valores del respeto y la convivencia.

I
DEFINICIÓN DE LA CONFEDERACIÓN

Artículo 1. Definición y ámbito de actuación de la Confederación Sindical de Comisiones Obreras (CS de CCOO)

La CS de CCOO es una organización sindical democrática y de clase que confedera a las federaciones estatales, confederaciones de nacionalidad y uniones territoriales en ella integradas. Defiende los intereses profesionales, económicos, políticos y sociales de los trabajadores y trabajadoras en todos los ámbitos, especialmente en los centros de trabajo. La CS de CCOO pretende la supresión de todo tipo de opresión, discriminación y explotación capitalista y orienta su actividad hacia:

a. El ejercicio efectivo del derecho de todas las trabajadoras y todos los trabajadores a un empleo estable y con derechos.

b. La plena protección social de los trabajadores y las trabajadoras.

c. La consecución de la igualdad real y efectiva entre mujeres y hombres, en particular mediante la lucha por la eliminación de la discriminación de la mujer en la sociedad y contra todo tipo de violencia de género, con especial atención al acoso sexual y acoso por razón de sexo en cualquier ámbito tolerancia cero.

d. La mejora de las condiciones de empleo y trabajo de la población activa.

e. La solidaridad internacional con las trabajadoras y los trabajadores de todos los países.

f. La integración social y laboral de los trabajadores y las trabajadoras, y de los pensionistas y jubilados y jubiladas en general, y de los colectivos sujetos a condiciones de exclusión de forma especial.

g. La mejora de las condiciones de vida y la promoción sociocultural de las trabajadoras y los trabajadores.

h. La protección del medio ambiente, la consecución de un modelo de desarrollo sostenible y la soberanía y seguridad alimentaria.

Para ello, la CS de CCOO desarrolla su actividad sindical a través de:

a. La negociación colectiva.

b. La concertación social.

c. La participación institucional y social.

d. La asistencia, asesoramiento y defensa individual y colectiva de los trabajadores y trabajadoras.

e. La promoción y/o gestión de actividades y servicios dirigidos a la integración y promoción social, cultural, profesional y laboral de los trabajadores y las trabajadoras, y en especial de los afiliados y las afiliadas.

f. Cuantas acciones y actividades consideren adecuadas para el cumplimiento de sus objetivos.

La CS de CCOO admite a las trabajadoras y los trabajadores que desarrollan su actividad en el Estado español, con independencia de sus convicciones personales, políticas, éticas o religiosas, de su raza, sexo o edad, que aceptan los Estatutos y sus reglamentos de desarrollo, y que practican la política sindical de la CS de CCOO aprobada en sus diferentes órganos de dirección.

La CS de CCOO adopta la forma jurídica de sindicato, al amparo y en concordancia con lo estipulado en la Ley Orgánica 11/1985, de 2 de agosto, de Libertad Sindical.

Artículo 2. Estatutos y reglamentos

Estos Estatutos regulan el funcionamiento y la estructuración organizativa de la CS de CCOO, los derechos y deberes de los afiliados y las afiliadas, así como los requisitos para adquirir dicha condición y su pérdida. Configuran, junto con su desarrollo reglamentario, una normativa común básica, indisponible e inmodificable en los estatutos específicos de las organizaciones confederadas, salvo en aquellos capítulos y artículos en los que se indique que puedan ser objeto de desarrollo o adaptación. Vinculan a todas las organizaciones que integran la CS de CCOO y a su afiliación.

Los reglamentos sindicales desarrollan y regulan los mandatos contenidos en los presentes Estatutos en aquellos aspectos

de funcionamiento, relaciones sindicales y derechos y deberes aquí previstos. Obligan a todas las organizaciones y a los afiliados y afiliadas de la CS de CCOO.

Ante disposiciones en contrario, prevalecerá lo dispuesto en los Estatutos Confederales y sus reglamentos, o en su caso lo que acuerde el Consejo Confederal.

Los estatutos de las organizaciones confederadas deberán incorporar a las competencias de sus Consejos la de modificación y adecuación de los mismos, en el supuesto de que contengan preceptos contrarios o contradictorios con los Estatutos Confederales, que se deberá llevar a cabo en un plazo máximo de seis meses desde la celebración del Congreso Confederal.

Los Estatutos y reglamentos serán publicados para su general conocimiento.

Artículo 3. Domicilio social

La CS de CCOO tendrá como domicilio social el de la calle Fernández de la Hoz, número 12, 28010 Madrid. El Consejo Confederal, a propuesta de la Comisión Ejecutiva Confederal, podrá acordar el cambio a otro lugar.

Artículo 4. Emblema

El emblema de la CS de CCOO, que deberá recogerse en las publicaciones, documentos públicos, de propaganda, etc., es una pastilla de formato rectangular de fondo rojo con las letras CCOO en blanco. Todas

las organizaciones confederadas deberán integrar en su imagen corporativa el logo confederal, según tipografía y perfil gráfico aprobados por el Consejo Confederal.

El diseño del emblema podrá ser modificado por el Consejo Confederal, a propuesta de la Comisión Ejecutiva Confederal.

Artículo 5. Ámbito territorial

El ámbito territorial de actividad de la CS de CCOO será el constituido por el territorio del Estado español, incluidas las delegaciones o representaciones oficiales de organismos nacionales o de otro ámbito en el extranjero.

Artículo 6. Ámbito profesional

El ámbito subjetivo o profesional de actuación de la CS de CCOO comprenderá a:

a. Las trabajadoras y los trabajadores en activo, en paro o en busca de primer empleo, los pensionistas y las pensionistas y los jubilados o jubiladas.

b. Los trabajadores y las trabajadoras autónomos, siempre que no tengan personas empleadas a su cargo para desempeñar servicios relacionados con su actividad como autónomos.

c. Quienes presten su servicio bajo el control y la dirección de otra persona o entidad, cualquiera que sea la forma jurídica que adopte esta relación laboral.

Artículo 7. Afiliación internacional

La CS de CCOO es miembro de la Confederación Sindical Internacional (CSI) y de la Confederación Europea de Sindicatos (CES). Sus federaciones estatales se integran en las federaciones europeas de rama afiliadas a la CES, así como en los Secretariados Profesionales Internacionales (SPI).

La afiliación o baja de la CS de CCOO en una organización de carácter internacional requerirá la aprobación del Congreso Confederal por mayoría absoluta.

II
AFILIACIÓN. DERECHOS Y DEBERES

Artículo 8. Afiliación

La afiliación a la CS de CCOO es un acto voluntario, sin otras condiciones que la aceptación y práctica de los objetivos señalados en la Definición de principios, las que establecen los ámbitos profesionales del artículo 6 y, en general, las obligadas por el respeto a los presentes Estatutos y demás normas y resoluciones del Consejo Confederal acordadas que los desarrollen.

La afiliación se realizará a la CS de CCOO a través de las organizaciones confederadas, según el encuadramiento organizativo que acuerden los órganos confederales y la situación laboral de la persona.

Sólo en los casos establecidos en el art.15.1 letras b), e), g) y h) será preceptivo obtener la rehabilitación mediante resolución favorable del órgano de dirección que, en su día, tramitó la propuesta de sanción o comunicó la baja automática.

Artículo 9. Carné

El carné es el documento que acredita la afiliación. Será editado por la CS de CCOO en las diferentes lenguas reconocidas en el Estado español. En él, así como en cualquiera otra documentación referida a la cotización, se reflejará que la afiliación es a la CS de CCOO y a la federación es-

tatal y la confederación de nacionalidad o unión territorial en las que se integra el afiliado o afiliada.

El Consejo Confederal regulará lo referido a los carnés y a la documentación que acredite a los afiliados y afiliadas.

Artículo 10. Derechos de los afiliados y afiliadas

Todos los afiliados y afiliadas a la CS de CCOO, con independencia de la federación estatal y confederación de nacionalidad o unión territorial en las que se integren, tienen derecho a:

a. Participar en todas y cada una de las actividades y decisiones que se lleven a cabo dentro de su ámbito de encuadramiento u otros para los que haya sido elegido o elegida.

b. Ser elector/electora y elegible en las votaciones para los órganos de dirección y representación de la sección sindical en la empresa o centro de trabajo.

c. Presentarse como delegado o delegada para asistir a las asambleas congresuales, los congresos y/o conferencias que se convoquen en su ámbito de encuadramiento.

d. Presentarse como candidato o candidata, tanto a los órganos de la Confederación como de cualquier otro de la estructura sindical de CCOO dentro de su ámbito de encuadramiento.

Las únicas restricciones para el ejercicio de estos derechos se indican en estos Estatutos y en las normas que para cada caso se acuerden.

e. Recibir el carné u otro documento que acredite su afiliación y tener a su disposición los Estatutos y reglamentos confederales vigentes.

f. A la libertad de expresión y a manifestar opiniones diferenciadas o críticas sobre las decisiones tomadas a cualquier nivel de la organización, sin perjuicio del deber de respetar y cumplir los acuerdos orgánicos adoptados. En ningún caso el derecho a la libertad de expresión podrá amparar conductas irrespetuosas o descalificatorias para con los órganos o cualquiera de sus miembros, tampoco las que causen grave perjuicio a la imagen pública del sindicato o atenten contra el honor y dignidad personal de sus representantes y afiliados o afiliadas.

g. El respeto a sus opiniones políticas y convicciones religiosas, así como a la falta de ellas. También a su vida privada.

h. Solicitar la intervención de los órganos competentes de su ámbito de encuadramiento contra resoluciones de los órganos de dirección o contra actuaciones de integrantes del sindicato y, en especial, contra medidas disciplinarias que les afecten directamente.

i. Recibir el oportuno asesoramiento sindical gratuito, así como el técnico, jurídico y asistencial en su ámbito

de encuadramiento en la forma que se establezca por los órganos competentes. Este derecho no incluye el asesoramiento para reclamar o tramitar acciones judiciales contra la CS de CCOO, las organizaciones en ella integradas o contra sus órganos respectivos, ni frente a las fundaciones o entidades similares por ellas creadas.

No obstante, las personas afiliadas con contrato de trabajo con las organizaciones sindicales confederadas en CCOO, sus fundaciones, o entidades similares creadas por él, tendrán el derecho a ver resarcidos los gastos de defensa jurídica que hubieran podido tener que realizar con profesionales externos, en casos de demandas judiciales interpuestas contra las organizaciones confederadas de CCOO con ocasión de su relación laboral.

El derecho se concreta en el abono de una cantidad como máximo igual a la establecida en la tarifa confederal de honorarios profesionales de CCOO según el tipo de demanda, con los ajustes correspondientes en función a la antigüedad en la afiliación y según los criterios aprobados en el Manual de Procedimiento.

j. A la confidencialidad de los datos personales comunicados al sindicato. El acto de afiliación constituye el consentimiento expreso para su tratamiento, con la finalidad sindical y de gestión, así como con fines estadísticos e históricos por parte de la CS de CCOO y de sus organizaciones confederadas.

En ningún caso podrá realizarse la cesión de dichos datos, salvo que medie autorización expresa de la persona afiliada a personas físicas o jurídicas diferentes del conjunto de las organizaciones confederadas.

Los derechos anteriormente descritos, excepto los referidos en las letras f), g) y j), se ejercerán siempre que el afiliado o la afiliada se encuentren al corriente de pago de sus cotizaciones.

Aquellas y aquellos integrantes sindicales a quienes se refiere el artículo 31, apartado c) 10, de los presentes Estatutos, ejercerán los derechos referidos en este artículo en las letras a), b), c), d), h) e i), encuadrándose en el ámbito en el que desarrollen la actividad de dirección para la que se hayan elegido.

Artículo 11. Elección de los órganos del sindicato y de los delegados y delegadas a las asambleas y conferencias congresuales

1. Las personas integrantes de los órganos de dirección y representación serán electivas. Podrán ser revocadas por los órganos que las eligieron o por las restantes causas señaladas en los Estatutos, incluidas las causas disciplinarias o las derivadas de alguna incompatibilidad. La baja de la afiliación conllevará su cese automático en todos los cargos.

2. Los candidatos y candidatas a formar parte de órganos de dirección y representación de la estructura sindical de CCOO distintos a la sección sindical acreditarán una antigüedad mínima en su afiliación de seis meses anterior

a la fecha de la convocatoria de la elección por el órgano competente, salvo para aquellos órganos en los que se establezca otra antigüedad diferente en los Estatutos.

En todos los casos deberá constar de manera indubitada la aceptación de los candidatos y candidatas de su inclusión en la candidatura.

3. En la constitución y desarrollo de la CS de CCOO como sindicato feminista de hombres y mujeres, y para lograr la plena participación, compromiso y responsabilidad en todos los órganos del sindicato y en las delegaciones que corresponda elegir en los congresos y/o asambleas (excepto en el primer nivel I), las candidaturas que se presenten se ajustarán a las reglas siguientes:

a. En las organizaciones en las que la afiliación de hombres o mujeres sea inferior al 30% incorporarán como mínimo un número de hombres o mujeres proporcional al mismo número de afiliados y afiliadas en dicha organización incrementado en un 10%.

b. En aquellas organizaciones en las que la afiliación de mujeres sea igual o superior al 30% e inferior al 50% guardarán la proporción del 60/40% para cada uno de los sexos.

c. En aquellas organizaciones en las que la afiliación de mujeres sea igual o superior al 50% incorporarán un porcentaje de mujeres no inferior al 50%.

d. Las candidaturas deberán respetar las proporciones mencionadas en los dos niveles: titulares y suplentes.

e. En los congresos y/o asambleas congresuales del primer nivel, el número de mujeres y hombres que integrarán las candidaturas que se presenten será proporcional a la afiliación de cada sexo en la circunscripción correspondiente, tanto para los órganos como para las delegaciones a las asambleas o congresos superiores.

   En las circunscripciones en las que la afiliación de hombres o mujeres sea inferior al 30% incorporarán como mínimo un número de hombres o mujeres proporcional al mismo número de afiliados y afiliadas en dicha organización incrementado en un 10%.

f. Todas las candidaturas se elaborarán garantizando la alternancia entre hombres y mujeres, desde la primera posición hasta donde el número de candidatos y candidatas lo permita, en concordancia con las reglas anteriores.

4. Las elecciones deberán estar presididas en todo momento por criterios de unidad, fundamentalmente a través de candidaturas únicas y cerradas. De no alcanzarse una lista única, la elección se regirá por las siguientes reglas:

a. Cada candidatura deberá contener tantas candidatas y candidatos como puestos a elegir.

b. Sólo se admitirán las candidaturas avaladas por al menos el 10% de las delegadas y delegados acreditados.

c. Mediante el sistema de representación proporcional se atribuirá a cada

lista de candidatos y candidatas el número de puestos que le corresponda, de conformidad con el cociente que resulte de dividir el número de votos válidos, sin tener en cuenta los votos en blanco, por el de puestos a cubrir. Los puestos sobrantes, en su caso, se atribuirán a las listas, en orden decreciente, según los restos de cada una de ellas. En caso de empate de votos o de empate de enteros o de restos para la atribución del último puesto a cubrir se elegirá a quien tenga más antigüedad en la afiliación, y en caso de ser la misma a quien sea de menor edad, en caso de coincidir ambos criterios se atribuirá el puesto a una mujer.

d. Dentro de cada lista resultarán elegidos los candidatos o candidatas por el orden en que figuren en la candidatura.

e. En las elecciones para las comisiones de garantías la atribución de puestos será por el sistema mayoritario.

Artículo 12. Corrientes sindicales. Corrientes de opinión

1. Podrán existir en la CS de CCOO corrientes sindicales que tendrán plena capacidad de expresión pública, con el único límite señalado en el art 10. f) de los presentes Estatutos. Las corrientes sindicales tendrán las siguientes condiciones:

a. No estar organizadas en el interior de CCOO como una organización dentro de otra, ni constituir estructuras paralelas a las de la CS de CCOO.

b. No atentar contra la unidad, principios, Estatutos y programas de la CS de CCOO.

c. Deberán cumplir los acuerdos tomados por los órganos correspondientes.

d. La existencia de una corriente sindical en el seno de CCOO se aprobará en un congreso ordinario o extraordinario de la CS de CCOO, previa propuesta favorable de la mayoría simple del Consejo Confederal o 1/3 de las federaciones estatales o de 1/4 de las confederaciones de nacionalidad o uniones territoriales.

e. Las corrientes sindicales respetarán el debate abierto, no establecerán disciplina de voto, ni se expresarán por medio de portavoces en los órganos de la CS de CCOO.

f. A las corrientes sindicales así constituidas se las dotará de los medios necesarios para el cumplimiento de sus funciones. Especialmente, se les facilitará el acceso a los medios de comunicación y a las publicaciones confederales, garantizándoles su capacidad de expresión pública.

2. Las corrientes de opinión sobre cuestiones concretas o sobre temas de carácter general serán consideradas siempre que cuenten con, al menos, un 10% de la afiliación del ámbito correspondiente, de los delegados o delegadas asistentes al congreso o del máximo órgano de dirección del ámbito correspondiente.

Artículo 13. Deberes de los afiliados y afiliadas

a. Los afiliados y afiliadas deberán cumplir los Estatutos y los reglamentos y resoluciones del Consejo Confederal que los desarrollen; procurarán la consecución de los fines y objetivos que la CS de CCOO propugna y la puesta en práctica de los acuerdos de la misma.

b. Cumplir las decisiones democráticamente adoptadas por la CS de CCOO en cada uno de los órganos y niveles de la estructura sindical, y defender las orientaciones y decisiones tanto del órgano en que se desarrolla su actividad como de los superiores.

c. Los acuerdos adoptados por cualquier órgano de la CS de CCOO son vinculantes y obligan en cuanto a su aceptación y cumplimiento a todos los afiliados y afiliadas representados en el órgano y a los integrantes del mismo, a quienes se respetará el derecho a expresar libremente en el acta en que se hubiera plasmado el acuerdo la opinión contraria o distinta de la acordada por el órgano.

d. Deberán satisfacer la cuota que se establezca por los órganos competentes de la CS de CCOO.

e. Aceptan la actuación de las comisiones de garantías y se obligan a agotar las vías internas de recurso antes de ejercitar las acciones judiciales que pudieran corresponderles.

f. Los afiliados y afiliadas que decidan presentarse en las candidaturas a alguno de los cargos públicos señalados en el artículo 33 no podrán hacer uso, en la propaganda electoral, de la responsabilidad que ejerzan en cualquier órgano de la CS de CCOO.

g. Los afiliados y afiliadas deben participar en las votaciones para la elección de representantes de personal de sus ámbitos de trabajo.

h. Deberán hacer buen uso de los derechos sindicales que les correspondan, conforme al código de utilización de los mismos y al Código de Conducta.

i. Cumplir las políticas que sobre seguridad, confidencialidad y protección de datos acuerden los órganos del sindicato.

Artículo 14. Medidas disciplinarias

El incumplimiento por los afiliados y afiliadas de las obligaciones y deberes estatutarios podrá dar lugar a la adopción de medidas disciplinarias por el órgano competente. El Consejo Confederal aprobará un reglamento en el que se definan las faltas, distinguiendo su calificación, así como las sanciones en orden a la gravedad de las faltas y los órganos competentes para sancionar y acordar la apertura de expediente sancionador.

Dicho reglamento contendrá una descripción de las faltas, calificándolas como muy

graves, graves y leves, así como las sanciones a aplicar en correspondencia con la gravedad de las faltas.

Por faltas muy graves:

a. Expulsión.

b. Suspensión de dos a cuatro años de los derechos del afiliado o afiliada, bien en su totalidad, bien en aspectos concretos de los mismos.

Por faltas graves:

Suspensión de seis meses a dos años de los derechos del afiliado o afiliada, bien en su totalidad, bien en aspectos concretos de los mismos.

Por faltas leves:

a. Suspensión de uno a seis meses de los derechos del afiliado o afiliada, bien en su totalidad, bien en aspectos concretos de los mismos.

b. Amonestación interna.

El reglamento contendrá también los procedimientos para instruir expedientes sancionadores, los plazos a respetar en la instrucción, las garantías para recurrir las sanciones impuestas o la desestimación de estas, los plazos de prescripción de las faltas, los requisitos para acordar suspensiones cautelares de derechos, los procedimientos sancionadores en los casos de miembros del Consejo Confederal y de los órganos de garantías, así como los requisitos para obtener la rehabilita-

ción de derechos por parte de cualquier persona sancionada y cualquier condición que deba respetarse ante la adopción de medidas disciplinarias.

En la tramitación de expedientes sancionadores se respetará el derecho de audiencia de la persona interesada antes de adoptarse medida sancionadora alguna.

Artículo 15. Baja y suspensión de la afiliación en la CS de CCOO

1. Se causará baja en la CS de CCOO por:

a. Libre decisión del afiliado o afiliada.

b. Por resolución sancionadora de los órganos competentes de la CS de CCOO, previa tramitación del expediente oportuno.

c. Por impago injustificado de seis mensualidades consecutivas, tras el sexto mes natural, con comunicación previa a la persona interesada.

d. Por fallecimiento de la persona afiliada.

e. Por presentarse a las elecciones sindicales en candidatura distinta a la avalada por CCOO sin consentimiento expreso del órgano de dirección competente.

f. Circunstancias sobrevenidas que supongan la exclusión del afiliado o afiliada del ámbito profesional de actuación del sindicato.

g. Por suscribir el acta de la constitución de un sindicato o participar en la promoción del mismo.

h. Cuando exista una sentencia firme y condenatoria sobre casos de violencia de género, acoso sexual, racismo, xenofobia o cualquier otro hecho que atente contra la dignidad o integridad de las personas.

En los supuestos contemplados en las letras b), e), g) y h) la baja en el sindicato se producirá de forma automática desde la misma fecha del hecho causante. Corresponde al órgano de dirección del ámbito de encuadramiento comunicar dicha baja a la persona afiliada.

2. La afiliación quedará suspendida:

a. Por resolución sancionadora de los órganos competentes de la CS de CCOO, previa tramitación del expediente oportuno conforme a lo dispuesto en el Reglamento de Medidas Disciplinarias a las Personas Afiliadas (RMDPA).

b. Cautelarmente, por decisión de los órganos ejecutivos de la CS de CCOO o de la organización confederada en la que esté encuadrada la persona afiliada, conforme a lo dispuesto en el RMDPA.

c. Por ser objeto de investigación en un proceso penal por violencia de género, acoso sexual, racismo, xenofobia o por cualquier otro hecho que atente contra la dignidad o integridad de las personas. La dura-

ción de la suspensión de la persona afectada se mantendrá hasta que se dicte sentencia o sobreseimiento de la causa. Corresponde al órgano de dirección del ámbito de encuadramiento comunicar dicha suspensión cautelar a la persona afiliada.

d. Por ser objeto de investigación en un proceso disciplinario interno o penal por apropiación indebida de bienes patrimoniales del sindicato relacionado en el artículo 42.

La suspensión de afiliación de un cargo sindical por la comisión de una falta grave o muy grave conllevará la pérdida definitiva de los cargos que ostente.

III
ESTRUCTURA DE LA CS DE CCOO

Artículo 16. Ámbitos de estructuración o integración

Partiendo de la configuración como clase social de los trabajadores y trabajadoras, y con el objetivo de dar cumplimiento a sus principios y objetivos, la CS de CCOO confedera dos tipos de organizaciones: federaciones de rama y confederaciones de nacionalidad/uniones territoriales. Ambas tienen niveles organizativos diferentes, asumen responsabilidades distintas y deben desarrollar funciones complementarias.

La federación de rama está relacionada con los lugares de trabajo. Atiende a los trabajadores y a las trabajadoras de la rama en la que se encuadran como ámbito en el que se deben organizar para desarrollar la negociación colectiva y defender sus intereses y derechos en las relaciones laborales e institucionales.

La confederación de nacionalidad/unión territorial está relacionada con los trabajadores y las trabajadoras que mantienen una relación laboral en un territorio. Atiende la acción socioeconómica como conjunto de problemas de los trabajadores y las trabajadoras fuera de la empresa, y de las personas desempleadas.

La complementariedad de las funciones de las organizaciones federales y territoriales se sustancia en las comisiones de exten-

sión sindical, formadas por las federaciones de nacionalidad/regionales, y en su caso, los sindicatos provinciales, comarcales, intercomarcales o insulares, así como las confederaciones de nacionalidad y uniones territoriales y, en su caso, las uniones provinciales, comarcales, intercomarcales o insulares, con la finalidad de alcanzar la mayor efectividad en las tareas reivindicativas y organizativas. La cooperación y la mancomunación de los recursos disponibles serán las pautas de su funcionamiento de forma coordinada entre territorio y rama, en los términos que se determine reglamentariamente en el Consejo Confederal

Sin perjuicio de ello, y atendiendo a la realidad plurinacional configurada históricamente en España, la CS de CCOO reconoce niveles específicos de integración, a través de confederaciones de nacionalidad confederadas a la misma, en las que se integran las federaciones de nacionalidad y uniones provinciales o intercomarcales y comarcales.

Artículo 17. Configuración de la CS de CCOO

1. La CS de CCOO está integrada por las siguientes federaciones estatales, confederaciones de nacionalidad y uniones territoriales:

a. Federaciones estatales:

- Federación de CCOO del Hábitat (CCOO Hábitat).
- Federación de Enseñanza de CCOO (FE).
- Comisiones Obreras de Industria (CCOO Industria).

- Federación Estatal de Pensionistas y Jubilados de CCOO.
- Federación de Servicios a la Ciudadanía de CCOO (FSC-CCOO).
- Federación de Servicios de CCOO (CCOO Servicios).
- Federación de Sanidad y Sectores Sociosanitarios de CCOO (FSS).

b. Confederaciones de nacionalidad y uniones territoriales:

- CS de Comisiones Obreras de Andalucía (CCOO-A).
- Comisiones Obreras de Aragón.
- Comisiones Obreras de Asturias.
- Comisiones Obreras de Cantabria.
- Comisiones Obreras de Castilla-La Mancha.
- Comisiones Obreras de Castilla y León.
- Comisión Obrera Nacional de Catalunya (CONC).
- Confederación Sindical de CCOO de Euskadi.
- CCOO de Extremadura.
- Sindicato Nacional de CCOO de Galicia.
- Comisiones Obreras Canarias.
- Confederación Sindical de CCOO de Les Illes Balears.
- CCOO de Madrid.
- CCOO Región de Murcia.
- Unión Sindical de CCOO de Navarra.

- Confederación Sindical de CCOO del País Valencià.
- Comisiones Obreras de La Rioja.
- CCOO de Ceuta.
- CCOO de Melilla.

2. La denominación de las organizaciones anteriormente relacionadas podrá ser cambiada por el Consejo Confederal, a propuesta de la federación estatal, confederación de nacionalidad o unión territorial afectada por dicho cambio. Mediante el procedimiento estatutariamente establecido en el artículo siguiente cabe modificar las organizaciones listadas ante los supuestos de fusión, disolución o disociación.

3. La organización de rama se concreta en las federaciones estatales. Deberán organizase en federaciones regionales o de nacionalidad y, en su caso, en sindicatos provinciales, intercomarcales, comarcales o insulares y en secciones sindicales y estructuras funcionales. En el supuesto de que no exista suficiente afiliación para constituirlos se elegirán coordinadores en asamblea congresual.

4. En aquellas federaciones estatales que tienen un gran número de personas afiliadas en el extranjero de forma estable podrán organizarse en una federación de trabajadores y trabajadoras en el extranjero.

5. Las federaciones regionales o de nacionalidad, uniones y sindicatos provinciales, intercomarcales, comarcales e insulares constituyen la organización a partir de la cual se forman las organizaciones que integran la CS de CCOO: federaciones, confederaciones y uniones territoriales.

6. Las secciones sindicales están formadas por el conjunto de afiliadas y afiliados en el centro de trabajo, empresa o grupo de empresas, y constituyen la representación del sindicato en sus ámbitos. En su constitución y funcionamiento se observará lo dispuesto en el reglamento de secciones sindicales aprobado por el Consejo Confederal.

7. Las secciones sindicales, y en general el conjunto de la afiliación, se integran en la estructura organizativa y funcional de su federación en función de su ámbito territorial.

8. La organización territorial se concreta en las confederaciones de nacionalidad o uniones territoriales. Deberán organizarse en uniones provinciales, comarcales, intercomarcales e insulares, o estructuras funcionales que integrarán a la estructura de rama correspondiente a su ámbito. Para el supuesto de que no exista suficiente afiliación para constituirlas se elegirán coordinadores en asamblea congresual.

9. Las únicas organizaciones que tendrán depositados estatutos sindicales ante la oficina pública correspondiente, y por tanto dotadas de personalidad jurídica propia y diferenciada, serán las organizaciones confederadas federales y territoriales, anteriormente descritas en el apartado 1 de este artículo.

Las otras estructuras organizativas sindicales que se mencionan en este artículo o que puedan crearse no tendrán esa personalidad jurídica diferenciada, y dependerán orgánicamente de la correspondiente federación u organización territorial.

10. La Federación de Pensionistas y Jubilados de CCOO está legalizada al amparo de la Ley Orgánica 1/2002, de 22 de marzo, reguladora del Derecho de Asociación.

a. Las personas pensionistas y jubiladas afiliadas a CCOO mantendrán una doble adscripción, tanto a la federación de rama de origen como a la de pensionistas y jubilados.

Todos los afiliados y afiliadas actuales en situación de jubilación o pensionista, así como quienes accedan en el futuro a dicha situación se adscribirán de oficio a la Federación de Pensionistas y Jubilados, manteniendo a su vez la afiliación a su federación de origen. Aquellas personas que a la fecha de aprobación de estos Estatutos se encuentren afiliadas a la Federación de Pensionistas y Jubilados también serán adscritas a la federación de rama en la que finalizaron su vida laboral.

b. Todas las personas en situación de pensionista o jubilación que deseen afiliarse a la CS de CCOO, a partir de la fecha de la aprobación de estos Estatutos, serán encuadradas en la federación en la que finalizaron su vida laboral y en la Federación de Pensionistas y Jubilados de CCOO.

c. La Federación de Pensionistas y Jubilados mantendrá una estructura orgánica propia y de participación de sus afiliados y afiliadas análoga a la de las demás federaciones estatales, de acuerdo con sus estatutos y acuerdos congresuales.

Las personas afiliadas adscritas a la Federación de Pensionistas y Jubilados mantendrán también sus derechos políticos de representación y voto en las federaciones de rama.

Los derechos de representación y voto en los procesos congresuales se regirán por lo dispuesto en las normas congresuales.

d. Se garantizará la presencia de representantes de la Federación de Pensionistas y Jubilados en el Consejo Confederal. Para ello, en el proceso congresual se garantiza a la Federación de Pensionistas y Jubilados el mismo número de delegados y delegadas que tienen en la actualidad, renovándose este acuerdo, mandato a mandato, dependiendo de la evolución de su afiliación. En los mismos términos se operará por parte de las confederaciones de nacionalidad o región y uniones territoriales. La representación de la Federación de Pensionistas y Jubilados se fijará en el mismo porcentaje que actualmente tiene para el 12º Congreso.

Artículo 18. Fusión de federaciones estatales y encuadramiento sectorial

1. Cuando por razones sindicales lo estimen oportuno dos o más federaciones estatales, y previo informe favorable de la Comisión Ejecutiva Confederal, podrán proponer al Consejo Confederal su fusión en una sola.

2. Esta propuesta deberá venir motivada y avalada por el acuerdo adoptado por, al menos, los 2/3 del Consejo de cada una de

las federaciones a fusionar, acuerdo que deberá ser tomado por cada Consejo en reunión separada, que habrá de ser convocada a tal efecto para iniciar los trámites.

3. El Consejo Confederal deberá ratificar esta decisión mediante acuerdo por mayoría absoluta, en cuyo caso la fusión se realizará celebrando sendos congresos extraordinarios en los que se acuerde la fusión y la consiguiente autodisolución, y un congreso de constitución de la nueva federación; todo ello según los términos y plazos que se hayan acordado entre las estructuras federativas implicadas.

4. El Consejo Confederal, a propuesta del Comité Confederal, podrá también proponer la fusión de dos o más federaciones estatales en una sola, o la segregación de sectores correspondientes a una federación estatal para su encuadramiento en otra distinta, cuando por razones sindicales lo estime oportuno. En este caso deberá seguirse el siguiente procedimiento:

a. El Comité Confederal, previo debate con las federaciones estatales afectadas, elaborará una propuesta razonada de la nueva estructura de rama.

b. Esta propuesta deberá someterse a debate del Consejo de cada una de las federaciones estatales afectadas que, en reunión expresamente convocada a tal efecto, deberán pronunciarse sobre la misma. Asimismo, en dicha reunión, el Consejo deberá aprobar, y hacer constar en el acta de la misma no sólo el acuerdo de fusión, sino también el de autodisolución.

c. El acuerdo alcanzado será remitido al Comité Confederal, al objeto de que lo tenga en consideración para elaborar la propuesta definitiva, que deberá ser presentada al Consejo Confederal.

d. El Consejo Confederal tomará la decisión definitiva mediante acuerdo de 2/3 de sus miembros, en reunión convocada con orden del día previo en el cual conste tal proposición, junto con las consideraciones de las federaciones estatales afectadas. En el transcurso de la reunión del Consejo Confederal podrá participar como invitada, con voz, pero sin voto, una persona portavoz de las opiniones minoritarias expresadas en los consejos federales que hayan alcanzado más del 10% de los votos.

e. Adoptada la decisión por el Consejo Confederal, la Comisión Ejecutiva Confederal pondrá en marcha los mecanismos necesarios para su efectivo cumplimiento.

5. En el supuesto de disociación de alguna de las federaciones estatales se seguirá un procedimiento asimilable al descrito y, en todo caso, es inexcusable el acuerdo del Consejo Confederal para hacer efectiva dicha disociación. En ningún caso podrán llevarse a la práctica fusiones o disociaciones en las estructuras organizativas de rama en ámbitos territoriales inferiores al estatal que no hayan sido decididas confederalmente.

Artículo 19. Derechos y deberes de las federaciones estatales y las confederaciones de nacionalidad y uniones territoriales

Las organizaciones listadas en el artículo 17.1 de los presentes Estatutos tendrán los derechos y deberes siguientes:

1. Serán las únicas organizaciones facultadas para tener estatutos propios y registrados, pudiendo autorizar a las organizaciones en ellas integradas a registrarse solo a efectos de cumplir lo estipulado en la Ley Orgánica 11/1985, de 2 de agosto, de Libertad Sindical, sin que ello faculte la realización de actuaciones económico-fiscales independientes, actuaciones que se desarrollarán a través de su federación estatal y/o su confederación de nacionalidad/unión territorial. Por tanto, conforme a la LOLS tienen personalidad jurídica propia.

2. Sus estatutos respetarán la normativa común básica recogida en los de la CS de CCOO, no pudiendo ser contradictorios con éstos, sin perjuicio de su facultad para desarrollarlos o adaptarlos en los artículos así indicados y en lo no dispuesto. En lo no previsto por los estatutos de las organizaciones confederadas serán de aplicación los de la CS de CCOO.

Asimismo, en sus estatutos establecerán las obligaciones y atribuciones en materia de gestión económica, patrimonial y administrativa de su estructura organizativa dependiente y las formas de participación en sus respectivos órganos de dirección, atendiendo a los principios democráticos de representatividad, proporcionalidad, que inspiran la configuración de los órga-

nos de dirección de la CS de CCOO, preservando la autonomía de las citadas estructuras y respetando lo recogido en los presentes Estatutos.

3. Otorgarán los poderes necesarios para el funcionamiento de su estructura organizativa dependiente de acuerdo con la organización establecida en el art. 17.3, 4 y 8 de los presentes Estatutos.

4. Tienen la responsabilidad de la dirección sindical en su ámbito respectivo y podrán relacionarse directamente con todas las organizaciones del mismo.

5. En aquellos temas que por su especial trascendencia revistan un interés sindical general o se constate una inhibición general, podrán los órganos de la CS de CCOO recabar su intervención y asumir la responsabilidad de la dirección sindical de los mismos, sin perjuicio de lo establecido en el título VI de estos Estatutos sobre acción sindical.

6.

a. Tienen autonomía de gestión económica y de patrimonio en su ámbito de actuación, pero deberán cumplir los acuerdos en materia de financiación y patrimonio que adopten los órganos competentes de la CS de CCOO, e incorporar a su propio ordenamiento interno la autonomía de gestión económica y financiera de los diferentes niveles de su estructura organizativa establecidos en los apartados 3 y 8 del artículo 17 de los presentes Estatutos, todo ello bajo el principio de responsabilidad del cumplimiento de las normas y de los criterios presupuestarios marcados por sus órganos de gobierno.

b. En caso de incumplimiento de los acuerdos en materia económica, financiera o fiscal o cuando la organización se encuentre en situación técnica de suspensión de pago o falta continuada de tesorería para afrontar los pagos regulares, la CEC podrá intervenir las cuentas de la organización relacionadas con los ingresos, pagos e inversiones por el tiempo estrictamente necesarios para conseguir estabilizar y normalizar el funcionamiento de dicha organización.

7. Solo podrán adquirir bienes y contraer obligaciones dentro de los límites de sus recursos económicos autónomos. Cualquier acto o contrato que exceda de los mismos requerirá la aprobación expresa de los órganos de la CS de CCOO.

8. En todo caso, la creación de fundaciones y de sociedades para prestación de servicios requerirá la aprobación expresa del Consejo Confederal.

9. Tendrán su propio CIF, no pudiendo utilizar en ningún caso el de otra organización o el de la CS de CCOO.

10. Tienen autonomía administrativa para dotarse de los órganos y servicios que consideren adecuados para el cumplimiento de sus funciones, en el marco de lo previsto en los presentes Estatutos.

11. Crearán la comisión de garantías de su ámbito, que estarán compuestas por tres integrantes titulares y dos suplentes. Sus decisiones y resoluciones, que se adoptarán en un plazo máximo de 15 días desde que

cuenten con la documentación completa, son recurribles por órganos sindicales y las personas afiliadas concernidos ante la Comisión de Garantías de la CS de CCOO.

12. Tienen el deber y el derecho de participar en la elaboración de la política sindical de la CS de CCOO, a través de los órganos de dirección y de coordinación confederales de los que forman parte, así como el deber de su aplicación y ejecución en la rama o ámbito territorial respectivo.

13. Aceptan, así como toda su estructura organizativa en ellas integradas, los Estatutos de la CS de CCOO y su programa, la política sindical aprobada en los Congresos Confederales y en sus órganos de dirección, su política de administración y finanzas y su política internacional, estando vinculadas a los reglamentos, resoluciones y decisiones que se adopten por el Consejo Confederal. Asimismo, aceptan expresamente las resoluciones y acuerdos de la Comisión de Garantías Confederal en sus ámbitos de actuación respectivos, así como las medidas disciplinarias que por los órganos estatutarios competentes pudieran imponerse, obligándose a agotar las vías internas de recurso antes de ejercitar las acciones judiciales que pudieran corresponder.

14. Determinarán la composición de sus congresos en sus respectivos estatutos, respetando la proporcionalidad en las cotizaciones acumuladas en los cuatro años anteriores a la convocatoria del congreso. En el caso de las confederaciones y/o uniones territoriales pluriprovinciales se distribuirán los delegados y delegadas a partes iguales entre los/las representantes de las

federaciones de nacionalidad o regionales y los/las de las uniones provinciales, intercomarcales, comarcales o insulares. En las uniprovinciales se distribuirán de forma directamente proporcional a las organizaciones de donde proceden las cotizaciones.

15. Las normas congresuales de las organizaciones integradas en la CS de CCOO concretarán la distribución en los casos de las citadas organizaciones uniprovinciales.

16. Los principios y reglas establecidos en las normas congresuales y reglamentos confederales deben ser respetados y observados por las respectivas normas y reglamentos de que se doten las organizaciones integradas en la CS de CCOO.

17. Sus representantes legales serán, a todos los efectos, sus secretarios o secretarias generales en el ámbito de su competencia y durante la vigencia de su mandato. Tendrán los poderes y facultades legales que se les reconozca en los estatutos de cada federación estatal, confederación de nacionalidad y unión territorial.

18. Si, entre congreso y congreso, la secretaría general de cualquier organización confederada a la CS de CCOO quedara vacante por cualquier causa, podrá elegirse un nuevo secretario o secretaria general por mayoría absoluta en el consejo de la organización correspondiente hasta el congreso ordinario, o extraordinario convocado a tal efecto, si así lo decidiera el órgano de dirección mencionado.

En el supuesto de que la estructura organizativa dependiente afectada no tuviera

constituido su consejo, la elección se llevará a cabo en los mismos términos por su comisión ejecutiva.

19. Para la secretaría general de las federaciones estatales y confederaciones de nacionalidad o uniones territoriales y de toda su estructura organizativa dependiente no podrá ser elegida la misma persona por más de tres mandatos.

A partir del proceso del 12º Congreso Confederal, si la vigencia del mandato de la secretaría general elegida en congreso extraordinario o en consejo (o en su defecto, en comisión ejecutiva) no superase los dos años, este mandato no se tendrá en cuenta para el cómputo del límite de los tres mandatos.

20. A partir del 11º Congreso Confederal las personas afiliadas no podrán ser elegidas por más de tres mandatos para una misma comisión ejecutiva de cualquiera de las organizaciones relacionadas en el artículo 17.1 de estos Estatutos. Esta limitación no supondrá en ningún caso una restricción para que las personas afectadas puedan presentar su candidatura a la secretaría general.

21. Establecerán un régimen de incompatibilidades similar al previsto en el art. 33 de los presentes Estatutos, señalando en cualquier caso la incompatibilidad entre formar parte de las comisiones ejecutivas de las confederaciones de nacionalidad, uniones territoriales y federaciones estatales u ostentar la secretaría general de la federación de nacionalidad, federación regional, unión provincial, comarcal e insular o sindicato

provincial, con ser diputado, diputada, senador o senadora de las Cortes Generales; diputado o diputada autonómicos, alcalde, alcaldesa, concejal o concejala; formar parte del equipo de gobierno de ayuntamientos, diputaciones o cabildos; formar parte del Gobierno del Estado o de los gobiernos de las comunidades autónomas; con ser secretario o secretaria general de un partido político. Asimismo, será incompatible presentar su candidatura a alguno de los cargos públicos señalados y ostentar la responsabilidad de la secretaría general de una confederación de nacionalidad, unión territorial, federación estatal, federación de nacionalidad o región, unión provincial, comarcal e insular, al igual que quienes integran las comisiones ejecutivas, confederal, confederaciones de nacionalidad, uniones territoriales, de las federaciones estatales, y quienes integran consejos de administración de empresas, ya sean públicas o privadas, salvo en caso de ser representante nombrado por la CS de CCOO.

Establecerán también la incompatibilidad entre ser miembro de una comisión ejecutiva con la pertenencia a cualquier otro órgano ejecutivo de la estructura organizativa de CCOO, con la excepción de los integrantes de las comisiones ejecutivas de nivel II que no tengan atribuidas las funciones de alguna secretaría. Estas personas (vocales) podrán formar parte de las comisiones ejecutivas de nivel III de rama.

Estas incompatibilidades se extenderán a las personas integrantes de la comisión ejecutiva y a los delegados y delegadas de las secciones sindicales de las diferentes Administraciones Públicas del ámbito local,

provincial, autonómico o general del Estado con relación a los cargos o candidaturas de las reseñadas en el párrafo anterior, así como ocupar cargos de designación directa del gobierno o los grupos políticos, en todos los caos que sean de la misma Administración en la que ocupa las responsabilidades sindicales.

Artículo 20. Responsabilidad de la CS de CCOO

1. La CS de CCOO no responderá de los actos y obligaciones contraídos por las organizaciones listadas en el artículo 17.1 de los presentes Estatutos, si estas no hubieran cumplido los acuerdos que en materia financiera, patrimonial y de protección de datos hayan adoptado los órganos competentes de la CS de CCOO.

Tampoco responderá si tales organizaciones se han excedido de sus recursos económicos autónomos, sin conocimiento y aprobación expresa de los órganos competentes de la CS de CCOO.

2. La CS de CCOO no responderá de la actuación sindical de las federaciones estatales, confederaciones de nacionalidad, uniones territoriales y organizaciones en estas integradas, adoptada por las mismas en el ámbito de sus respectivas competencias, salvo en los supuestos previstos en los artículos 19.4 y 5 y 36 (acción sindical) de estos Estatutos en los que haya mediado intervención de los órganos de la CS de CCOO.

3. La CS de CCOO no responderá de las actuaciones de sus afiliados o afiliadas cuando estas lo sean a título personal y no represen-

tativas del sindicato, todo ello con independencia de las medidas sancionadoras que la CS de CCOO pudiera adoptar al respecto.

Artículo 21. Medidas disciplinarias referidas a los órganos de las organizaciones integradas en la CS de CCOO

1. El incumplimiento de los Estatutos, de los reglamentos o de las decisiones adoptadas por el Congreso, el Consejo Confederal, el Comité Confederal, la Comisión Ejecutiva Confederal o la Comisión de Garantías Confederal podrán dar lugar a la adopción de medidas disciplinarias.

2. El Consejo Confederal aprobará un reglamento en el que se definan las faltas, distinguiendo su calificación en faltas muy graves, graves y leves, así como las sanciones en orden a su gravedad:

Por faltas muy graves:

a. Suspensión de hasta 12 meses de las funciones administrativas, económicas, financieras y patrimoniales del órgano sancionado. En este supuesto, el organismo sancionador asumirá directamente, a través de sus órganos de dirección o nombrando un administrador al efecto, todas las funciones en él determinadas.

b. Suspensión definitiva de todas las funciones del órgano sancionado.

. Esta sanción conlleva también la suspensión definitiva de todas las funciones del consejo de su ámbito.

Por faltas graves:

a. Pérdida de derechos que pueda tener el órgano sancionado a ayudas financieras o de otro tipo.

b. Intervención por los órganos superiores correspondientes del régimen administrativo, financiero y patrimonial del órgano sancionado de tres a seis meses. En este supuesto, el órgano sancionador nombrará una persona interventora del órgano sancionado, sin cuya aprobación expresa no podrá realizarse ninguno de los actos que sean relativos a los aspectos mencionados.

c. Suspensión de uno a seis meses de los derechos del órgano sancionado, bien en su totalidad, bien en aspectos concretos de los mismos.

Por faltas leves:

a. Amonestación interna. La amonestación podrá contener un requerimiento al órgano amonestado para que corrija su comportamiento y la advertencia de sanciones más graves, en el supuesto de persistir en la acción u omisión que motiva la amonestación.

3. Dicho reglamento contendrá los requisitos y los órganos competentes para adoptar sanciones, así como la actuación a seguir en los casos de inhibición constatada de los órganos competentes, el derecho de audiencia, los plazos de prescripción de las faltas y los procedimientos de recurso ante las comisiones de garantías y cualquier

otra condición que deba respetarse para la adopción de medidas disciplinarias.

4. En el supuesto de imponer la sanción de suspensión definitiva de las funciones del órgano, la comisión ejecutiva sancionadora asumirá las funciones de la comisión ejecutiva sancionada y de sus secretarías generales, y designará una comisión gestora que actuará por delegación de la comisión ejecutiva sancionadora, con las funciones correspondientes al órgano que ha sustituido.

La comisión ejecutiva sancionadora también designará a la persona que, integrando la comisión gestora, la presidirá y ejercerá las funciones y competencias legales y estatutarias correspondientes a la secretaría general.

5. La comisión gestora estará compuesta, al menos, con una persona integrante del órgano sancionador y por un afiliado o afiliada del ámbito del órgano sancionado.

6. Previamente a la designación de la comisión gestora, la comisión ejecutiva sancionadora deberá tratar de consensuar el nombramiento de la misma.

7. La comisión gestora convocará y realizará, en el plazo máximo de doce meses, un congreso de dicho ámbito para que se proceda a la elección de una nueva dirección, salvo en los supuestos en los que esté pendiente una resolución de la comisión de garantías, en cuyo caso el plazo de doce meses comenzará a correr desde que ésta sea publicada. La comisión gestora responderá de su actuación ante el órgano sancionador y su consejo, y en última instancia ante el

máximo órgano de su ámbito, el congreso que debe convocar, al cual podrán asistir como miembros natos, dentro de los límites dispuestos en las normas congresuales aprobadas para la celebración del mismo.

8. Las funciones del consejo suspendido serán asumidas por el consejo del ámbito de la comisión ejecutiva sancionadora.

Artículo 22. Autodisolución o dimisión de las comisiones ejecutivas

1. Se considerará dentro del supuesto de dimisión el que el órgano colegiado (incluida la secretaría general) haya visto reducidas las personas elegidas directamente en el congreso a menos de la mitad. Las vacantes que hayan sido cubiertas por acuerdo mayoritario del consejo tendrán a estos efectos la misma naturaleza que las elegidas directamente en el congreso.

2. La autodisolución o dimisión de la comisión ejecutiva conlleva también la suspensión definitiva de las funciones del consejo de su ámbito.

Las funciones del consejo suspendido serán asumidas por el consejo del ámbito superior.

3. En los casos de autodisolución o dimisión de la comisión ejecutiva de las organizaciones integradas en la CS de CCOO, la Comisión Ejecutiva Confederal, asumirá las competencias de dicha comisión ejecutiva y las de la secretaría general y designará una comisión gestora que actuará por delegación de la Comisión Ejecutiva Confede-

ral, con las funciones correspondientes al órgano que ha sustituido.

La Comisión Ejecutiva Confederal también designará a la persona que, integrando la comisión gestora, la presidirá y ejercerá las funciones y competencias legales y estatutarias correspondientes a la secretaría general.

Previamente a la designación de la comisión gestora, la Comisión Ejecutiva Confederal deberá tratar de consensuar el nombramiento de la misma.

4. Las personas dimitidas no podrán forma parte de la comisión gestora.

5. La comisión gestora estará compuesta, al menos, con una persona integrante de la Comisión Ejecutiva Confederal y por un afiliado o afiliada del ámbito del órgano dimitido o autodisuelto.

6. La comisión gestora convocará y realizará, en el plazo máximo de doce meses, un congreso de dicho ámbito para que se proceda a la elección de los nuevos órganos de dirección y representación, salvo en los supuestos en los que esté pendiente una resolución de la comisión de garantías, en cuyo caso el plazo de doce meses comenzará a correr desde que ésta sea publicada. La comisión gestora responderá de su actuación ante el órgano sancionador y su consejo y en última instancia ante el máximo órgano de su ámbito, el congreso que debe convocar, al cual podrán asistir como miembros natos, dentro de los límites dispuestos en las normas congresuales aprobadas para la celebración del mismo.

Artículo 23. Reuniones y acuerdos de los órganos

1. Las reuniones ordinarias de los órganos de dirección, distintas del congreso, serán convocadas por la secretaría general, y la extraordinarias por la secretaría general o por al menos 1/3 de sus componentes, salvo que en estos Estatutos se establezca otra cosa.

2. Los órganos se entenderán debidamente constituidos cuando en primera convocatoria estén presentes la mitad más uno de sus componentes, y en segunda convocatoria estén presentes al menos 1/3.

3. Las decisiones de todos los órganos serán adoptadas por mayoría simple, salvo cuando se establezca otra mayoría en los estatutos.

4. Existe mayoría simple cuando los votos afirmativos de sus integrantes presentes son más que los negativos.

5. Para establecer las mayorías cualificadas (incluida la mayoría absoluta) previstas en estos Estatutos se tendrá en cuenta el número total de personas integrantes del órgano fijado en congreso que vaya a tomar la decisión.

6. Los congresos se entenderán debidamente constituidos cuando estén acreditados la mayoría absoluta de los delegados y delegadas convocados.

En los congresos se contarán los delegados y delegadas acreditados a efectos de establecer las mayorías cualificadas.

7. Las decisiones adoptadas serán inmediatamente ejecutivas. Vinculan y obligan a quienes forman parte del órgano que las adopta, a las estructuras dependientes y a la afiliación del ámbito afectado, independientemente de las reclamaciones o recursos que puedan interponer ante los órganos competentes del sindicato o de la jurisdicción social.

IV
FORMAS DE INTEGRACIÓN EN LA CS DE CCOO

Artículo 24. Integración en la CS de CCOO

1. La solicitud de integración de una federación, una confederación, una unión territorial o una organización sectorial en la CS de CCOO deberá instarse a la Comisión Ejecutiva Confederal y, posteriormente, aprobarse por el Consejo Confederal.

2. La integración en la CS de CCOO por parte de cualquier organización sindical supondrá la aceptación de los Estatutos y política sindical de la CS de CCOO.

Artículo 25. Formas especiales de asociación a la CS de CCOO

1. Las organizaciones sindicales que así lo deseen podrán establecer formas especiales de asociación a la CS de CCOO. El acuerdo de asociación deberá ser aprobado por el Consejo Confederal a instancias de la Comisión Ejecutiva Confederal.

2. Las formas especiales de asociación de organizaciones sindicales a la CS de CCOO que se concreten en una propuesta de federación directa, sin necesidad de fusionarse con la organización territorial o la de rama del mismo o análogo ámbito existente en CCOO, requerirá un informe previo de dichas organizaciones. Su aprobación, en

todo caso, corresponderá al Consejo Confederal a instancias de la Comisión Ejecutiva Confederal.

En los supuestos de fusiones entre organizaciones se estará a lo dispuesto en el artículo 18 de los presentes Estatutos.

3. El acuerdo específico de asociación establecerá los aspectos organizativos, financieros, de acción sindical, etcétera, que constituyen el régimen concreto de la misma.

Particularmente, dicho acuerdo abordará la definición de la capacidad jurídica y de obrar, autonomía económica, financiera, administrativa y patrimonial.

V
ÓRGANOS Y CARGO DE REPRESENTACIÓN DE LA CS DE CCOO

Artículo 26. Órganos y cargo de representación de la CS de CCOO

1. Los órganos de la CS de CCOO son:

a. El Congreso Confederal.
b. La Conferencia Confederal.
c. El Consejo Confederal.
d. El Comité Confederal.
e. La Comisión Ejecutiva Confederal.
f. La Comisión de Garantías Confederal.

2. El cargo de representación de la CS de CCOO es el secretario o secretaria general, con las funciones y competencias de dirección que se expresan en el artículo 32.

Artículo 27. Congreso Confederal

El Congreso Confederal es el máximo órgano deliberante y decisorio de la CS de CCOO.

a) Composición:

El Congreso Confederal, una vez fijado el número de delegados y delegadas, estará compuesto por el secretario o secretaria general, la Comisión Ejecutiva Confederal y, a partes iguales, por representantes

de las federaciones estatales, incluida la representación de la Federación de Pensionistas y Jubilados, por un lado, y de las confederaciones de nacionalidad y uniones territorial, por otro, en proporción a las cotizaciones acumuladas en los cuatro años naturales anteriores a la convocatoria del congreso. Los delegados y delegadas al Congreso Confederal se elegirán según la normativa que regule la convocatoria y funcionamiento del mismo.

b) Funcionamiento:

1. El congreso ordinario será convocado por el Consejo Confederal cada cuatro años.

2. El congreso extraordinario se convocará cuando así lo apruebe el Consejo Confederal por mayoría absoluta o lo soliciten las organizaciones territoriales y/o federativas que sumen, al menos, dos tercios de cotizantes.

3. El congreso ordinario será convocado, al menos, con seis meses de antelación a las fechas fijadas para su celebración; las ponencias y documentos que sirvan de base para la discusión se enviarán, como mínimo, con un mes de antelación al inicio de las asambleas congresuales del nivel I; el reglamento y el informe general, al menos, con quince días de antelación al inicio del congreso y las enmiendas en el plazo que se establezca en las normas de convocatoria del congreso.

4. Todos los acuerdos del congreso se adoptarán por mayoría simple, salvo

los que tengan por objeto la modificación de los Estatutos de la Confederación en los apartados de definición de principios y definición de la Confederación, que requerirán mayoría de dos tercios.

5. La normativa de convocatoria, composición y funcionamiento del congreso, así como la articulación del proceso congresual serán establecidas por el Consejo Confederal.

c) Funciones y competencias:

1. Determinar la estrategia general, la actividad sindical, la política de organización y finanzas, y la política internacional de la CS de CCOO.

2. Aprobar y modificar el programa de la CS de CCOO.

3. Aprobar y modificar los Estatutos de la CS de CCOO.

4. Aprobar la composición del Consejo Confederal.

5. Elegir mediante sufragio libre, directo y secreto la Comisión Ejecutiva Confederal, la Secretaría General y la Comisión de Garantías Confederal.

6. Decidir por acuerdo de 4/5 del congreso sobre la disolución de la CS de CCOO y/o su fusión con otra organización sindical.

7. Reconocer el carácter de corriente sindical.

Artículo 28. Las conferencias confederales

Entre congreso y congreso y cuando, a propuesta de la Comisión Ejecutiva Confederal, se considere oportuno por el Consejo Confederal, podrán convocarse conferencias confederales para debatir y establecer la posición de la CS de CCOO con relación a cuestiones específicas o generales de especial interés para la política sindical de la CS de CCOO, en la línea de lo aprobado en los congresos confederales. Los acuerdos adoptados tendrán carácter de decisiones para el conjunto de la CS de CCOO y no podrán contradecir los acuerdos aprobados por el Congreso Confederal.

En cada convocatoria específica realizada por el Consejo Confederal se establecerán los criterios de asistencia y funcionamiento de la conferencia, participando el Consejo confederal y al menos tantos delegados y delegadas como integrantes del mismo Consejo Confederal, representando de forma paritaria las estructuras territoriales y de rama. Estos delegados y delegadas se elegirán de manera proporcional por los consejos de las organizaciones del art. 17.1., conforme a las normas que junto con la convocatoria de la conferencia apruebe el Consejo Confederal.

Artículo 29. El Consejo Confederal

El Consejo Confederal es el máximo órgano de dirección colegiada entre congreso y congreso.

a) Composición: el Consejo Confederal estará compuesto por:

1. La Comisión Ejecutiva Confederal, incluida la Secretaría General.

2. Los secretarios o secretarias generales de las organizaciones confederadas.

3. El resto estará compuesto en número igual de representantes de las federaciones estatales, por una parte, y de las confederaciones de nacionalidad y uniones territoriales, por otra, en proporción directa a las cotizaciones previstas en el art. 27.a), que se elegirán en sus respectivos consejos necesariamente y con arreglo a las previsiones establecidas en el art. 11 de los presentes Estatutos, teniendo en cuenta que -a efectos del cálculo de los miembros que corresponda elegir a cada organización confederada y de cumplir la proporcionalidad de género los secretarios o secretarias generales de la federaciones estatales, confederaciones de nacionalidad y uniones territoriales forman parte de su cuota de delegados y delegadas.

4. El Consejo Confederal, a propuesta de la Comisión Ejecutiva Confederal, incorporará a sus reuniones, con voz pero sin voto, a integrantes de la CS de CCOO cuya presencia o asesoramiento considere oportunas, por su responsabilidad en determinados servicios o comisiones de carácter permanente o temporal.

b) Funcionamiento:

1. El Consejo Confederal será convocado con carácter ordinario por la Comisión Ejecutiva Confederal al menos tres veces al año y, con carácter extraordinario, cada vez que lo solicite un tercio de integrantes del

Consejo Confederal. En este último caso la reunión deberá celebrarse en un plazo no superior a quince días, incluyendo en el orden del día el motivo de la convocatoria.

2. Las resoluciones y decisiones del Consejo Confederal se adoptarán por mayoría simple, salvo en los casos previstos en los presentes Estatutos.

c) Funciones y competencias:

1. Discutir y decidir sobre la política general de la CS de CCOO entre dos congresos sucesivos y controlar su aplicación por el Comité Confederal y la Comisión Ejecutiva Confederal.

2. Convocar el Congreso Confederal. Aprobar las normas que regulan el proceso congresual previo y el reglamento de funcionamiento del congreso, así como las ponencias.

3. Aprobar anualmente aquellas partidas presupuestarias de la CEC que impliquen derechos y obligaciones económicas de las organizaciones confederadas con la CEC y viceversa. Estas partidas se presentarán y votarán de manera diferenciada del resto del presupuesto a propuesta de la Comisión Ejecutiva Confederal.

Aprobar la aplicación de los resultados del ejercicio económico, a propuesta de la Comisión Ejecutiva Confederal.

4. Aprobar anualmente los planes de trabajo confederales y los balances de actividad.

5. Aprobar la integración, asociación y otras formas específicas de vinculación

sindical de las federaciones, uniones territoriales y organizaciones sindicales que así lo soliciten.

6. Fijar y revisar el sistema de cuotas de la CS de CCOO y resolver los litigios que se puedan presentar derivados de su aplicación.

7. Regular la edición de carnés u otros documentos acreditativos de la afiliación.

8. Conocer anualmente los informes elaborados por la Comisión de Garantías, el director de Cumplimiento y el Centro para la Transparencia y Seguridad Confederal sobre sus actividades de las mismas.

9. Nombrar a la persona encargada de dirigir Gaceta Sindical.

10. Nombrar al director de la Unidad Administrativa de Recaudación (UAR).

10 bis. Nombrar a los directores de Cumplimiento y del Centro para la Transparencia y Seguridad Confederal.

11. Podrá acordar por mayoría absoluta, a propuesta de la Comisión Ejecutiva Confederal, que sean cubiertas las vacantes que se produzcan en el seno de esta entre congreso y congreso. Las sustituciones acordadas no podrán superar 1/3 del número de miembros fijado en el congreso. Las vacantes que hayan sido cubiertas por acuerdo mayoritario del Consejo tendrán a estos efectos la misma naturaleza que las elegidas directamente en el congreso.

También a propuesta de la Comisión Ejecutiva Confederal podrá acordar por mayoría absoluta la ampliación del número inicial de

los miembros de la CEC fijados en el congreso. Esta ampliación no podrá superar el 10% del número de miembros fijado en el congreso y las personas elegidas se abstendrán de votar en asuntos que exijan estatutariamente mayorías cualificadas.

En ambos supuestos la elección se llevará a cabo en el seno del Consejo Confederal, se regirá por lo dispuesto en el art. 11 de estos Estatutos y se mantendrá la proporcionalidad entre mujeres y hombres salida del congreso.

12. Aprobar por mayoría absoluta los siguientes reglamentos:

a. El reglamento de funcionamiento del Consejo Confederal y las reglas básicas de funcionamiento de los órganos de dirección.

b. El reglamento que desarrolle el art. 14 sobre medidas disciplinarias y art. 21 de medidas disciplinarias a los órganos de organizaciones integradas en la CS de CCOO.

c. El reglamento que desarrolle el art. 10 h) de derecho del afiliado y de la afiliada a solicitar la intervención de los órganos competentes de la estructura.

d. El código de utilización de los derechos sindicales y Estatuto del delegado y de la delegada.

e. El reglamento de funcionamiento de la Comisión de Garantías.

f. El reglamento de desarrollo del art. 17.6 sobre la sección sindical.

g. Los reglamentos necesarios para ordenar la gestión económica de la CS de CCOO y de sus organizaciones confederadas a que se refiere el art. 44 de estos Estatutos.

h. El reglamento de solución de conflictos en materia de negociación colectiva.

i. El reglamento de funcionamiento de la estructura supra federativa del Área Pública.

j. El reglamento que regule los criterios y el procedimiento para el encuadramiento y la ubicación de los sectores fronterizos.

k. El reglamento regulador del funcionamiento de la Unidad Administrativa de Recaudación (UAR).

l. El reglamento de ámbito de cooperación y participación (ACPI).

m. El reglamento de seguridad y protección de datos.

n. El protocolo de acoso sexual o por razón de sexo.

ñ. El reglamento de actuación respecto a la declaración de bienes patrimoniales y rentas.

o. El reglamento sobre cumplimiento normativo.

p. El reglamento del Centro para la Transparencia y la Seguridad Confederal.

q. Los que el propio Consejo Confederal, en el desarrollo de la política sindical, considere convenientes.

13. Aprobar los sistemas de resolución de conflictos entre las distintas organizaciones confederadas.

14. Convocar las conferencias confederales.

15. Modificar las denominaciones de las organizaciones confederadas recogidas en el artículo 17.1 a) y b), cuando por cualquier circunstancia estatutaria cambien el nombre recogido en dicho artículo, así como modificar e incluir las disposiciones necesarias que, por imperativos legales o por sentencia judicial firme, sea necesario adaptar en los Estatutos y reglamentos confederales vigentes.

16. Cuantas otras competencias se le asignen en los presentes Estatutos.

Artículo 30. El Comité Confederal

a). El Comité Confederal es el órgano de coordinación compuesto por la Secretaría General y la Comisión Ejecutiva Confederal y las secretarías generales de las organizaciones confederadas que se relacionan en el art. 17.1 a) y b) de los presentes Estatutos.

b). Son funciones de este órgano la elaboración de propuestas de política sindical y organizativa de carácter estratégico y la evaluación de su aplicación y resultados, en especial las referidas a las estrategias de diálogo social, negociación colectiva, gestión de recursos confederales y fusiones federativas, así como cuantas otras le sean expresamente encargadas por el Consejo Confederal.

c). El Comité Confederal funcionará colegiadamente, convocado por la Secretaría General o cuando lo solicite una tercera parte de sus componentes.

d). Con el fin de garantizar su funcionamiento regular tendrá un reglamento interno.

Artículo 31. La Comisión Ejecutiva Confederal

La Comisión Ejecutiva Confederal, de la que forma parte inescindible la Secretaría General, es el órgano de dirección que lleva a la práctica las decisiones y directrices adoptadas por el Congreso, el Consejo y el Comité Confederal.

a) Composición:

1. El Congreso Confederal fijará su número y elegirá a sus componentes de conformidad con el reglamento del propio Congreso Confederal.

2.Se asegurará un tiempo mínimo de cuatro años de afiliación para poder formar parte de la Ejecutiva Confederal.

3. A partir del 11º Congreso Confederal, las personas afiliadas no podrán ser elegidas para la Comisión Ejecutiva Confederal por más de tres mandatos. Esta limitación no supondrá, en ningún caso, una restricción para que las personas afectadas puedan presentar su candidatura a la Secretaría General de la Confederación.

b) Funcionamiento:

1. La Comisión Ejecutiva Confederal funcionará colegiadamente convocada por la Secretaría General o cuando lo solicite una tercera parte de sus componentes.

2. Creará todas las secretarías, comisiones y departamentos que estime convenientes para el mejor desarrollo de las funciones que tiene encomendadas.

3. Podrá elegir en su seno un Secretariado, como órgano de gestión para el desarrollo y aplicación de los acuerdos de la propia Comisión Ejecutiva y del Comité Confederal.

4. Sus integrantes podrán participar, por delegación de la misma, en las reuniones de cualesquiera de los órganos de las organizaciones integradas en la CS de CCOO.

5. Con el fin de garantizar su funcionamiento regular, tendrá un reglamento interno.

6. Responderá ante el Congreso al término de su actuación y ante el Consejo Confederal entre congreso y congreso.

c) Funciones y competencias:

1. Llevar a la práctica las decisiones adoptadas por el Congreso y el Consejo Confederal, asegurando la dirección permanente de la actividad de la CS de CCOO, deliberando y tomando decisiones sobre cuestiones urgentes entre reuniones del Consejo Confederal.

2. Asegurar la organización y funcionamiento de todos los servicios centrales de la CS de CCOO.

3. Nombrar y cesar al personal técnico y administrativo de los servicios centrales de la CS de CCOO.

4. Coordinar las actividades del Consejo y del Comité Confederal, de las secretarías y de los servicios técnicos de la CS de CCOO.

5. Mantener contactos periódicos con todas las federaciones estatales, confederaciones de nacionalidad y uniones territoriales.

6. Llevar la responsabilidad de las publicaciones centrales oficiales de la CS de CCOO.

7. Nombrar y cesar a los miembros de los órganos de dirección de las sociedades y servicios dependientes de la CS de CCOO.

8. Nombrar a las direcciones de los departamentos confederales.

9. Nombrar a las personas representantes en los órganos de representación institucional.

10. Nombrar hasta un máximo de un tercio de las y los integrantes de un órgano de dirección de rama o territorial entre afiliados y afiliadas de otra rama o ámbito territorial distinto al del órgano en cuestión en los casos constatados de debilidad organizativa, a fin de reforzar la capacidad de dirección de dicho órgano. Los nombramientos que se realicen a los efectos indicados deberán ser ratificados por el consejo de la organización afectada.

11. Exigirá la creación de las Secretarías de las Mujeres en las organizaciones relacionadas en el artículo 17 punto 1 de los Estatutos, en las organizaciones de ellas dependientes se potenciará la creación de las Secretarías de las Mujeres. Estas secretarías se integrarán en los órganos de dirección respectivos con plenos derechos.

12. Constituir e impulsar en todos los territorios y federaciones un espacio de participación, formación y militancia, del que formen parte la totalidad de la afiliación de hasta 35 años, bajo la denominación "Jóvenes CCOO" u otra asimilable.

13. Cuantas otras competencias se le asignen en los presentes Estatutos o en su desarrollo reglamentario.

14. Corresponderá a la comisión ejecutiva de la organización sindical correspondiente o, indistintamente a la secretaría general, la facultad de adoptar las decisiones consistentes en el ejercicio de acciones judiciales o administrativas de todo tipo para la impugnación de disposiciones legales y actos administrativos, de modo que adoptada la decisión se dará traslado de la misma a los representantes procesales, procuradores y abogados, para que ejerciten esta acción de impugnación.

Artículo 32. Secretario o secretaria general de la CS de CCOO

a). Es quien representa legal y públicamente a la CS de CCOO. Actúa bajo el acuerdo colegiado del Consejo y de la Comisión Ejecutiva Confederal de la que forma parte

de manera inescindible, siguiendo el principio de dirección y representación colectiva, y tiene como misión la de cohesionar e impulsar las funciones de dichos órganos.

b). Tendrá las facultades que la ley le otorga como representante legal y público de CCOO y las que expresamente se recogen en el anexo de los presentes Estatutos. En el reglamento de funcionamiento de la Comisión Ejecutiva Confederal se podrá regular la forma de ejercer estas facultades.

c). Podrá delegar y revocar las funciones y facultades que le reconocen los presentes Estatutos en los miembros y órganos competentes de la CS de CCOO.

d). En caso de ausencia, la Comisión Ejecutiva Confederal, colegiadamente, asumirá las funciones reconocidas al secretario o secretaria general durante el período que dure la ausencia.

e). Si entre congreso y congreso la Secretaría General de la CS de CCOO quedara vacante por cualquier causa, se procederá a una nueva elección por mayoría absoluta en el Consejo Confederal, de acuerdo con lo establecido en el art. 11 de estos Estatutos. Su mandato alcanzará hasta el siguiente congreso ordinario o hasta el congreso extraordinario convocado para la elección de un secretario o secretaria general, si así lo decide el órgano de dirección mencionado.

f). Presidirá las reuniones del Consejo, del Comité y de la Comisión Ejecutiva Confederal.

g). El secretario o secretaria general no podrá ser elegido/a por más de tres mandatos.

h). Presentará el informe al Congreso Confederal en nombre del Consejo Confederal, e informes periódicos al Consejo Confederal en nombre de la Comisión Ejecutiva Confederal, salvo que se adopte otro acuerdo para sesiones concretas.

Artículo 33. Incompatibilidades de las y los integrantes de los órganos de dirección de la CS de CCOO

La condición de integrante de la Comisión Ejecutiva o de la Comisión de Garantías será incompatible con el desempeño de las siguientes funciones:

- Alcalde, alcaldesa, concejal o concejala.
- Representante de las Cortes Generales (Congreso de los Diputados y Senado).
- Representante de los Parlamentos de las comunidades autónomas y del Parlamento Europeo.
- Integrante del Gobierno del Estado o de los gobiernos de las comunidades autónomas.
- Integrante de Juntas Generales y/o instituciones provinciales. Presidente, presidenta, consejero o consejera de cabildo insular.
- Cualquier cargo de designación directa por parte del Gobierno del Estado, o de alguna de las Administraciones o empresas públicas.
- La secretaría general de un partido político.

- Responsable directo de una secretaría o área de trabajo permanente en un partido político.

- Candidato o candidata a alguno de los cargos públicos señalados anteriormente.

- Integrantes de consejos de administración de empresas, ya sean públicas o privadas, salvo en caso de ser el representante nombrado por designación de la CS de CCOO.

- Dirigir y/o formar parte del consejo de administración u órganos de dirección o gestión de empresas, fundaciones, etc., cuyos fines sean los de colaborar o llevar a cabo actividades empresariales relacionadas con las actividades y servicios del sindicato o dependientes de este.

El incurrir en cualquiera de las incompatibilidades descritas anteriormente conllevará el cese automático en el cargo y funciones que esté desempeñando la persona implicada, con el único requisito de la comunicación previa por parte del órgano.

Es incompatible ser miembro de la Comisión Ejecutiva Confederal con la pertenencia a los órganos de dirección ejecutivos o de garantías de cualquiera de las organizaciones integradas en la CS de CCOO.

Artículo 34. La Comisión de Garantías Confederal

1. La Comisión de Garantías es el órgano supremo de control de las medidas disciplinarias internas, tanto de carácter individual

sobre los afiliados y afiliadas como de carácter colectivo sobre las organizaciones.

2. Interviene, asimismo, en cuantas reclamaciones le presenten las personas afiliadas o las organizaciones integradas en la CS de CCOO sobre la violación de los principios de democracia interna contenidos en los Estatutos y reglamentos sindicales.

3. Los acuerdos del Congreso Confederal y del Consejo Confederal no podrán ser objeto de impugnación ante la Comisión de Garantías.

4. Las resoluciones de la Comisión de Garantías tienen carácter definitivo y ejecutivo, y deberán dictarse en el plazo máximo de un mes.

5. La Comisión de Garantías será elegida, siempre en número impar, por el Congreso Confederal y estará compuesta por tres titulares y dos suplentes, que no podrán, a su vez, formar parte de los órganos de la CS de CCOO ni de las organizaciones integradas en ella.

6. Se requerirá un tiempo mínimo de cuatro años de afiliación para poder formar parte de la Comisión de Garantías.

7. Las personas elegidas en congreso mantendrán sus cargos hasta el siguiente congreso.

8. En el supuesto de producirse una vacante en la Comisión de Garantías Confederal se cubrirá automáticamente con las personas suplentes.

9. En el caso de que la Comisión de Garantías Confederal llegara a tener menos de tres titulares, las vacantes deberán ser cubiertas hasta un nuevo congreso mediante elección por el Consejo Confederal, de acuerdo con lo establecido en el art. 11 de estos Estatutos.

10. La Comisión presentará un balance de su actuación durante ese período. El balance se publicará en los órganos de expresión de la CS de CCOO.

11. La Comisión elaborará un informe anual sobre sus actividades que presentará al Consejo Confederal y que se publicará en los órganos de expresión de la CS de CCOO.

12. La Comisión de Garantías Confederal se dotará de un reglamento para su funcionamiento y relaciones con las otras comisiones de garantías constituidas, reglamento que aprobará el Consejo Confederal.

13. Los órganos sindicales y la afiliación de Ceuta y Melilla podrán recurrir en primera instancia a la Comisión de Garantías Confederal, excepto en los casos en los que les corresponda hacerlo ante las comisiones de garantías de las federaciones estatales.

14. En las restantes situaciones, salvo en los casos establecidos en los Estatutos Confederales o cuando la materia o acuerdo impugnado sea de ámbito confederal, la Comisión de Garantías Confederal no podrá intervenir en primera instancia, sino que sus competencias lo son en vía de recursos contra resoluciones de las Comisiones de Garantías de las organizaciones confederadas correspondientes.

15. La Comisión de Garantías es un órgano sindical facultado para elaborar propuestas y sugerencias de carácter estatutario, funcional y teórico a los órganos de dirección de la CS de CCOO.

16. La Comisión de Garantías no es un órgano sindical consultivo.

Artículo 35.

SIN CONTENIDO.

VI
ACCIÓN SINDICAL

Artículo 36. Principios generales de la acción sindical de la CS de CCOO

La acción sindical de la CS de CCOO se acuerda por los órganos de dirección confederales. La iniciativa de la acción sindical corresponde a cada organización en su ámbito y la desarrolla de acuerdo con las orientaciones fijadas por la CS de CCOO.

Deberán ser consultadas y debatidas previamente por el Consejo Confederal y, en su defecto, por el Comité Confederal de la CS de CCOO:

a. Aquellas propuestas de acción sindical que, por su trascendencia y repercusión, puedan afectar al desarrollo de la CS de CCOO, a su implantación entre los trabajadores y las trabajadoras o puedan suponer una variación de la política sindical de la misma.

b. Aquellas que afecten gravemente a servicios públicos esenciales de repercusión estatal. Sobre las propuestas mencionadas en los apartados a) y b) se realizará siempre informe de impacto de género.

VII
ÓRGANO DE PRENSA, FUNDACIONES, SERVICIOS TÉCNICOS Y PATRIMONIO DOCUMENTAL

Artículo 37. Órgano de prensa de la CS de CCOO

El medio de expresión y difusión de CCOO es la Gaceta Sindical, que se realizará teniendo en cuenta la perspectiva de género y utilizando lenguaje no sexista, bajo la responsabilidad de un consejo editorial, que fortalecerá esta obligación y garantizará la proporcionalidad del consejo, además de lo que en ella se escriba o desarrolle. Todos los órganos de las organizaciones integradas en la CS de CCOO recibirán esta publicación, y están obligados a promover su suscripción entre la afiliación y entre los trabajadores y trabajadoras en general. Asimismo, la Gaceta Sindical será lugar de debate y reflexión. Se promoverán desde sus páginas la expresión de las problemáticas sindicales y laborales y de las opiniones distintas que coexistan en el seno de la CS de CCOO.

Artículo 38. Fundaciones de la CS de CCOO

La CS de CCOO ha creado y podrá crear fundaciones, con las finalidades y objetivos declarados en su acta fundacional. Se establecerán estrechos vínculos entre las fundaciones y la CS de CCOO para poder cumplir mejor las finalidades previstas.

Artículo 39. Servicios técnicos de asesoramiento, asistenciales y otros de la CS de CCOO

La CS de CCOO, en la forma que considere oportuna, dispondrá de los servicios técnicos de asesoramiento y asistenciales, y de otros que considere necesarios de índole editorial, distribución cultural, ocio, etcétera, tanto para las trabajadoras y trabajadores afiliados como para quienes no lo sean, estableciéndose los criterios diferenciados que se consideren oportunos para un caso u otro.

Artículo. 40. Patrimonio documental de la CS de CCOO

El patrimonio documental de la CS de CCOO está compuesto por el conjunto de documentos producidos, recibidos o reunidos por los distintos órganos de la CS de CCOO y de sus organizaciones confederadas, así como por las personas físicas a su servicio en el ejercicio de sus responsabilidades. La CS de CCOO y sus organizaciones confederadas, en tanto que titulares, son responsables del patrimonio documental y su gestión a través del Sistema de Archivos de CCOO.

VIII
FINANZAS Y ADMINISTRACIÓN

Artículo 41. Principios de la actuación económica

La actividad de la CS de CCOO, de las organizaciones confederadas y las de aquellas en que estas se organizan y articulan se desarrollará de acuerdo con los siguientes principios:

Autonomía de gestión: La CS de CCOO, las federaciones estatales y confederaciones de nacionalidad o uniones territoriales a que se refiere el art 17.1, dispondrán de autonomía de gestión económica y de patrimonio, en su ámbito de actuación, dentro del límite de sus recursos propios y en el marco de los procedimientos y criterios establecidos en los presentes Estatutos y los acuerdos que, en su desarrollo, establezcan los órganos competentes.

Dicha autonomía implica:

- La capacidad para aprobar sus presupuestos. Presentarán presupuestos y cuentas anuales consolidadas de todas las estructuras que integran cada organización confederada.

- La gestión y disposición de los bienes y derechos de que sea titular y el cumplimiento de las obligaciones contenidas en los presentes Estatutos y sus normas de desarrollo.

Gestión presupuestaria. El presupuesto de las distintas organizaciones que integran la CS de CCOO constituye el instrumento básico para el desarrollo de su gestión económica.

Gestión no lucrativa. Los eventuales resultados económicos positivos de la actividad desarrollada por las organizaciones referidas en el art 17.1 se reinvertirán de forma obligatoria en la mejora de las actividades, servicios sindicales y situación patrimonial de cada una de las organizaciones que integran la CS de CCOO, sin que, en ningún caso, puedan destinarse aquellos a reparto de beneficios en ninguna de sus formas.

Las compensaciones retribuciones percibidas, en su caso, por integrantes de los órganos de dirección de cargos de representación lo serán en concepto de vínculo asociativo sindical de carácter voluntario no laboral y adscrito temporalmente a mandato congresual, y estarán sujetas al régimen de incompatibilidades establecido en los presentes Estatutos.

Información y transparencia. La CS de CCOO y sus organizaciones confederadas están obligadas al cumplimiento de las obligaciones contenidas en el presente capítulo.

- Hacer pública, mediante la página web o cualquier otro sistema, la información económica y financiera, el estado de sus cuentas y el origen de los recursos del conjunto de las organizaciones confederadas.

- Disponer de:
  - Un registro de contabilidad donde figuren sus estados de ingresos-gastos y su balance general.
  - Un registro de afiliadas y afiliados.
  - Un registro de delegados, delegadas y personal sindical.
  - Un registro de apoderamientos.
- Toda empresa, entidad u organismo que realice trabajos para cualquier estructura de CCOO deberá cumplir la normativa laboral y fiscal, así como los convenios colectivos correspondientes, en especial lo referente a los derechos sindicales.

Artículo 42. Patrimonio y financiación de la CS de CCOO y de las organizaciones confederadas

Los recursos y bienes propios de la CS de CCOO y de cada una de las organizaciones confederadas en la misma están integrados por:

1. La parte proporcional de las cuotas de las personas afiliadas que les resulte de aplicación. Su importe, periodicidad y formas de abono se determinarán por el Consejo Confederal.

2. Los ingresos "extra cuotas" tasados en el reglamento que contempla este tipo de recursos. Entre ellos, los ingresos o compensaciones de gastos por representación sindical en instituciones públicas u organizaciones privadas, aun cuando

aquella se ejerza mediante representación nominal delegada.

3. Los ingresos procedentes por prestación de servicios de las distintas organizaciones confederadas.

4. El capital acumulado por las organizaciones a lo largo de su gestión.

5. Las subvenciones que puedan serle concedidas, así como los ingresos procedentes de acuerdos sindicales, incluidos los no dinerarios derivados de las leyes y convenios en vigor. Los bienes y valores de que sean titulares y sus rentas.

6. Cualesquiera otros recursos obtenidos de conformidad con las disposiciones legales y preceptos estatutarios.

7. Todos los bienes muebles e inmuebles adquiridos, donados o legados a la CS de CCOO o a cada una de las organizaciones confederadas. Para la gestión de los servicios y actividades establecidos en los presentes Estatutos podrá solicitar y obtener subvenciones finalistas de las Administraciones Públicas.

8. El patrimonio documental.

La admisión de recursos y su formalización corresponden exclusivamente a la CS de CCOO y cada una de sus organizaciones confederadas. Solo mediante delegación expresa podrá autorizarse esta capacidad a las organizaciones en que estas últimas se estructuran.

Artículo 43. Balance y presupuesto de la CS de CCOO

Anualmente, los órganos de dirección correspondientes de cada una de las organizaciones confederadas de la CS de CCOO presentarán a su consejo un presupuesto que integre las previsiones de ingresos, gastos e inversiones para el desarrollo de su actividad y del resto de las estructuras que las integran así como las cuentas anuales que comprenderán al menos: la memoria, el balance, la cuenta de resultados, el estado de cambio del patrimonio neto, el estado de flujos de efectivo y el informe de auditoría externo si pasara auditoría.

El Consejo Confederal presentará, conjuntamente con el presupuesto de la CEC o sus cuentas anuales, la consolidación de estos instrumentos contables con los de las distintas organizaciones confederadas.

La CS de CCOO y las organizaciones confederadas, referidas en el art. 17.1, podrán establecer en los correspondientes presupuestos anuales fondos patrimoniales dirigidos a asegurar el desarrollo y consolidación organizativa o la mejora y potenciación de los servicios básicos. El funcionamiento de dichos fondos estará sujeto al reglamento que acuerde el órgano competente, y será publicado para general conocimiento de sus afiliados y afiliadas.

Artículo 44. Ordenamiento de la gestión económica

El Consejo Confederal para ordenar su gestión económica y la de las organizaciones confederadas aprobará:

1. Los tipos de cuota, incluyendo cualquier tipo de cuota adicional, suplemento de cuota o cuota extraordinaria, sus importes, periodicidad y formas de cobro de la misma.

2. Un plan de cuentas y un manual de procedimiento de gestión, así como sus actualizaciones periódicas y que serán de obligatoria aplicación en el conjunto de organizaciones que conforman la CS de CCOO.

3. Los criterios generales anuales para la elaboración de los presupuestos y de su gestión atendiendo a la diferente naturaleza de ingresos y gastos.

4. Aprobará la parte del presupuesto de la CEC que afecte directamente al resto de las organizaciones confederadas que tengan que ser aprobadas por éstas, así como la aplicación de la cuenta de resultados de la CEC.

5. El reglamento marco de los fondos confederales, así como la propuesta de gestión de los mismos.

6. El reglamento de funcionamiento de los centros contables

7. El reglamento de funcionamiento de la Unidad Administrativa de Recaudación.

8. Los reglamentos de los registros auxiliares de información económica.

9. Las líneas generales de la política de recursos humanos.

10. Los proyectos de iniciativa económica de la CS de CCOO y sus organizaciones confederadas.

11. La norma de gastos e ingresos de servicios comunes, de aplicación a todas las estructuras de rama y territorio.

12. Cuantas normas básicas resulten necesarias para ordenar la actividad sin afectar a la autonomía de gestión de las organizaciones.

13. Para ordenar la gestión económica de las organizaciones confederadas, el Consejo Confederal podrá aprobar la intervención de la gestión contable de las organizaciones que incumplan los criterios o procedimientos acordados, dicha gestión se realizará por el Centro Contable Confederal.

Artículo 45. La actividad mercantil y fundacional

La CS de CCOO y las organizaciones confederadas podrán desarrollar iniciativas económicas de carácter mercantil y no lucrativas coherentes con el proyecto confederal de CCOO. Su aprobación corresponde al Consejo de la organización correspondiente, previo informe favorable del Consejo Confederal.

Artículo 46. Obligaciones de las organizaciones integradas en la CS de CCOO

Todas las organizaciones integradas en la CS de CCOO tienen la obligación de cotizar a través de la Unidad Administrativa de Recaudación (UAR) y en la forma y cuantía que se establezcan por el Consejo o el Congreso Confederal.

Aquellas organizaciones que no estén al corriente de pago, según los plazos es-

tablecidos por el Consejo Confederal, no podrán ejercer el derecho de voto en el mismo si previamente no han regularizado su situación.

Todas las organizaciones elaborarán anualmente los balances y presupuestos de gastos e ingresos, que deberán ser remitidos a los órganos superiores de rama y territorio, independientemente de donde consoliden. A través de los mecanismos contemplados en la Comisión Ejecutiva Confederal se podrán realizar las auditorías que se estimen oportunas en el conjunto de las organizaciones confederadas.

El incumplimiento injustificado de estas obligaciones dará lugar a la adopción de las medidas disciplinarias contenidas en los presentes Estatutos y en su desarrollo reglamentario.

La CS de CCOO arbitrará las medidas necesarias para garantizar la redistribución de recursos económicos entre las diversas organizaciones que la integran, con criterios de solidaridad y corrección de los desequilibrios financieros que, derivados de condiciones objetivas, puedan poner en peligro la presencia en la CS de CCOO de federaciones de rama o uniones territoriales o de CCOO en determinados sectores o territorios por no tener capacidad económica de autofinanciación.

Artículo 47. Personal con vínculo laboral de la CS de CCOO

Aquellas personas sujetas a relación laboral por cuenta ajena y para realización exclusiva en tareas no sindicales que presten

sus servicios en la CS de CCOO se definirán y clasificarán con arreglo al convenio colectivo y plan de igualdad que les sea de aplicación.

La selección de personas se efectuará con criterios de igualdad, objetividad, publicidad y transparencia.

Las organizaciones promoverán una política activa de integración de plantillas de personas con otras capacidades.

Artículo 48. Personal con vínculo asociativo sindical de carácter no laboral de la CS de CCOO

Las personas afiliadas que se dediquen a tareas sindicales, por ser cargos electos o por ser nombradas adjuntas y de confianza a los cargos electos o a las ejecutivas (personal sindicalista), no sujetas a un control horario fijo y, por tanto, con flexibilidad en el tiempo de dedicación y en la disponibilidad, y desempeñen las tareas propias de la actividad sindical no tendrán relación laboral con la organización sindical que las retribuya o compense, siendo su relación de carácter voluntario.

Si tienen retribución por su dedicación a tiempo completo o parcial se les dará de alta en los Códigos de Cuenta de Cotización abiertos para los/as sindicalistas en el Régimen General de la Seguridad Social, de conformidad a lo establecido en la legislación vigente, procediéndose a un nombramiento sindical para el periodo que se determine en los Estatutos, y sus retribuciones serán conforme a lo que se determine en el órgano correspondiente (Congre-

so, Consejo o Comisión Ejecutiva). Cuando los/as sindicalistas cesen en sus cargos o puestos de responsabilidad (por las causas establecidas estatutariamente) no tendrán derecho a indemnización. Dichas retribuciones se limitarán a completar hasta un nivel o niveles de referencia, a cuadros de dirección de salarios bajos, dentro de un marco retributivo homogéneo.

Si en aplicación de lo recogido en el art. 15 b) de estos Estatutos causaran baja como afiliado en la CS de CCOO perderán, asimismo, la condición de personal con vínculo asociativo de carácter no laboral.

En caso de que se estableciera una nueva relación asociativa, con alguna persona a quien se le haya aplicado con anterioridad una baja afiliativa por los supuestos recogidos en el párrafo anterior, se le comunicará a la organización que aplicó la medida sancionada para que traslade su opinión sobre la procedencia o no del establecimiento de la relación asociativa.

IX
DESARROLLO Y ADAPTACIÓN DE LOS ESTATUTOS

Artículo 49. Disposiciones de desarrollo y adaptación

Según lo establecido en los artículos 2 y 19.1 y 2, estos Estatutos Confederales serán desarrollados en los de las organizaciones confederadas reseñadas en el artículo 17.1, desarrollo que debe respetar en todo caso lo dispuesto en los presentes.

Será desarrollado en los estatutos de las federaciones estatales el artículo 17.3, 17.4 y 17.5 y en los de las confederaciones de nacionalidad y uniones territoriales el artículo 17.8.

Dentro del respeto a lo establecido en estos Estatutos Confederales, serán artículos de necesaria adaptación en los estatutos de las organizaciones listadas en el artículo 17.1, en virtud de las peculiaridades organizativas de su ámbito, los artículos 3, 5 y 17.8 (por las confederaciones de nacionalidad y uniones territoriales); 3, 6, 7, 17.3, 17.4, 17.5, 17.6 (por las federaciones estatales); y por todas ellas los artículos 19, 20, 27, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 43, 46, y 50.

X
DISOLUCIÓN DE LA CS DE CCOO

Artículo 50. Disolución de la CS de CCOO o de las organizaciones confederadas

Por acuerdo de 4/5 de los votos de un congreso extraordinario, convocado exclusivamente a estos efectos, se podrá proceder a la disolución de la CS de CCOO. La forma de disolución del patrimonio confederal se establecerá en el acuerdo que motive la disolución.

En los supuestos de disolución de una confederación de nacionalidad, unión territorial o federación estatal, su patrimonio, bienes muebles o inmuebles y recursos en general quedarán integrados en el patrimonio de la CS de CCOO, excepto en los casos de congresos de disolución previos a una fusión entre federaciones, en los que quedarán integrados en la nueva organización resultante, bastando en este último supuesto la aprobación por mayoría simple del congreso extraordinario convocado al efecto.

ANEXO A LOS ESTATUTOS DE LA CS DE CCOO APROBADOS EN EL CONGRESO CONFEDERAL

En relación con el artículo 32, apartado b) de los Estatutos, el secretario general o secretaria general tendrá las siguientes facultades:

Tomar parte en concursos y subastas, hacer propuestas y aceptar adjudicaciones; aceptar, con o sin beneficio de inventario; repudiar y manifestar herencias y liquidaciones de sociedades; entregar y recibir legados; aceptar, liquidar y extinguir fideicomisos; pagar, cobrar, fijar, garantizar y depositar legítimas y cancelar o renunciar a sus garantías legales; hacer o aceptar donaciones. Dividir bienes comunes; ejercer el comercio; otorgar contratos de todo tipo, incluidos de trabajo, de transporte y de arrendamientos; retirar y remitir géneros, envíos y giros; retirar y llevar correspondencia de cualquier clase.

Constituir, disolver, extinguir, modificar y gestionar fundaciones y sociedades de todo tipo, incluidas laborales, civiles y mercantiles, y cuenten o no con participación pública; nombrar, aceptar y desempeñar cargos en ellas e intervenir en sus consejos de administración y juntas generales.

Operar con bancos, cajas de ahorros y demás organismos y entidades bancarias de todo tipo, sean públicas o privadas, nacionales, europeas o internacionales, incluso con el Banco de España, el Banco Central

Europeo y el Fondo Monetario Internacional y, sus sucursales, haciendo todo cuanto la legislación y prácticas bancarias le permitan. Abrir, seguir y cancelar cuentas y libretas de ahorro, cuentas corrientes y de crédito, fondos de inversión y de cajas de seguridad. Librar, aceptar, avalar, endosar, cobrar, intervenir y negociar letras de cambio y otros efectos. Comprar, vender, canjear o pignorar valores y cobrar sus intereses, dividendos y amortizaciones; concretar pólizas de crédito, ya sean personales o con pignoración de valores, con entidades bancarias y sucursales, firmando los oportunos documentos, incluyendo la firma electrónica. Modificar, transferir, cancelar, retirar y constituir depósitos de efectivos o valores, provisionales o definitivos.

Afianzar operaciones mercantiles, singularmente los créditos que cualquier entidad financiera, bancos o cajas de ahorros concedan a la CS de CCOO, o a las sociedades, empresas y fundaciones en cuyo capital participe la CS de CCOO y las organizaciones relacionadas en estos Estatutos, así como solicitar y obtener cualquier información relacionada con las cuentas, movimientos bancarios y relaciones con las entidades financieras, de las sociedades, empresas, fundaciones con participación de la CS de CCOO, así como de la propia CS de CCOO y de sus organizaciones.

Crear, gestionar, extinguir, liquidar y efectuar todo tipo de operaciones que permita la legislación en relación con planes y fondos de pensiones, estén o no constituidos con participación de CCOO o sus organizaciones, empresas y fundaciones. Instar y otorgar actas notariales de todas clases,

promover y seguir expediente de dominio y liberación de cargas; solicitar asientos en registros públicos incluidos mercantiles, de publicidad y de la propiedad; hacer, aceptar y contestar notificaciones y requerimientos notariales y otorgar poderes. Comparecer ante el Consejo Económico y Social, Defensor del Pueblo, Defensor del Menor y centros y organismos del Estado, comunidades autónomas, provinciales, municipales o locales, supranacionales e internacionales, jueces, tribunales, fiscalías, sindicatos, organizaciones empresariales, delegaciones, comités, juntas, jurados y comisiones, y en ellos instar, seguir y terminar como actor, demandado, ejecutante, tercerista, ejecutado o cualquier otro concepto, toda clase de expedientes, juicios y procedimientos civiles, penales, administrativos, contencioso-administrativos, laborales y eclesiásticos, de todos los grados, jurisdicciones e instancias, elevando peticiones y ejerciendo acciones legales y excepciones en cualesquiera procedimientos, trámites y recursos, prestar cuanto se requiera para la ratificación y absolver posiciones.

Administrar en los más amplios términos bienes muebles e inmuebles, hacer declaraciones de edificación y planificación/deslindes, amojonamientos, agrupaciones y segregaciones. Reconocer deudas y aceptar créditos, hacer y recibir préstamos, pagar y cobrar cantidades, hacer efectivos libramientos; dar o aceptar bienes, en o para pago; otorgar transacciones, compromisos, renuncias; avalar y afianzar. Comprar, vender, retraer, permutar pura o condicionalmente, con precio confesado, aplazado o pagado al contado, toda clase de bienes inmuebles o muebles, derechos reales y personales.

Constituir, aceptar, dividir, enajenar, gravar, redimir y extinguir usufructos, servidumbres, censos, arrendamientos inscribibles y además derechos reales, ejercitando todas las facultades derivadas de los mismos, entre ellas cobrar pensiones y laudamientos, firmar por dominio, autorizar traspasos y cobrar la participación legal de los mismos. Constituir, aceptar, modificar, adquirir, enajenar, posponer y cancelar total o parcialmente, antes o después de su vencimiento, háyase o no cumplido la obligación asegurada, hipotecas, prendas, anticresis, prohibiciones, condiciones y toda clase de limitaciones o garantías. Contratar activa o pasivamente rentas, pensiones o prestaciones periódicas, temporales o vitalicias y su aseguramiento real.

Comparecer ante los organismos de la Administración de Trabajo, de cualquier ámbito territorial que fuere, servicios de mediación, arbitraje y conciliación y de solución de conflictos, Dirección General de Trabajo, Delegaciones y Subdelegaciones del Gobierno, Juzgados, Tribunales Superiores de Justicia, Audiencia Nacional, Tribunal Supremo, Tribunal Constitucional, Tribunal de Justicia de las Comunidades Europeas, Tribunal Europeo de Derechos Humanos, y en ellos instar, seguir y terminar como actor, como demandado, ejecutante, tercerista, ejecutado o en cualquier otro concepto, toda clase de expedientes, juicios, trámites y procedimientos, recursos y ejecuciones, hacer cuanto fuere menester para ratificarse y absolver posiciones. Instar, seguir, tramitar y terminar, en cualquier ámbito que fuere, convenios colectivos, conflictos colectivos, huelgas y cualquier otra medida de conflicto colectivo, denuncias, elevar

peticiones, ejercer acciones y excepciones y recursos.

Comparecer, participar y efectuar cualquier trámite pertinente en cualquier procedimiento o expediente relacionado con la materia social, económica o sociopolítica, con el ejercicio de los derechos de manifestación y reunión, huelga y conflicto colectivo, regulaciones de empleo, despidos y extinciones individuales, plurales y colectivas, reconversiones sectoriales o territoriales, elecciones sindicales, incluidas de delegados y delegadas de personal, comités de empresa y juntas de personal, ante las empresas, sus organizaciones, la Administración Pública y los institutos u organismos dependientes de los ministerios, incluidos el Ministerio de Empleo y Seguridad Social, Ministerio de Economía, Industria y Competitividad, Ministerio de Hacienda y Función Pública y Ministerio de Educación, Cultura y Deporte, así como en los de la Unión Europea, Organización Internacional del Trabajo, comunidades autónomas o de cualquier otro ámbito territorial inferior.

Comparecer, solicitar, descargar, instalar, renovar, suspender, revocar y utilizar cualesquiera certificados de firma electrónica emitidos por la Fábrica Nacional de Moneda y Timbre-Real Casa de la Moneda o por otros presentadores de servicios de certificación, tanto los certificados expresados en las leyes como cualesquiera otros de los emitidos por la citada Fábrica Nacional y otros prestadores de servicios de certificación electrónica, incluidos, pero no limitados, a certificados de persona física, de representantes de persona jurídica, de representante de entidad sin personalidad

jurídica, de dispositivo móvil, de servidor, de componente, de firma de código, de personal al servicio de las administraciones públicas, de sello electrónico para la actuación administrativa automatizada y cualesquiera otros certificados electrónicos que pudieran surgir con posterioridad de conformidad con el estado de la técnica.

La solicitud del certificado de firma electrónica podrá realizarse ante las oficinas de registro de la Agencia Estatal de Administración Tributaria o ante otras oficinas de registro delegadas de órganos, organismo o entidades que ejerzan funciones públicas, así como ante las oficinas o registros que designen los prestadores de servicios de certificación.

Las actividades comprendidas anteriormente a realizar por cuenta del poderdante comprenderá la utilización del certificado de firma electrónica ante: la Administración General del Estado, comunidades autónomas, entidades locales y sus organismos públicos, sociedades, mancomunidades, consorcios o cualesquiera otros entes con o sin personalidad jurídica vinculados o dependientes de los anteriores, incluyendo la Administración institucional, territorial o periférica y órganos reguladores; también realizar trámites ante oficinas y funcionarios públicos de cualquier Administración, registros públicos, agencias tributarias, tribunales económicos-administrativos, de competencia o de cuentas, notarías, colegios profesionales, sindicatos, autoridades eclesiásticas, organismos de la UE e internacionales, órganos jurisdiccionales, fiscalías, juntas y jurados, juntas arbitrales, cámaras de comercio, órganos cons-

titucionales y cualesquiera otros órganos, agencias, entes u organismos de cualquier Administración y demás entidades creadas y por crear, en cualesquiera de sus ramas, dependencias o servicios de cualesquiera Administraciones nacionales, de la UE o internacionales; asimismo podrán actuar ante personas físicas, jurídicas, entidades, sociedades y comunidades con y sin personalidad jurídica, organismos, agrupaciones, asociaciones, fundaciones, ONG y demás entes de derecho privado previstos en el ordenamiento jurídico español, de la UE e internacionales, para la realización, vía electrónica mediante la utilización del certificado de firma electrónica del poderdante y por su cuenta de todas facultades anteriormente reseñadas.

Asimismo, se le faculta expresamente para, sea en favor de terceras personas o sea en favor de organizaciones de la CS de CCOO, instar y hacer apoderamientos, y efectuar sustituciones y delegaciones, totales o parciales, de las facultades anteriores y de cualesquiera otra que esté atribuida al secretario o secretaria general en estos Estatutos.

Corresponderá a la secretaría general o indistintamente a la comisión ejecutiva de la organización sindical correspondiente la facultad de adoptar las decisiones consistentes en el ejercicio de acciones judiciales o administrativas de todo tipo para la impugnación de disposiciones legales y actos administrativos, de modo que adoptada la decisión se dará traslado de la misma a los representantes procesales, procuradores y abogados, para que ejerciten esta acción de impugnación.

Pase lo que pase

Annex 13

RULE BOOK

Effective from Rules Conference 2023

(Amended March 2024)

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INTERPRETATION

Unite is an inclusive union and recognises that our members have diverse gender identities.

All pronouns used in these Rules shall be construed and understood as being gender neutral, save that terms referrable directly to women should be interpreted as being referrable and applied to women consistent with the rule in question. Words in the singular shall include the plural, and words in the plural shall include the singular.

RULE 1. TITLE AND REGISTERED OFFICE

1.1 The Union formed under these rules (hereinafter called the Union) shall be known by the title of "Unite the Union".

1.2 This Rule Book applies to all members of the Union, and represents the entirety of the rules applicable to members of the Union, save as explicitly provided for under this Rule Book.

1.3 The Registered Office of the Union shall be Unite House, 128 Theobalds Road, London WC1X 8TN or such other place as may be decided upon by the Executive Council.

RULE 2. OBJECTS

2.1 The objects of the Union shall be:

2.1.1 To organise, recruit and represent workers, and strengthen workplace organisation, to encourage membership involvement and participation to achieve real union power for its members.

2.1.2 To defend and improve its members' wages and working conditions including the pursuit of equal pay for work of equal value and extend collective bargaining. This being the best and most effective means of distributing wealth, improving the wages and conditions of workers, and giving workers collective power in the workplace. To help our members win in the workplace, using the union's resources to assist in that process, and to support our members in struggle including through strike action.

2.1.3 To defend and improve the social and economic well-being of members and their families, both directly and via commensurate policies in relation to society both domestically and abroad.

2.1.4 To have a strong political voice, fighting on behalf of working peoples' interests, and to influence the political agenda locally, regionally, nationally and internationally, so as to promote a socialist vision for

- a more equal society in which wealth is distributed from the rich to the poor, including by means of progressive taxation and other regulatory measures to restrict excessive wealth

- a collective society in which public services are directly provided on the basis of public need and not private greed, and a fair system of welfare and benefits to support those in need
- public ownership of important areas of economic activity and services, including health, education, water, post, rail and local passenger transport.

2.1.5 To further political objectives including by affiliation to the Labour Party.

2.1.6 To promote equality and fairness for all, including actively opposing prejudice and discrimination on grounds of gender, race, ethnic origin, religion, class, marital status, sexual orientation, gender identity, age, disability, migrant worker status or caring responsibilities.

2.1.7 To affiliate to the TUC, ICTU, Welsh and Scottish TUCs and other appropriate trade union cooperation/coordination bodies domestically and internationally.

2.1.8 To promote constructive cooperation between trade unions internationally to further the interests of members of the Union and those in other unions in dealing with the direct and indirect impact of globalisation.

2.1.9 To promote education and training; both vocational and industrial and otherwise as conducive to these objects.

2.1.10 To provide such financial and other benefits and legal assistance to members as may be specified in these rules.

2.1.11 To do all such other things as may in the opinion of the Executive Council be incidental or conducive to the attainment of these objects.

2.1.12 To communicate information to members about union activities, campaigns, services and/or benefits, so as to encourage participation and further these objects.

2.1.13 The Union's procurement policy shall be based, wherever possible, on sourcing assets and services from organised labour within the UK or internationally, if unavailable in the UK. The union will maintain a list of union recognised sources of asset and service providers. Periodically, the union will consult with the relevant industrial sectors to ensure the list remains comprehensive and accurate.

2.1.14 The union will conduct its procurement process in line with the Ethical Trading Initiative (ETI) Base Code. The ETI Base Code is based on internationally recognised standards of the International Labour Organisation, the UN agency responsible for labour standards, which the UK and Ireland has signed up to.

RULE 3. MEMBERSHIP

3.1 The Executive Council shall define the categories of membership. Where the Union organises or represents persons engaged in an occupation or seeks to do so, any person engaged in that occupation shall be eligible for membership of the Union, subject to these rules.

3.2 There shall be other categories of membership as may from time to time be determined by the Executive Council. These categories shall include:

- Retired Members Plus
- Community/Student Member
- Back to Work Member
- Apprentice/Trainee Member

The Executive Council shall determine the qualifications for membership of these categories as well as the level of contribution and entitlement to benefit. Membership of Retired Members Plus and Community/Student Membership shall not accord an entitlement to vote in any ballot or election held by the Union other than:

I. An election to the office of General Secretary under Rule 15 and 16.

II. Elections within Retired Members Plus and community/Student Member structures, or:

III. As otherwise specified in these Rules or any ballot or election in which all members must by statute be accorded an unconditional entitlement to vote.

3.3 Members of the union who upon retirement wish to remain in membership but not as Retired Members Plus shall be organised as “ordinary” retired members. Such “ordinary” retired members shall not be afforded any entitlement to vote in any ballot or election held by the Union.

3.4 Any eligible person may apply for membership by completing the appropriate application form agreeing to be bound by the rules of the Union and submitting it to the Union office or by electronic means as may be provided for via the Union’s website. An applicant shall become a member when his/her application has been approved and he/she has been entered into the register of members. Such approval process may require receipt by the Union of the contribution applicable under these rules.

3.5 Each member must notify the Union’s membership department of any subsequent change of address, and in the absence of such notice the Union shall be entitled to treat the address shown on that member’s application form as the member’s address for all correspondence.

3.6 Each member must notify the Union’s membership department of any subsequent change of workplace or contribution category status.

3.7 If an applicant has previously been a member of the Union (or any of its predecessors), the Executive Council may, as a condition of re-admission, require the applicant to pay some or all of any monies owed by the applicant to the Union (or any of its predecessors).

3.8 The Executive Council may reject an application if in its opinion the conduct of the applicant has at any time been such as would justify a disciplinary charge under these rules against a member of the Union who behaved in a similar fashion.

3.9 Any period of continuous membership of a predecessor union at the point of amalgamation or transfer shall count as continuous membership of the Union for the purposes of these rules.

3.10 For the purposes of producing a Membership Audit Certificate as required by Sections 24ZA, 24ZB and 24ZD of the Trade Union and labour Relations (Consolidated) Act 1992, the Union is required to appoint an assurer. The assurer must be qualified in accordance with Section 24ZB and the appointment and removal of the assurer shall be subject to the provisions of Section 24ZC of the Trade Union and Labour Relations (Consolidation) Act 1992.

RULE 4. MEMBERSHIP CONTRIBUTIONS and BENEFITS

4.1 It shall be the personal responsibility of the member to maintain contributions and avoid arrears in all circumstances. Any period during which a member's contributions are 13 or more weeks in arrears shall break continuity of membership for the purpose of the qualification required to be an officer employed by the Union set out in Rule 14 and lose entitlement to vote in any election or ballot held by the Union, save where a member establishes to the satisfaction of the Executive Council that the arrears arose through no fault of that member. A member whose contributions are recorded by the Union as more than 39 weeks in arrears will be excluded from membership by the Union communicating notice to that effect to the member. A member so excluded from membership may apply for reinstatement which may be allowed on such terms as to the payment of outstanding arrears as the Executive Council may consider appropriate.

4.2 The Executive Council shall determine the period of membership necessary prior to the member attaining eligibility for benefits, and any period during which contributions are in arrears which shall remove such eligibility.

4.3 The Executive Council shall determine the level of contributions for each category of membership.

4.4 The Executive Council shall determine the scope and level of benefits.

4.4.1 Such benefits may include such things as: DriverCare, funeral, incapacity, personal accident (death, loss of limb/ eye, permanent disability), maternity/adoption, paternity, convalescence, professional liability insurance, etc. Without interference to the overriding authority granted by this rule to the Executive Council (to determine the scope and level of benefits), funeral benefit shall be paid to all paying members, working or retired, as at the 1st Day of September 2009 at the same rate.

4.4.2 Maximum sum assured. The Union shall not have the power to assure for any member/individual provident benefits amounting to more than £4,000 by way of a gross sum or £825 by way of an annuity.

4.5 The Union shall pay dispute benefit in such circumstances and on such terms as are decided by the Executive Council from time to time.

4.6 The Union will provide legal assistance, as follows:

4.6.1 A member who is entitled to benefit who suffers injury or disease arising out of or in connection with his/her employment (or the dependants of such a member who has died) shall be entitled to such legal advice and representation, and on such terms, as the Executive Council may consider appropriate.

4.6.2 A member seeking legal assistance must ensure that a request in the appropriate form is lodged at the appropriate Union office in sufficient time and with sufficient information to enable the request to be considered and appropriate action taken.

4.6.3 A member who requires advice and/or representation on a problem relating to the member's employment which first arose at a time when the member was entitled to benefit and which cannot be resolved through the member's workplace representative should refer the matter to the appropriate Regional Officer. The Union may provide such advice and/or representation as the Executive Council shall consider appropriate, whether by a full time officer or otherwise, and on such terms as the Executive Council shall consider appropriate.

4.6.4 The Executive Council may provide such additional legal advice and representation to members and to members' families as it may consider appropriate.

4.6.5 The Executive Council may extend legal assistance to a member who is not otherwise entitled to benefits.

4.6.6 A member who is given advice and/or representation under this rule shall provide all relevant information and co-operate fully with the compilation of evidence for any legal proceedings and shall comply with any other obligations and/or conditions set out in any arrangements for the provision of legal assistance. If a member fails to do so or provides false or misleading information or fails to act upon the advice of those appointed to represent him/her, the Executive Council may at its absolute discretion annul all legal assistance or withdraw any further legal assistance to that member.

4.7 The Executive Council shall have discretion to provide additional benefits.

4.8 Before reinstating a lapsed member's membership it will be ascertained that they have not been previously expelled from the Union. They will also be advised that they will not receive representation or advice on any employment issue that has arisen during the period where the lapse has occurred.

4.9 The Executive Council may provide, agree and permit other organisations to provide to members and their households insurance, financial, legal, consumer and other services and products and loyalty or other similar schemes and Unite may provide information by direct mailing or otherwise to members concerning such services, products and schemes.

RULE 5. OBLIGATIONS OF MEMBERS

5.1 A member of the Union must comply with these rules and with any duty or obligation imposed on that member by or pursuant to these rules whether in his/her capacity as a member, a holder of a lay office or as an employee of the Union.

5.2 A member must not knowingly, recklessly or in bad faith provide the Union with false or misleading information or malicious false complaints relating to a member including those holding lay office as accountable representatives of workers or employees of the Union or any aspect of the Union's activities.

5.3 A motion shall not be submitted by or on behalf of the Union or any group or body within the Union to an organisation or body outside the Union if that motion is inconsistent with existing Union policy.

5.4 When acting as a representative of the Union at a meeting of an organisation or body outside the Union a member shall speak and vote in accordance with the policy of the Union and with any decision taken by the Union's representatives at that meeting which is consistent with the Union's policy.

RULE 6. LAY OFFICE

6.1 The Executive Council shall make provision to ensure accountability of Regional, Industrial and Equalities Executive Council members and those Executive Council members elected pursuant to rule 14 shall meet with their respective National Industrial Sector, National Equalities or Regional Committees at least four times per year.

6.2 In order to be eligible to be a candidate for election to the Executive Council, National Industrial Sector Committee and Regional Committee the member in question must be an elected accountable representative of workers in a workplace.

6.2.1 In order to be eligible to be a candidate for election to any other committee, council, or other body of the Union provided for by these rules, the member in question must be an accountable representative of workers, with the exception of Area Activists Committees and the young members' structure, other than the Young Members' delegate to the Executive Council and Regional Committees as specified elsewhere in these rules.

6.3 The definition of the term "accountable representative of workers" shall be in the exclusive power of the Executive Council, which is empowered to take into account changing industrial realities and the unique nature of some industries (e.g. construction, contracting, leisure, rural etc). In formulating such a definition for the purpose of the Executive Council, National Industrial Sector committee and Regional Committee, it must only include elected workplace representatives who are in employment when employed by an organisation that is not Unite the union. Elected workplace representatives shall include shop stewards, health & safety, equalities and learning representatives. In formulating such a definition for all other committees, councils or purposes the Executive Council must include branch executive officers who are in employment when employed by an organisation that is not Unite the union, shop stewards, health & safety, equalities and learning representatives elected at their place of work.

6.4 It is further required that a fair procedure be developed by the Executive Council to deal sympathetically with cases where a member's eligibility to stand for election or continue to hold office may be affected by employer victimisation.

6.5 The electoral period to hold lay office shall be three years unless otherwise provided for under these rules.

6.6 The Executive Council shall issue guidance to establish the right of recall over members elected to lay office.

6.7 All Unite fulltime officers assigned to the Union's constitutional committees are responsible for maintaining an up to date record of constitutional committee members' credentials in order to ensure compliance with Rule 6. This record is to be reported to all constitutional committee meetings and included in the Minutes.

6.8 To be eligible to stand for election as an accountable representative of workers members must be committed to the Objects of the Union as defined in Rule 2 including strengthening the workplace organisation and resources of the Union.

Members who are engaged in the recruitment of members to a union that is not Unite the Union are excluded from standing as accountable representatives of workers within Unite the Union.

In the case of any such restriction imposed on a member, an appeal may be made to the Regional Committee in line with the provisions of Rule 27.

6.9 Members seeking election as accountable representatives of workers must have made at least thirteen weeks financial contributions and not be more than thirteen weeks in arrears.

This clause may not be applied in the case of newly organised workplaces.

RULE 7. INDUSTRIAL/OCCUPATIONAL/PROFESSIONAL SECTORS

7.1 Members in employment shall be allocated to the Industrial Sector in which they are employed. The term 'Industrial Sector' is a generic term including occupational and professional sectors.

7.2 There shall be organisation and representation of union members at both regional and national level by reference to their Industrial Sector.

7.3 These Industrial Sectors shall be determined by the Executive Council, which shall and after full consultation and approval of the sectors can amalgamate existing sectors as seems expedient on the basis of industrial logic and developing patterns of membership organisation (see appendix for full current list).

7.3.1. Prior to the transfer of a workplace, company or occupation from an existing sector to an alternative sector, the Executive Council shall consult the National Industrial Sector Committee.

7.4 Each Industrial Sector shall be led by a National Industrial Sector Committee, to be elected from the appropriate Regional Industrial Sector Committees in such proportion, as may be determined by the Executive Council. The Executive Council shall have the

power to determine additional special constituencies (which may be on a national basis) where they deem it necessary in light of the particular industrial circumstances of the sector. Regional Industrial Sector Committees shall be elected at triennial meetings of Regional Industrial Sector Conferences. Every elected lay representative (Rule 6 compliant) listed in Rules 17 and 18 is entitled to attend the triennial conference.

7.5 National Industrial Sector Committees shall enjoy full autonomy in the conduct of their own proper industrial business, which must include comprehensive minutes of constitional meetings. The conduct must not be inconsistent with the general policy and objectives of the Union.

7.6 Each Industrial Sector shall hold a national conference, with delegates elected from amongst the membership in that sector, once every two years to determine its own industrial policies provided that they are not inconsistent with the general policy and objectives of the Union. That the Executive Council shall determine the size and composition of each National Industrial Sector Conference and shall ensure that in each case it is larger than the number of seats on the corresponding National Industrial Sector Committee.

7.7 Each Industrial Sector shall, where practicable, be divided into Regional Industrial Sectors, in conformity with the territorial Regions of the Union. There shall be a Regional Industrial Sector Committee in each Region where a Regional Industrial Sector is established elected in such proportion, as may be determined by the Executive Council, to reflect Branch and workplace organisation including geographical and industrial sub-sector distribution of the sector membership.

7.8 Each National and Regional Industrial Sector Committee shall be empowered to fill vacancies arising from the failure of any Committee member, without good reason, to attend 3 consecutive Committee meetings or following the resignation of any member.

7.8.1 Any member who is replaced or removed will be prohibited from seeking re-election within the electoral period.

7.9 Members employed in managerial, professional, supervisory, technical and/or clerical grades may, where appropriate, be organised and represented separately from other members in the same sector.

7.10 Special sub-sectors and/or advisory committees of Industrial Sectors

7.10.1 The Executive Council shall constitute special sub-sectors and/or advisory committees of Industrial Sectors as may seem expedient, on the basis of company or occupation, and shall have discretion to maintain the autonomy of specific craft or professional groupings which may not have the status of industrial committees.

7.10.2 The Executive Council may approve byelaws to govern the activities of a group or association or other body or organisation of members. In the event of a conflict between these rules and the byelaws of a group or association or other body or organisation of members, these rules shall prevail. Any amendment to the byelaws of a group or association or other body or organisation of members shall require the consent of the Executive Council

7.10.3 Any group or association or other body or organisation of members existing immediately before these rules came into force which had its own constitution,

byelaws, regulations or rules shall treat that constitution, those byelaws, regulations or rules as being byelaws for the purposes of these rules. Accordingly, in the event of a conflict between these rules and the constitution, byelaws, regulations or rules of a group or association or other body or organisation of members, these rules shall prevail. Further, any amendment to such constitution, byelaws, regulations or rules shall require the consent of the Executive Council which may also amend such constitution, byelaws, regulations or rules after consultation with the relevant group or association or other body or organisation of members.

RULE 8. REGIONS

8.1 For the purpose of regional administration the Union shall constitute Regions for Ireland, Scotland and Wales with England divided into 7 Regions on the basis of Regional Development Agency boundaries (as at 1st January 2006) as follows:

North West;

North East, Yorkshire and Humber;

West Midlands;

East Midlands;

South West;

South East; and

London and Eastern

8.2 Each Region shall have a Regional Committee of lay members elected from the Regional Industrial Sector Committees, Area Activists Committees where established, Regional Equalities Committees and as otherwise provided for by these rules in such proportions, as may be determined by the Executive Council and one member elected from the Regional Retired Members Co-ordinating Committee and one member elected from the Regional Young Members Committee. Should any seat become vacant on the Regional Committee, then the Regional Secretary shall write to the nominating committee seeking a replacement delegate. One observer shall be elected from the Regional Community Campaign Forum but shall not have voting rights.

8.3 The Regional Committees shall have responsibility for the management of the Union's affairs in their Regions in conformity with decisions of the Executive Council and responsible to it.

8.4 The Regional Committees shall have their own funds not exceeding 1% of the membership income attributable to members within that Region. Regional Committees shall be responsible for the affiliation of union organisations to Trades Councils and appropriate public bodies within their Region.

8.5 Regions shall constitute Area Activists meetings between activists in different companies, sectors and Branches, across geographical areas within a Region, subject to the approval of the Executive Council. The first of these meetings in an electoral period shall elect Area Activists Committees, the size and composition of which being determined by the respective Regional Committee, subject to the approval of the Executive Council. Thereafter Regions may convene further Area Activists meetings,

up to four times a year. All activists shall be eligible to stand for election to Area Activists Committees.

8.6 The Regional Committee shall meet once a quarter or more frequently if, in the opinion of the Regional Secretary, the business renders it necessary. The Regional Secretary is responsible for convening all meetings.

8.7 A special Regional Committee meeting can be called by 50% +1 of the members of the Regional Committee, either by a show of hands at a Regional Committee meeting or by written requisition.

8. 8 The Regional Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.

8.9 Each Regional Committee shall be empowered to fill vacancies arising from the failure of any Regional Committee member, without good reason, to attend three consecutive Regional Committee meetings or following the resignation of any member.

RULE 9. YOUNG MEMBERS

9.1 In each Region there shall be a young members' forum open to all members up to and including the age of 30 in that Region commencing from the 2021/2024 election cycle. (The qualifying age remains at 27 until the 2021/2024 electoral cycle)

9.2 The purpose of the young members structure shall be to advocate the industrial and social interests of young workers, to cement links with the Union's industrial and community members youth organizations both within the labour movement and beyond and to promote relevant policies provided that they are not inconsistent with the general policy and objectives of the Union.

9.3 There shall be conferences in each Region every three years for young members. The Regional Secretary shall be responsible for convening these conferences. The Executive Council shall determine the number of delegates to the regional conferences and how they shall be appointed or elected.

9.4 There shall be a Regional Young Members Committee charged with developing, organising and delivering the young members' strategy in the Region, elected at the Regional Young Members' Conference in such proportion, as may be determined from time to time by the Executive Council. The Regional Young Members Committee shall elect a delegate to the Regional Committee.

9.5 There shall be a national conference every two years for young members which the Executive Council shall be responsible for convening. The Executive Council shall determine the number of delegates to the national conference and how they shall be appointed or elected.

9.6 Young member activists are entitled to attend Area Activists Meetings and to stand for election to at least 2 defined young members' seats on the Area Activists' Committee, elected by young members attending the Meeting.

9.7 Young members who are also Unite branch CLP GC delegates and up to four nominees (who must be members of the Labour Party) from the Regional Young Members' Committee, elected by members of that Committee, are entitled to attend the Regional Labour Party Liaison Conference and are eligible to stand for election to two additional young Members' seats on the Regional Labour Party Liaison Committee.

9.8 There shall be a Young Members National Committee elected from each Young Members Regional Committee in such proportion, as may be determined from time to time by the Executive Council.

9.9 There shall be a Young Members designated seat on every Regional Industrial Sector Committee and National Industrial Sector Committee.

RULE 10. MEMBERS IN RETIREMENT

10.1 Members in retirement may be organised as "retired members plus" or as ordinary retired members. Only "retired members plus" members or members in retirement who choose to pay full contributions may hold office in any retired members' structures that the Union may establish which shall include attendance at Regional Retired Members' Conference. Separate arrangements may apply in the Republic of Ireland, Channel Islands, Isle of Man and Gibraltar.

10.2 Unite retired members, working through retired members' structures, shall campaign for and promote the interests of senior citizens and the communities in which they live by working with the wider structures of the Union as well as other bodies involved with the retired, cementing links with the Union and ensuring support both within Unite and beyond.

10.3 The retired members' structures shall harness the support of retired members in promoting the Union's political and campaigning objectives.

10.4 Retired members may be members of the workplace, local or national branches of the union (as defined in Rule 17) or may be organised in retired members' branches. Members in retirement may not simultaneously be members of more than one branch of the union.

10.5 In each Region there shall be a triennial conference of retired members representatives which shall be defined as officers of Retired Members' branches and retired members who may hold office in other types of branch. The Regional Secretary shall be responsible for convening the conference.

10.6 There shall be Regional Co-ordinating Committees for retired members, elected from the regional conference, in such proportion as may be determined by the Executive Council. These Committees shall elect a delegate to their respective Regional Committee of the union as a whole.

10.7 Retired member activists are entitled to attend the triennial Area Activists Meetings and general Area Activists Meetings, and to stand for election for up to 2 defined retired

members' seats on Area Activists Committees, elected by retired members attending the meeting.

10.8 Retired members who are also Unite branch CLP GC delegates plus up to four nominees (who must be a members of the Labour Party) from the Regional Retired Members' Co-ordinating Committee, elected by the members of that Committee, are entitled to attend the Regional Labour Party Liaison Conference and are eligible to stand for election to at least two additional retired members seats on Regional Labour Party Liaison Committees.

10.9 There shall be a national conference of retired members' representatives held every two years. The Executive Council shall be responsible for convening this conference which shall be made up of delegates elected by the regional retired members' structures.

10.10 There shall be a National Committee for retired members, elected from the Regional Co-ordinating Committees in such proportion as may be determined by the Executive Council. This Committee shall elect a lay Chair and Co-ordinator to organise the work of the Committee in co-operation with the responsible National Officer, a delegate to the National Labour Party Co-ordinating Committee who must be a member of the Labour Party as well as delegates to national campaigning and labour movement organisations.

10.11 No member who is in receipt of a pension from any funds of the union shall be eligible for election to the delegate positions as set out in Clauses 10.6 and 10.10 of this Rule.

RULE 11. EQUALITIES

11.1 The Union shall strive to have elected equalities representatives recognized and active in all workplaces and who participate in the work of the Union's industrial structure.

11.2 All constitutional conferences and committees of the Union shall have a gender and ethnic balance of elected representatives at least reflecting the proportion of the Black and Asian ethnic minority and women membership which they represent. The Executive Council shall ensure the implementation of this rule and shall report on its implementation to the Policy Conference of the Union.

11.3 There shall be separate conferences in each Region every three years for women members; Black and Asian ethnic minority members; disabled members; and lesbian, gay, bisexual and trans + members. The Regional Secretary shall be responsible for convening these conferences.

11.4 There shall be Regional Committees for women members; Black and Asian ethnic minority members; disabled members; and lesbian, gay, bisexual and trans + members, elected in Sector based constituencies of at least one member per regional Sector at the appropriate regional conference in 11.3, to advance the area of equalities, and to represent and report to the Regional Industrial Sector Committees in such proportion, as may be determined by the Executive Council. Members elected to such Sector based seats shall become full members of the Regional Industrial Sector Committee, provided that they are an accountable representative of workers. These committees shall each elect a delegate to their respective Regional Committee of the Union as a whole.

11.5 Each National and Regional Equalities Committee shall be empowered to fill vacancies arising from the failure of any appropriate regional Equalities Committee member, without good reason, to attend 3 consecutive Regional Equalities Committee meetings or following the resignation of any member.

11.6 There shall be separate national conferences every two years for women members; Black and Asian ethnic minority members; disabled members; and lesbian, gay, bisexual and trans + members. The Executive Council shall be responsible for convening these conferences which shall be made up of delegates elected at each of the appropriate Regional Equalities Committees.

11.7 There shall be National Committees for women members; Black and Asian ethnic minority members; disabled members; and lesbian, gay, bisexual and trans + members, elected from their respective Regional Equalities Committees in such proportion, as may be determined by the Executive Council.

RULE 12. POLICY CONFERENCE

12.1 The supreme policy making body of the Union shall be a Policy Conference held every two years consisting so far as is reasonably practicable of one lay delegate for each one thousand three hundred working members of the Union. Only elected lay delegates shall have the right to vote. No member shall be a lay delegate if they are currently employed by the Union.

12.2 Motions to the Policy Conference shall be confined to the general policies of the Union and shall not deal with matters relating to the interpretation or amendment of rule or which are concerned solely with the Union's policy within an Industrial Sector. Following the conference any motion which commits the Union to expenditure of funds must be put to the Executive Council for consideration and ratification before implementation.

12.3 The General Secretary will present a financial report to the Policy Conference.

12.4 The Executive Council shall determine the procedure for nomination, qualification and election of delegates and the constituencies from which they shall be elected.

12.4.1 In addition there shall be:

12.4.1.1 Six delegates one each representing the National Women's, National Black and Asian ethnic minorities, National LGBT+, National Disabled Members', National Retired Members and National Young Members' Committees, and

12.4.1.2 In addition each Regional Committee shall elect the following delegates to Policy Conference directly:

a) Three delegates from the Regional Committee (at least one of which must be a woman)

b) two Lesbian, Gay, Bisexual or Trans + members

c) Two disabled members,

d) Two young members.

e) Two Retired members

12.5 The Executive Council shall be in attendance at any Policy Conference, and its members may speak upon but may not vote on any subject.

12.6 Each delegate shall hold office until the next Policy Conference.

12.7 The Executive Council shall determine the number of policy motions which may be submitted by the Branch; regional; industrial and equalities structures, and from the Executive Council itself.

12.7.1 The National Retired Members Committee and the Regional Retired Members Committee may submit one motion each to the policy conference. They cannot submit motions that solely affect or substantially affect only working members.

12.8 The Policy Conference shall be chaired by the Chair of the Executive Council.

12.9 The Policy Conference may be recalled by the Executive Council in an emergency. It shall deal only with the business for which it is summoned.

12.10 The Executive Council shall draft the standing orders for the Policy Conference. A Standing Orders Committee shall be constituted on the basis of at least one delegate from each Region, under a procedure to be agreed by the Executive Council. No member of the Executive Council shall be eligible to serve on the Standing Orders Committee. The Chair of conference may attend the meetings of the Committee and may issue directions prior to the Conference, subject to those directions being upheld by the Conference itself.

12.10.1 A member of the Standing Orders Committee may not simultaneously be a delegate to the Conference, but for the purpose of electing the next Policy Conference Standing Orders committee members will be treated as being a delegate to Conference and may be nominated and elected to serve on the next Standing Orders Committee.

12.11 No member of the Executive Council, employee of the Union or retired employee of the Union, or any member who is in receipt of a pension from any of the funds of the Union, no tutor employed by the Education Department or registered for delivery of Unite education, , and no member who is employed on Union business on a full-time or part-time basis with remuneration paid from funds which are raised from special contributions paid by Branch members as distinct from Union contributions, shall be eligible for nomination as a delegate to the Policy Conference.

RULE 13. RULES AMENDMENT

13.1 For the revision of the rules and constitution of the Union there shall be a Rules Conference which shall meet in every fourth year. No member shall be a lay delegate if they are currently employed by the Union.

13.2 The Rules Conference shall consist, in so as is reasonably practicable, of one lay delegate for each four thousand working members of the union.

13.2.1 In addition there shall be:

13.2.1.1 Six delegates one each representing the National Women's, National Black and Asian Ethnic Minority, National Lesbian, Gay, Bisexual and Trans +, National Disabled Members', National Young Members and National Retired Members' Committees; and

13.2.1.2 In addition each Regional Committee shall elect the following delegates to Rules Conference directly:

a) Two delegates from the Regional Committee (at least one of which must be a woman)

b) One Lesbian, Gay, Bisexual or Trans + member

c) One disabled member

d) One young member

e) One Retired member

13.3 Amendments to rule may be approved by a simple majority of those voting. Only elected lay delegates shall have the right to vote.

13.4 Following the conference any amendment to rule which commits the Union to expenditure of funds must be put to the Executive Council for consideration and ratification before implementation.

13.5 The Executive Council shall be entitled to submit amendments to the rules to a Rules Conference and if an urgent issue arises it may do so at short notice.

13.6 If in the opinion of the Executive Council there is an urgent need to amend the rules between Rules Conferences, the Executive Council may amend the rules by a resolution supported by not less than 75% of its members, provided that amendment shall cease to have effect at the end of the next Rules Conference unless it has been ratified by a resolution of that conference.

13.7 The Executive Council shall determine the procedure for nomination, qualification and election of delegates and the constituencies from which they shall be elected.

13.8 The Executive Council shall be in attendance at any Rules Conference, and its members may speak upon but may not vote on any subject.

13.9 Each delegate shall hold office until the next Rules Conference.

13.10 The Executive Council shall determine the number of rules motions which may be submitted by from the Branch; regional; industrial and equalities structures, and from the Executive Council itself.

13.10.1 The National Retired Members Committee and Regional Retired Members Co-ordinating Committees may submit one amendment each to the Rules Conference solely pertaining to members in retirement.

13.11 The Rules Conference shall be chaired by the Chair of the Executive Council.

13.12 The Rules Conference may be recalled by the Executive Council in an emergency. It shall deal only with the business for which it is summoned.

13.13 The Executive Council shall draft the standing orders for the Rules Conference. A Standing Orders Committee shall be constituted on the basis of at least one delegate from each Region under a procedure to be agreed by the Executive Council. No member of the Executive Council shall be eligible to serve on the Standing Orders Committee. The Chair of conference may attend the meetings of the Committee and may issue directions prior to the Conference, subject to those directions being upheld by the Conference itself

13.13.1 A member of the Standing Orders Committee may not simultaneously be a delegate to the Conference, but for the purpose of electing the next Rules Conference Standing Orders Committee members will be treated as being a delegate to the Conference and may be nominated and elected to serve on the next Standing Orders Committee.

13.14 No member of the Executive Council, employee of the Union or retired employee of the Union, or any member who is in receipt of a pension from any of the funds of the Union, no tutor registered for delivery of Unite education by the Education Department, and no member who is employed on Union business on a full-time or part-time basis with remuneration paid from funds which are raised from special contributions paid by Branch members as distinct from Union contributions, shall be eligible for nomination as a delegate to the Rules Conference.

RULE 14. EXECUTIVE COUNCIL

14.1 Election of the Executive Council

14.1.1 The election of the Executive Council shall be on the basis of representatives from the Union's regional structure, representatives from the Union's Industrial Sectors and National Representatives of the Union's women and Black and Asian ethnic minority, disabled, LGBT+, Young membership and Retired membership.

14.1.2 Elections to the Executive Council shall be conducted in conformity with guidance issued by the Executive Council. Such guidance will ensure equality and fairness throughout the election and balloting process. All nominees gaining the required number of nominations will be provided with the same appropriate access to branch secretaries, workplaces and constitutional committees information and promotion throughout the union.

14.2 Election to the Executive Council shall be on the basis of electoral constituencies determined by the Executive Council. A full audit of each Industrial Sector's membership will take place at the September Executive Council meeting in the year prior to the election of the Executive Council to determine Executive Election Constituencies. These constituencies shall ensure the fair and equitable representation of the working membership and shall include representatives to be elected from the Regions as constituted in the union on the basis of each region with fewer than 150,000 members on the date at which the membership figures are struck having two representatives, each region with 150,000 members but fewer than 200,000 members having three, and each region with 200,000 members or more having four; and shall include representatives

from the national industrial sectors, on the basis of each sector with fewer than 50,000 members at the date at which the membership figures is struck having one representative, each sector with 50,000 but fewer than 100,000 members having two and each sector with 100,000 members or more having three. The allocation of constituencies based on this formula will be automatically applied to all Executive Council elections henceforward unless the formula is varied by the Rules Conference.

14.2.1 The Executive Council of the Union shall include designated seats within the electoral constituencies to ensure the proportionate representation of women members and of Black and Asian ethnic minority members.

14.2.2 The term of office for the Executive Council shall be three years**.**

14.2.3 No current or former employee of the Union, nor any current employee of any other union, is eligible to stand for, or hold office on, the Executive Council.

14.2.4 No Executive Council Members to be eligible to be delegates to their Regional or National Committees except as ex-officios.

14.3 The Executive Council shall meet at least four times a year, with up to a maximum of five days duration per meeting to complete the business at hand. Special meetings of the Executive Council may be called when the General Secretary or when a majority of the Executive Council considers it necessary.

14.4 Members of the Executive Council who do not attend two consecutive meetings to which they are summoned, may be removed from office by the Executive Council if they fail to provide a written explanation of that absence to the General Secretary or if any written explanation provided is in the opinion of the Executive Council unsatisfactory. The Executive Council shall determine the guidance on the application of this rule.

14.5 An elected Executive Council member cannot act as a Stand Down Officer during their elected period of office as an Executive Council Member.

14.6 The Executive Council shall elect a Finance and General Purposes Committee provided that it shall include the Chair of the Executive Council. The Executive Council shall determine the number of members thereof. This committee shall meet not less than six times a year. This Committee shall also act as an emergency committee, and the Executive Council shall delegate to such Committee all or any of its powers and duties as it may determine, and may modify or revoke such powers.

14.7 At the first meeting of the Executive Council following its election there shall be appointed by and from the members a Chair. The Executive Committee will have the power to remove and replace its Chair at any time, and to appoint one or more Vice Chairs for such business and period as it deems fit from time to time.

14.8 The Chair shall preside over all Executive Council meetings, see that the business is properly conducted, and sign the minutes of each meeting when passed. The Chair shall also preside at the biennial Policy Conference, the Rules Conference, the Finance and General Purposes Committee and in addition shall be a delegate to the Trades Union Congress and Annual Conference of the Labour Party (where appropriate) held during their term of office, and to such other conferences as the Executive Council may determine.

14.9 The Government, management and control of the Union shall be vested in the Executive Council collectively, which may do such things consistent with the rules and objects of the Union as it may consider expedient to promote the interests of the Union or any of its members. In particular and without limiting the general powers conferred on it by these rules the Executive Council shall have the power to:

14.9.1 Ensure that properly prepared management accounts and annual statements of account relating to all financial affairs of the Union are presented at its regular meetings, and it may call for the production of any book, vouchers, or documents.

14.9.2 Direct that special audits or examinations of the books or finances of any part of the Union shall be made by special auditors appointed by the Executive Council.

14.9.3 Appoint and remove the Union's auditor and assurer in relation to membership records for which purpose the members of the Executive Council shall act as the delegates of the members by whom they were elected.

14.9.4 Appoint all officers who are employed as such by the Union (who shall have been paying members of this Union or, if employed by Unite, paying members of another trade union recognised by the union for bargaining purposes, for at least two years immediately preceding the date of application) other than the General Secretary. The promotion of individual officers (up to but excluding the level of General Secretary) and the allocation/reallocation of officer roles shall be subject to the approval of the Executive Council in each case.

14.9.5 Determine one or more constitutional committees of lay members to which each officer employed by the Union shall report and be accountable and ensure that the list of these allocations is available to members.

14.9.6 Consider all appeals and resolutions addressed to it, subject to where it deems appropriate the Council shall have the power to refer such appeals and references to Regional or National Industrial Committees.

14.9.7 Require reports to be submitted to it of all disputes, and shall take such action with regard thereto as it shall deem fit.

14.9.8 Raise or borrow money and secure the payment of money or the carrying out of any other obligation of the Union on any of the properties or securities of the Union in such manner as it shall think fit.

14.9.9 Decide questions of policy which may arise between Policy Conferences and which have not been decided by a previous decision of such a conference. Any substantive policy decisions made by the Executive Council to be ratified by the next scheduled Policy Conference.

14.9.10 Send delegates or deputations to represent the Union, and to delegate power to any person to act on behalf of the Union for any purpose.

14.9.11 Sanction payment of benefit in respect of any strike and in respect of any lockout.

14.9.12 Expend moneys on any of the purposes authorised by these rules, or on any other purpose which, in their opinion, is expedient in the interests of the Union

or its members, including, at its discretion, the provision of legal services to members (and where it additionally and severally sees fit, to members' families), and the taking and defending of legal action by the Union.

14.9.13 Suspend, or impose any other penalty on any Branch, Region or other administrative section of the Union for such reasons and on such terms as they deem expedient and their decisions, save as herein provided, shall be final and conclusive for all purposes provided that every Branch, Region or other administrative section shall have the right within 14 days, of the date of notification of the decision of the Executive Council to give notice of appeal, and until the hearing of such appeal the decision of the Council shall be binding.

14.9.14 Delegate to any committee constituted under these rules such of their powers as are necessary or expedient and consistent with the powers and duties of such committee as in these rules provided, and may modify or revoke such powers and duties from time to time.

14.9.15 Provide training for lay representatives, activists and its employees.

14.9.16 Decide its own Standing Orders and procedures in all matters not expressly provided for in these rules.

14.9.17 Make standing orders, consistent with these rules, governing the proceedings of Regional Committees, Industrial Committees and any other body provided for by these rules, as it sees fit.

14.9.18 Decide any question relating to the meaning and the interpretation of these rules or any matter not expressly provided for by these rules which decision shall be binding on all members of the Union.

14.10 Recognising the central importance of the organisation of workers into the Union the Executive Council shall devote no less than five per cent of membership income to organising each year and shall aim to move to no less than ten per cent within no less than three years of amalgamation. Organising units shall be maintained by these funds in each Region and shall be controlled by a national organising department under the control of the General Secretary.

14.11 In addition to any express powers in these rules provided, the Executive Council shall have power generally to carry on the business of the Union, as it may deem necessary, and do such things and authorise such acts, including the payment of moneys, on behalf of the Union, as it, in the general interests of the Union, may deem expedient, and to delegate to any person or persons the power to represent and to act on behalf of the Union. Between Executive Council meetings the Executive Council's powers under clause 9 above and this clause are delegated to the General Secretary save the following:

14.11.1 regarding appeals and resolutions

14.11.2 regarding delegation of powers from the Executive to any committee

14.11.3 regarding Executive Council procedures

14.12 The Executive Council may exercise any power given to it by these rules as it sees fit from time to time.

RULE 15. GENERAL SECRETARY

15.1 All elections for the General Secretary shall be on the basis of a ballot of the whole membership of the Union other than 'ordinary' retired members who shall not be eligible to vote. The fixed term of office for each General Secretary election will be set at 5 years. If the General Secretary position becomes vacant due to retirement, resignation or death within a fixed term of office a General Secretary election will be called.

15.2 The General Secretary shall not hold office without re-election for more than 5 years from the last day on which the votes were cast in his/her previous election.

15.3 The General Secretary shall be responsible for the administration of the affairs of the Union; including convening the meetings and implementing the decisions of the Executive Council, and such other duties as may be determined by the Executive Council.

15.4 All employees of the Union shall be under ultimate control of the Executive Council whose approval shall be required before changing their terms and conditions of employment or superannuation arrangements. Subject to that ultimate control the General Secretary shall be responsible for managing all employees of the Union who, subject to their terms and conditions of employment, shall perform such duties and work from such locations as the General Secretary may direct.

15.5 The General Secretary shall be under the control of and act in accordance with the directions of the Executive Council.

15.6 The General Secretary may delegate to any employee of the Union such of the General Secretary's powers as the Executive Council may consider appropriate.

15.7 The General Secretary shall be entitled to attend all meetings of the Union and to take part in their deliberations but shall not have a vote.

RULE 16. ELECTION OF EXECUTIVE COUNCIL MEMBERS AND THE GENERAL SECRETARY

16.1 Subject to the provisions of these rules and the powers of the independent scrutineer, the election of members of the Executive Council and the General Secretary shall be organised and conducted in accordance with the directions of the Executive Council.

16.2 The Executive Council shall appoint an independent scrutineer to supervise the production, storage and distribution of voting papers, to receive and count the voting papers, to report on the election, to retain the voting papers for an appropriate period and to perform such other duties as the Executive Council may specify.

16.3 The Executive Council shall appoint a suitable, independent person to act as Election Commissioner to adjudicate on any complaints made under clause (24) of this rule relating to the conduct of the election. In the event that the Electoral Commissioner finds it necessary to carry out an investigation in the conduct of his or her duties under

rule all members and employees of the Union are required to afford him or her every assistance in this regard.

16.4 The Executive Council shall appoint an independent Returning Officer to deal with the conduct of the election between the Executive Council meetings and may delegate to him/her its powers relating to the conduct of that election provided that the Returning Officer shall not act inconsistently with any decision of the Executive Council and shall report directly to the Executive Council all actions taken and decisions made in respect of that election.

16.5 A candidate in an election shall play no part in any deliberations of or decision by the Executive Council which relates specifically to the conduct of an election in the constituency in which an individual is a candidate.

16.6 Only for the purpose of the Executive Council Member elections and the General Secretary election any workplace with more than 50 members that is not constituted as a workplace branch will be classified as a workplace branch for the purpose of nominating candidates for the Executive Council election and General Secretary election.

16.7 Executive Council candidates for election to represent a Region shall be nominated by at least three Branches within that Region or that part of a Region as the case may be. A branch shall be entitled to make only such number of nominations as there are members to be elected from that Region or part thereof.

16.8 Executive Council candidates for election to represent a particular Industrial Sector constituency shall be nominated by branches which have members in the particular Industrial Sector constituency concerned.

16.9 In every case no nomination shall be valid unless a meeting of the Branch has been convened and that nomination has been endorsed by the meeting. The Executive Council guidance shall state whether and how a nomination may be made by a Branch.

1610 For Executive Council elections a member is required to receive at least three nominations. On receipt of such nominations the candidate shall be invited to confirm in writing that she/he accepts the nomination. Each member who does so and who is otherwise eligible shall be a candidate in the election for that constituency.

16.11 Executive Council candidates for election to represent a constituency under any equalities provision of these rules shall be nominated by Branches.

16.12 Executive Council candidates must be a member of the electoral constituency they wish to represent.

16.13 Nominations of Candidates for election of General Secretary may be made by each branch. A candidate must be eligible to vote in the election; have at least 5 years continuous membership of the union; and have received nominations from at least 5% of the total number of branches subject to the total including nominations from more than two regions. In every case no nomination will be valid unless a meeting of the branch has been convened and that nomination has been endorsed by the meeting. The Executive Council guidance will state whether and how a nomination may be made by a branch.

16.14 Prospective nominees for the Executive Council and General Secretary elections will be covered and bound by the election directions of the Executive Council, from when the prospective nominee 150 word statement is released and circulated by the union with the letter inviting nominations.

16.15 All candidates in Executive Council and General Secretary elections receiving the required nominations will be provided an election webpage on Unite's website for campaign material which will be visible and open to all members to view and download campaign material. The election webpages will be governed by the directions provided by the Executive Council.

16.16 If the number of candidates does not exceed the number of vacancies to be filled by that constituency, the candidate(s) shall be declared elected. If there are more candidates than vacancies, the election shall be conducted by a secret postal ballot.

16.17 Executive Council constituencies to be based on paying membership allocations as reported at the September Executive Council in the year prior to the Executive Elections.

16.18 The election shall not be concluded until the Executive Council has received the independent scrutineer's report and declared which candidate(s) has been elected. This should take place as soon as reasonably practicable after the votes have been counted. If the Election Commissioner advises the Executive Council that it should not declare the outcome of an election until he/she has adjudicated on a complaint, it shall comply with that request.

16.19 The Executive Council may decide that members who have joined the Union after a prescribed date shall not be eligible to vote, provided the date shall not be more than 13 weeks before the first day on which voting is due to take place in that election.

16.20 Members of a territorial Region shall be accorded equally an entitlement to vote in the election for a representative from their own territorial Region (but no other territorial Region) to the Executive Council. A member's Region for the purposes of this rule shall be the Region to which their Branch is allocated by the Executive Council. In the case of Branches covering more than one Region the method of establishing a member's individual Region shall be determined by the Executive Council.

16.21 Members of a particular Industrial Sector shall be accorded equally an entitlement to vote in the election for a representative from their own Industrial Sector Constituency (but no other Industrial Sector Constituency) to the Executive Council.

16.22 In relation to the election of the National Representative(s) for Women Members; members who are women shall be accorded equally an entitlement to stand and vote.

16.23 In relation to the election of the National Representative(s) for Black and Asian ethnic minority Members; members who are Black and Asian ethnic minority members shall be accorded equally an entitlement to stand and vote.

16.24 In relation to the election of the National Retired Member Representative only members who contribute at the rate of Retired Member Plus shall be accorded equally an entitlement to stand and vote.

16.25 In relation to the election of the National LGBT+ and Disabled Member Representatives, from the electoral period 2022/2025, only members who are LGBT+ or Disabled shall be accorded equally an entitlement to stand and vote.

16.26 In relation to clauses 18 and 19 above, the Union shall rely on its membership records and shall endeavour to collect and record such relevant information, but shall be entitled to make a presumption of non-entitlement to vote in such election where there is an absence of the relevant qualification information.

16.27 A member who is eligible to vote in an election who does not receive a voting paper should contact the Union but the final decision on whether to issue a further voting paper to that member shall be a matter for the independent scrutineer.

16.28 Each candidate shall be entitled to attend as an observer the counting of the votes from the constituency in which he/she is a candidate.

16.29 If at any stage during an election or within 28 days of the declaration of the outcome a candidate in an election or the Executive Council considers that there has been a breach of these rules or of any other legal requirement relating to the conduct of the election or any other interference with the conduct of the election and that the breach or interference may materially affect or may have materially affected the outcome of the election, he/she or the Executive Council may submit a complaint to the Election Commissioner.

16.30 If the Returning Officer or a member who is not a candidate considers that there are grounds for a complaint to the Election Commissioner, he/she should refer the matter directly to the Executive Council.

16.31 A complaint to the Election Commissioner should be made as soon as is reasonably practicable. The Election Commissioner shall not consider any complaint made more than 28 days after the date on which the Executive Council declared the outcome of the election.

16.32 A complaint to the Election Commissioner shall be made in writing addressed to the Election Commissioner care of the Returning Officer and accompanied by all the supporting evidence which the complainant wishes to be taken into account.

16.33 If when the Election Commissioner receives a complaint the independent scrutineer has not yet reported on the election and the Election Commissioner considers that the complaint raises matters which fall within the jurisdiction of the independent scrutineer, he/she shall refer the complaint (or the part thereof which raise such matters) to the independent scrutineer unless it is not reasonably practicable to do so. When the Election Commissioner has referred a complaint (or part thereof) to the independent scrutineer he/she shall not adjudicate on the complaint until the independent scrutineer has expressed a view on that complaint.

16.34 The Election Commissioner may adjudicate on a complaint on the basis of written material submitted with the complaint or, at his/her complete discretion, call for such further information as he/she shall think fit and/or conduct a hearing of the complaint. Subject to the provisions of this rule, the Election Commissioner shall decide his/her own procedures for investigating and adjudicating upon the complaint provided that he/she shall endeavour to adjudicate on the complaint as quickly as is reasonably practicable.

16.35 If after considering a complaint the Election Commissioner considers; that there has been a material breach of these rules or of any other legal requirement relating to the conduct of the election or any other material interference with the conduct of the election; and that the breach or interference may materially affect or has or may have materially affected the outcome of the election; the Election Commissioner may recommend that the Executive Council should take one or more of the following measures:-

16.35.1 Declare the ballot and, if it has been declared, the outcome of the election void and call for a fresh ballot to be held;

16.35.2 Disqualify a candidate or candidates and permit the remaining candidates to go forward in the ballot or in any fresh ballot that may be ordered; or

16.35.3 Such other remedial measures as the Election Commissioner considers appropriate.

16.36 Subject always to any decision to the contrary by a court, the Certification Officer or any other lawful authority, the Executive Council shall give effect to any recommendation by the Election Commissioner made in accordance with clause (29) of this rule.

16.37 If an election is delayed as a result of action taken pursuant to a recommendation by the Election Commissioner, an order of a court, the Certification Officer or other lawful authority, a member who holds the office which is the subject of that election shall be entitled to continue in that office until the election is concluded.

16.38 Any casual vacancies on the Executive Council that occur within the first two years of the electoral term shall be filled by a by-election for a replacement delegate. If that casual vacancy occurs in the final year of the electoral term, there shall not be a by-election but that an observer may be elected to represent the section's interests from the relevant constituency, i.e. NISC, Regional Committee, National Equalities Committee.

RULE 17. BRANCHES

17.1 Wherever possible, Branches shall be based on the workplace, although provision shall also be made for local Branches, including local industrial sector, community and retired branches.

17.2 National Industrial Branches shall be approved by the Executive Council only as appropriate and where the local workplace branch model is not deemed suitable. Members of National Industrial Branches may fully participate in the structures of the Union, including the Regional Industrial Sector Conference and the Regional Political Conference (in both cases subject to meeting eligibility criteria), in the Region where they live if different from the Region where the branch is based.

17.3 Branch membership shall be allocated on the basis of the workplace if there is a workplace branch at the member's workplace, or the local branch most appropriate for their workplace if there is not a workplace or National Industrial branch.

17.4 Branches shall have direct access to a proportion of membership subscriptions. Such a proportion and access arrangements to be determined by the Executive Council, and may be conditional on performed compliance with financial reporting requirements. These funds may be used to meet the cost of administering the Branch; for recruitment

and other campaigns approved by the Executive Council; for local affiliations; to assist members or their dependants who have suffered misfortune; or for any other worthy cause, subject to any provisions elsewhere in these rules, and that no general purposes funds shall be used for political objects. Any payments made in connection with any form of industrial action must be made strictly in line with Executive Council guidance applicable at the time. Branch funds shall not be utilised to assist a member or former member in obtaining legal advice, assistance or representation in respect of any court, tribunal or other proceedings brought against (or intended to be brought against) the Union.

17.5 All the property of the Branch including the books and other effects of the Branch, shall be the property of the Union and shall, on request by the Executive Council, be produced for inspection and audit. In the event of a closure, merger or dissolution of the Branch, all property of the Branch shall be dealt with as directed by the Regional Committee subject to the overall control of the Executive Council. No branch will be closed and no member will be transferred to another branch without proper consultation with the branch, the member or members concerned.

17.6 The Regional Committee shall be required to ensure that each Branch meets at least quarterly and operates in accordance with the standing orders provided for in clause 9 of this rule. Where a Branch fails to meet quarterly of all members that Branch shall be suspended and members of the Branch shall be allocated to a Branch which meets the requirements of rule subject to the right of the Branch to appeal to the Executive Council. Branches shall, with the assistance of the Region, advise their members of the venue, time and date of branch meetings; this may be by post or by posting the information on the Union's website. It shall be the responsibility of the branch secretary to ensure that up to date information about branch meetings is held by the Union.

17.7 Where deemed desirable for organisational and/or administrative reasons the Regional Committee shall be empowered to merge Branches; in the event of an appeal this will be heard by a sub-committee of the Executive Council.

17.8 Each Branch shall have for its management branch executive officers consisting of a Chair, a Vice-Chair (where a branch so decides), a Treasurer, an Equality Officer and a Secretary; and such other officers as the Branch may elect. They shall be elected at a Branch meeting by show of hands, or by ballot, if so decided by the meeting. The election shall take place at a branch meeting held between 1st January and 31st March in each third year and the elected candidates shall take office for three years. Casual vacancies may be filled at an ordinary Branch meeting, but notice of the impending election must be given to members of the Branch on the notice convening the meeting. The positions of Secretary and Treasurer may be held by the same member if the Branch so chooses.

17.9 The Executive Council shall issue standing orders to regulate the conduct of Branch meetings and business and may amend the standing orders from time to time. Those standing orders may only be varied in respect of a Branch with the prior approval of the Regional Committee. The quorum for a Branch meeting to make a decision on any matter shall be 5 members and all matters should be decided by a simple majority of those voting. If the votes are equal the proposition before the meeting shall fail.

17.10 The Branch chair shall preside over all meetings of the Branch and shall ensure that business is conducted in accordance with the rules and Branch standing orders. If the chair is absent from a Branch meeting, those present shall elect a substitute to take his/her place for that meeting. The chair shall be entitled to vote on all matters to be

decided by the Branch but he/she shall not have a second or casting vote. The Branch secretary shall be responsible for the general administration of the Branch including maintaining the Branch membership, financial and other records in the manner required by the Executive Council, taking and preserving Branch minutes and conducting all correspondence on behalf of the Branch. On taking office the branch secretary shall provide an address where members can contact him or her. This information shall be posted on the Union's website.

17.11 The Branch treasurer shall be responsible for dealing with financial transactions concerning the Branch, ensuring that all payments are made in accordance with the rules of the Union, receiving contributions from members who pay at the Branch and banking monies. He/she shall provide the Branch secretary with a record of all financial transactions and shall ensure that they are accurately recorded in the Branch records and that all monies are dealt with in accordance with the rules and the instructions of the Executive Council.

17.12 If a Branch is unable to fill a vacancy for secretary or treasurer, the Executive Council may appoint a full time officer to fulfil the duties of that office until such time as the Branch is able to fill the position.

17.13 All references to "Branch" throughout these rules refer to lay member organisations. All references to Branch secretaries refer to lay officials.

17.14 Branch officers shall receive the fullest support and protection from the union, and an immediate enquiry shall be undertaken by the appropriate regional industrial sector or regional committee into every case of victimisation of a branch officer with a view of preventing victimisation whether open or concealed. Following the enquiry by the Regional Industrial Sector, or the Regional Committee, a full report will be sent to the EC with recommendations.

RULE 18. WORKPLACE REPRESENTATION

18.1 At each workplace, the members employed at that workplace, shall elect from amongst themselves, at least every 3 years, 1 or more of the following representatives:

18.1.1 Shop stewards/workplace representatives

18.1.2 Safety representatives

18.1.3 Learning representatives

18.1.4 Equality representatives

18.1.5 Environment representatives

The election shall take place at a meeting held between 1st January and 31st March in each third year, and the elected candidates shall take office for three years. Such workplace representatives as listed above shall be entitled to attend the triennial Regional Industrial Sector Conference.

18.2 The election of workplace representatives shall, where practicable, have a gender and ethnic balance at least reflecting the proportion of Black and Asian ethnic minority and women members which they represent. Election to one representative role shall not preclude election to another such role within the same workplace.

18.3 The method of election shall be by such means as authorised by relevant guidance which shall be issued by the Executive Council from time to time.

18.4 On being elected for the first time in a particular role, each representative should within twelve months attend an appropriate union training course. On re-election, representatives are expected to continue to attend appropriate training courses as provided by the union to ensure they can best represent members**.**

18.5 The Executive Council may group workplaces together for the purposes of representation where the number of members at each workplace is so small that representation and bargaining for the individual workplaces is not, in the opinion of the Executive Council, practicable.

18.6 The constituency of a workplace representative shall be the workplace from which they were elected, or such grouping of workplaces as was defined by the Executive Council under clause 5 of this rule.

18.7 Following election of a workplace representative the appropriate Regional Officer shall be informed of the election by the elected representative without delay. The Regional Officer shall ensure that the Regional Industrial Sector Committee and the Union's membership department are informed of the date of the election and the identity, constituency and contact details of the elected workplace representative.

18.8 The Executive Council may issue guidance on the powers and procedures of the Regional Industrial Sector Committee in relation to ratification of such election. The Regional Industrial Sector Committee shall ensure compliance with such procedures.

18.9 Shop stewards/workplace representatives shall receive the fullest support and protection from the union, which includes the provision of a Shop Stewards Handbook/Health and Safety Handbook/Branch Officers Handbook. Officers should be able and willing to fully support shop stewards/workplace representatives facing victimisation/bullying/disciplinary action. Officers should consistently support all shop stewards/workplace representatives and where appropriate be able to provide support in legal referrals to the Union's solicitors. Officers should ensure shop stewards/workplace representatives are updated within a reasonable time. An immediate inquiry shall be undertaken by the appropriate regional industrial sector or regional committee into every case of dismissal of a shop steward with a view to preventing victimisation, either open or concealed. If it is deemed necessary, a ballot for industrial action will be convened.

RULE 19. FUNDS

19.1 The General Secretary and employees of the Union authorised by him/her shall subject to the endorsement of the Executive Council have authority to open and operate such bank accounts on behalf of the Union as he/she may consider appropriate.

19.2 Subject to clause 3 of this rule, the funds of the Union may be used in accordance with the provisions of these rules for the payment of provident benefits as defined in Section 467(2) Income and Corporation Taxes Act 1988, as that section may be amended, consolidated or re-enacted from time to time. Such provident benefits shall include the provision of legal advice and assistance.

19.3 No member shall be entitled to sums in excess of the limits set out in section 467(1) of the Income and Corporation Taxes Act 1988 as that section may be amended, consolidated or re-enacted from time to time.

19.4 The Executive Council shall publish an annual financial report providing details of the Union's income and expenditure in the previous year, this shall include an audited account of all Officers and Organisers remuneration including the pay, benefits and expenses – up to and including all Unite the Union Regional Secretaries, National Officers, Directors, Executives, Assistant General Secretaries, Deputy General Secretaries and the General Secretary, as well as details of Departmental and Regional spending, campaign costs and any other significant union expenditure.

19.5 All property (including all books, effects, funds or other assets) which immediately prior to the date of these rules coming in to effect was held by or in trust for or otherwise on behalf of the Amicus or TGWU Sections of the Union or the former trade unions Amicus or TGWU, or any committee, council, Branch, or other body of one of those sections or unions, shall be the property of the Union and shall be dealt with in accordance with the instructions of the Executive Council.

19.6 The Executive Council shall cause to be kept proper accounting records with respect to the Union's transactions, assets and liabilities and establish and maintain a satisfactory system of control of its accounting records, its cash holdings and all receipts and payments in accordance with Sections 28 and 29 of the Trade Union and Labour Relations (Consolidation) Act 1992.

19.7 The Accounts of the Union shall be audited at least once a year. The auditor shall be qualified in accordance with Section 34 of the Trade Union and Labour Relations Act (Consolidation) 1992. The appointment and removal of the auditor shall be subject to the provisions Section 35 of the Trade Union and Labour Relations (Consolidation) Act 1992.

19.8 No member or members, or Branch, or any committee of members shall be permitted to use the name of the Union, or any machinery of the Union, in connection with any appeal for funds or establishment of any subsidiary benefit connected with a Branch, unless the conditions stated hereunder are accepted and the requisite official sanction obtained:-

19.8.1 That the accounts of such funds and all documents in connection therewith shall be open at all times to inspection by the Union accountants.

19.8.2 That in the case of a regional or local appeal the permission and sanction of the Regional Committee shall be first obtained, and thereafter is subject to the endorsement of the Executive Council.

19.8.3 That in the case of a national appeal the permission and sanction of the Executive Council shall be first obtained.

19.8.4 Where such funds are properly raised they are included in the consolidated accounts of the Union and be subject to the requirements in clauses 1 and 2 of this rule.

19.9 In accordance with Section 30 of the Trade Union and Labour Relations (Consolidation) Act, 1992, any member of the Union has the right to access to any accounting records

of the Union which are available for inspection and which relate to periods including a time when that person was a member of the Union.

19.10 There shall be a national access fund for the provision of British Sign Language/English Interpreters, communication support, or other forms of support as required by Deaf of disabled members to that they may access branch meetings, national meetings or other Union events.

RULE 20. ASSETS AND TRUSTEE PROVISION

20.1 All property of the Union shall be held by a trustee company specified by the Executive Council (hereinafter called the Trustee Company) in trust for the Union in accordance with the provisions of these rules. For the avoidance of doubt, the property of the Union includes all funds and assets of the Union and its constituent bodies.

20.2 The Trustee Company shall invest, dispose of or otherwise deal with the funds and other assets of the Union in accordance with the instructions of the Executive Council. Subject to the provisions of these rules, the Executive Council shall have complete discretion how to instruct the Trustee Company to invest, dispose of or otherwise deal with the property of the Union.

20.3 All property (including all books, effects, funds or other assets) which immediately prior to the date of these rules coming in to effect was held by or in trust for or otherwise on behalf of the Amicus or TGWU Sections of the Union or the former trade unions Amicus or TGWU, or any committee, council, Branch, or other body of one of those sections or unions, shall be the property of the Union and shall be dealt with in accordance with the instructions of the Executive Council.

20.4 Trustee

20.4.1 The Trustee Company is the trustee of the Union.

20.4.2 The Executive Council may appoint and remove a second trustee where necessary to facilitate disposal of Union property, and solely for such purpose.

20.5 Trustee Company

20.5.1 The Directors of the Trustee Company shall consist of

20.5.1.1 Directors appointed by and from the Executive Council.

20.5.1.2 The General Secretary.

20.5.2 A Director appointed by the Executive Council may be replaced by the Executive Council at any time.

20.5.3 Subject to the provisions of the Companies Act 2006, the Executive Council shall appoint and may at any time replace the company secretary of the Trustee Company.

20.5.4 Property which immediately prior to the coming into force of these rules was vested in other trustees (whether individual or corporate) in trust for the Union shall on the date of the coming into force of these rules vest in the Trustee Company.

RULE 21. EXPENSES

A lay member engaged on Union business shall be entitled to such reasonable expenses and in such circumstances as may be decided by the Executive Council provided that the method of calculating such expenses and any subsequent alteration thereto must be reported to and shall cease to have effect unless ratified by the next Policy Conference of the Union. All expenses should be paid at the same rate and in the same manner across all disciplines i.e. constitutional committees, branches, education etc.

RULE 22. POLITICAL ORGANISATION – THE LABOUR PARTY

22.1 There shall be Regional and National Labour Party Liaison Committees composed of individual members of the Labour Party to co-ordinate the Union's work in the Labour Party, acting under the direction of the Executive Council.

22.2 Neither the Union, nor any constituent part of the Union, shall affiliate to or give support to the candidates of any other political party in Great Britain and Northern Ireland other than the Labour Party.

22.3 Each Branch of the Union in Great Britain and Northern Ireland shall be entitled to affiliate and elect delegates to Constituency Labour Parties in appropriate areas subject to agreement by the Regional Labour Party Liaison Committee and approval of the Executive Council.

22.4 A portion of the political fund, to be determined by the Executive Council, shall be remitted to each Region. The Executive Council will provide guidance to Regional Committees as to ownership and accountability for expenditure of their portion of the political fund.

22.5 Each Industrial Sector shall have a political forum, acting under the direction of the Executive Council and composed only of members in each sector who contribute to the Political Fund. There shall also be political forums for women members; Black and Asian ethnic minority members; disabled members; and lesbian, gay, bisexual and trans + members, elected in Sector based constituencies. The Industrial Sector Political Forums and Equality Political Forums shall make recommendations on actions relating to the industrial priorities in their sectors to be funded from the political fund.

22.6 All Branch Constituency Labour Party delegates together with representatives from the Regional Industrial Sector Committees, Area Activist Committees, Regional Equalities Committees and the Regional Committee, who are Labour Party members, shall be entitled to attend triennial Regional Labour Party Liaison Conferences. The Regional Labour Party Liaison Conferences shall elect Regional Labour Party Liaison Committees. Retired Member Plus, Community and Young Members are eligible to

stand for election to Regional Labour Party Liaison Committees subject to meeting eligibility criteria specified elsewhere in these Rules. . The size and composition of the Regional Labour Party Liaison Committees shall be determined by the Executive Council from time to time. The Regional Labour Party Liaison Committees shall also elect delegates who, together with delegates from the Executive Council, shall form a National Labour Party Liaison Committee, the size of which shall be determined by Executive Council.

22.7 The Executive Council shall designate a Regional Political officer in each Region, who shall act as Secretary to the Regional Labour Party Liaison Conference and Regional Labour Party Liaison Committee. Any individual Regional Political Officer may also have other responsibilities. The Executive Council is free to designate this role to a different employee at any time as it sees fit.

22.8 The Union shall be represented at the Labour Party Annual Conference by the National Labour Party Liaison Committee and others as determined by the Executive Council. The Regional Labour Party Liaison Committees shall represent the Union at the Labour Party regional conference.

22.9 The Union shall enter into Labour Party Constituency Development Plans subject to agreement by the Regional and National Labour Party Liaison Committees and sanction of the Executive Council.

22.10 The Union shall support a parliamentary group of Labour Party MPs who are members of the Union. Such support shall be determined by the Executive Council.

22.11 The Union shall maintain a panel of members wishing to seek political office including becoming member of the UK, Scottish, Welsh Assembly and European Parliaments and any such other public bodies as the Executive Council may decide. The Union will only formally endorse candidates who have held elected lay office as representatives of workers. Unite the Union Representatives will be given priority. The composition, including the process required to become a member of the panel, shall be determined by the Executive Council..

22.12 The union's representation on the Labour Party's committee structure should, so far as is practicable, be made up equally of lay members and union officials, subject to ratification by the Executive Council or Regional Committee as appropriate

RULE 23. POLITICAL FUND

Political Fund – Other than in Northern Ireland

23.1 The objects of the Union shall include the furtherance of the political objects to which section 72 of the Trade Union and Labour Relations (Consolidation) Act 1992 (the Act) applies, these objects are:

23.1.1 The expenditure of money –

23.1.1a on any contribution to the funds of, or on the payment of expenses incurred directly or indirectly by, a political party;

23.1.1b on the provision of any service or property for use by or on behalf of any political party;

23.1.1c in connection with the registration of electors, the candidature of any person, the selection of any candidate or the holding of any ballot by the Union in connection with any election to a political office;

23.1.1d on the maintenance of any holder of a political office;

23.1.1e on the holding of any conference or meeting by or on behalf of a political party or of any other meeting the main purpose of which is the transaction of business in connection with a political party;

23.1.1f on the production, publication or distribution of any literature, document, film, sound recording or advertisement the main purpose of which is to persuade people to vote for a political party or candidate or to persuade them not to vote for a political party or candidate.23.2 Where a person attends a conference or meeting as a delegate or otherwise as a participator in the proceedings, any expenditure incurred in connection with his/her attendance as such shall, for the purposes of 23.1.1e above, be taken to be expenditure incurred on the holding of the conference or meeting.

23.3 In determining, for the purposes of paragraphs 23.1.1a to 23.1.1f, whether the Union has incurred expenditure of a kind mentioned in those paragraphs no account shall be taken of the ordinary administrative expenses of the Union.

23.4 In these objects –

"candidate" means a candidate for election to a political office and includes a prospective candidate;

"contribution", in relation to the funds of a political party, includes any fee payable for affiliation to, or membership of, the party and any loan made to the party;

"electors" means electors at any election to a political office;

"film" includes any record, however made, of a sequence of visual images, which is capable of being used as a means of showing that sequence as a moving picture;

"local authority" means a local authority within the meaning of section 270 of the Local Government Act 1972 or section 235 of the Local Government (Scotland) Act 1973; and

"political office" means the office of member of Parliament, member of the European Parliament or member of a local authority or any position within a political party.

23.5 Any payments in the furtherance of such political objects shall be made out of a separate fund of the Union (hereinafter called the political fund).

23.6 The particular rules which apply to those people that joined the Union and to political funds set up before 1st March 2018 are set out in Schedule PF1 to these rules.

23.7 The particular rules which apply to those people that joined the Union and to politicial funds set up after 28th February 2018 are set out in Schedule PF2 to these rules.

23.8 A member who is exempt from the obligation to contribute to the political fund of the union shall not be excluded from any benefits of the union, or placed in any respect either directly or indirectly under any disability or disadvantage as compared with other members of the union (except in relation to the control or management of the political fund) by reason of his being so exempt.

23.9 If any member alleges that s/he is aggrieved by a breach of any of these rules for the political fund, being a rule or rules made pursuant to section 82 of the 1992 Act, s/he may complain to the Certification Officer, and the Certification Officer, after making such enquiries as s/he thinks fit and after giving the complainant and the union an opportunity of being heard, may, if s/he considers that such a breach has been committed, make such order for remedying the breach as s/he thinks just in the circumstances. Any such order of the Certification Officer may, subject to the right of appeal provided by section 95 of the 1992 Act, be enforced in the manner provided for in section 82(4) of the 1992 Act.

23.10 Contribution to the political fund of the union shall not be made a condition for admission to the union.

23.11 The union shall include in the annual return that is submitted to the Certification Officer details of political expenditure as required by section 32ZB of the 1992 Act.

23.12 The union shall ensure that a copy of the political fund rules is available, free of charge, to any member of the union who requests a copy.

PF1

Rules that apply to members that joined the Union before 1st March 2018

23.13 As soon as is practicable after the passing of a resolution approving the furtherance of such political objects as an object of the Union the Executive Council shall ensure that a notice in the following form is given to all members of the Union in accordance with this rule:-

Trade Union and Labour Relations (Consolidation) Act 1992 (as amended)

A resolution approving the furtherance of political objects within the meaning of the above Act as an object of the Union has been adopted by a ballot under the Act. Any payments in the furtherance of any of those objects will be made out of a separate fund, the political fund of the Union

Every member of the Union has a right to be exempt from contributing to that fund. A form of exemption notice can be obtained by or on behalf of any member either by application at, or by post from, the head office or any branch office of the Union or from the Certification Officer Certification Office, 8th Floor, Windsor House, 50 Victoria Street, London SW1H 0TL.**.**

This form, when filled in, or a written request in a form to the like effect, should be handed or sent to the secretary of the branch to which the member belongs.

The notice shall be published to members by such methods as are customarily used by the Union to publish notices of importance to members and shall include the following minimum requirements. The notice shall be published in the Union's main journal which

is circulated to members and be available on the Union's website. The secretary of each branch shall supply a copy to any member on request.

23.14 Any member of the Union may at any time give notice on the form of exemption notice specified in Clause (15) or by a written request in a form to the like effect, that he/she objects to contribute to the political fund. A form of exemption notice may be obtained by, or on behalf of, any member, either by application at, or by post from, the head office or any Branch office of the Union, or from the Certification Officer Certification Office, 8th Floor, Windsor House, 50 Victoria Street, London SW1H 0TL.

23.15 The form of exemption notice shall be as follows:-

Unite the Union

POLITICAL FUND EXEMPTION NOTICE

I hereby give notice that I object to contributing to the political fund of the Union and am in consequence exempt, in the manner provided by Chapter VI of the Trade Union and Labour Relations (Consolidation) Act 1992, from contributing to that fund.

Signature .....

Name .....

Address .....

Name of Branch .....

Membership No ..... Date .....

23.16 Any member may obtain exemption by sending such notice to the secretary of the Branch to which the member belongs and, on receiving it, the secretary shall send an acknowledgement of its receipt to the member at the address in the notice, and shall inform the General Secretary of the name and address of that member.

23.17 On giving such notice, a member shall be exempt, so long as his/her notice is not withdrawn, from contributing to the political fund of the Union as from either: (a) the first day of January next after notice by the member is given, or, (b) in the case of a notice given within one month after the notice given to members under Clause (13) or after the date on which a new member admitted to the Union is supplied with a copy of these rules under Clause (12) as from the date on which the member's notice is given.

23.18 The Executive Council shall give effect to the exemption of members to contribute to the political fund of the Union by relieving any members who are exempt from the payment of part of any periodical contributions required from the members of the Union towards the expenses of the Union as provided and such relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment.

23.19 For the purposes of enabling each member of the Union to know as respects any such periodical contribution what portion, if any, of the sum payable by him/her is a

contribution to the political fund of the Union, it is hereby provided that a sum equal to seventy percent of the weekly contribution rate of a full time member payable in the first week of each quarter is a contribution to the political fund and any member who is exempt shall be relieved from the payment of the said sum and shall pay the remainder of such contribution only.

PF2

Rules that apply to members that joined the Union after 28th February 2018

23.20 A member cannot be required to make a contribution to the political fund of the union unless they have given notice of their willingness to contribute to that fund (an "opt-in notice").

23.21 A member of a trade union who has given an opt-in notice may withdraw that notice by giving notice to the union (a "withdrawal notice").

23.22 A withdrawal notice takes effect at the end of the period of one month beginning with the day on which it is given.

23.23 A member of a trade union may give an opt-in notice or a withdrawal notice:-

(a) by delivering the notice (either personally or by an authorised agent or by post) at the head office or a branch office of the union;

(b) by sending it by e-mail to the following email address membership@unitetheunion.org

(c) by completing an electronic form provided by the union which sets out the notice and sending it to the union by electronic means with instructions by the union.

(d) by any other electronic means prescribed under the 1992 Act (as inserted by the 2016 Act)

23.24 The union shall take all reasonable steps to secure that, not later than the end of the period of eight weeks beginning with the day on which the annual return of the union is sent to the Certification Officer, all the members of the union are notified of their right to give a withdrawal notice.

23.25 Such notification may be given:-

(a) by sending individual copies of it to members; or

(b) by any other means (whether by including the notification in a publication of the union or otherwise) which it is the practice of the union to use when information of general interest to all its members needs to be provided to them.

23.26 The notification may be included with the statement required to be given by Section 32A of the Trade Union and Labour Relations (Consolidation) Act 1992.

23.27 A trade union shall send to the Certification Officer a copy of the notification which is provided to its members in pursuance of this section as soon as is reasonably practicable after it is so provided.

23.28 Where the same form of notification is not provided to all the members of the union, the union shall send to the Certification Officer a copy of each form of notification provided to any of them.

23.29 The Executive Council shall give effect to the exemption of members to contribute to the political fund of the Union by relieving any members who are exempt from the payment of part of any periodical contributions required from the members of the Union towards the expenses of the Union as provided and such relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment.

23.30 For the purposes of enabling each member of the Union to know as respects any such periodical contribution what portion, if any, of the sum payable by him/her is a contribution to the political fund of the Union, it is hereby provided that a sum equal to 10p per week or other such rate as time to time determined by the Executive Council is a contribution to the political fund and any member who is exempt shall be relieved from the payment of the said sum and shall pay the remainder of such contribution only.

23.31 Any form (including an electronic form) that a person has to complete in order to become a member of the union shall include:-

(a) a statement to the effect that the person may opt to be a contributor to the fund; and

(b) a statement setting to the effect that a person who chooses not to contribute to the political fund shall not, by reason of not contributing, be excluded from any benefits of the union or be placed in any respect either directly or indirectly under a disability or at a disadvantage as compared with other members of the union (except in relation to control of the political fund).

23.32 If any member alleges that s/he is aggrieved by a breach of any of these rules for giving information to members about opting into the political fund, being a rule or rules made pursuant to section 84A of the 1992 Act, s/he may complain to the Certification Officer. Where the Certification Officer is satisfied that the union has failed to comply with a requirement of section 84A of the 1992 Act the Officer may make such order for remedying the failure as s/he thinks just under the circumstances. Before deciding the matter the Certification Officer:-

(a) may make such enquiries as the Officer thinks fit;

(b) must give the union, and any member of the union who made a complaint to the Officer regarding the matter, an opportunity to make written representations; and

(c) may give the union, and any such member as is mentioned in clause (b), an opportunity to make oral representations.

Political Fund – Northern Ireland

23.33 Under Article 59 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 no Northern Ireland member of the union shall be required to make any contribution to the political fund of the union as defined by Clause 1 of this Rule unless he/she has given to the Union notice in writing of his/her willingness to contribute to that Fund (an “opt-in” notice)

23.34 Any form (including an electronic form) that a person has to complete in order to become a member of the union shall include a statement to the effect that the person may opt to be a contributor to the Fund (an “opt-in” notice)

23.35 A Northern Ireland member of the union who has given an opt-in notice may withdraw that notice by giving notice to the union (a “withdrawal notice”)

23.36 A Northern Ireland member giving a withdrawal notice shall be deemed to have withdrawn as from the first day of January next after the delivery of the notice of withdrawal.

23.37 The notices referred to in Clause 33 -35 may be delivered personally by the member or by an authorised agent of the member, and any notice shall be deemed to have been delivered at the head or Branch office of the Union if it has been sent by post properly addressed to that office.

23.38 The Executive Council shall give effect to the exemption of Northern Ireland members to contribute to the political fund of the Union by relieving those members who are legally exempt from the payment of part of any periodical contributions required from the members of the Union towards the expenses of the Union as provided and such relief shall be given as far as possible to all members who are exempt on the occasion of the same periodical payment.

23.39 For the purpose of enabling each Northern Ireland member, who has opted to pay to the political fund, to know as respects any such periodical contribution what portion of the sum payable by him/her is a contribution to the political fund of the Union, it is hereby provided that:

(i) For members who joined before 1st March 2018 a sum equal to seventy percent of the weekly contribution rate of a full time member payable in the first week of each quarter is a contribution to the political fund and any member who is exempt shall be relieved from the payment of the said sum and shall pay the remainder of such contribution only.

(ii) For members who joined after 1st March 2018 a sum equal to 10 pence per week or other such rates as from time to time determined by the Executive Council is a contribution to the political fund and any member who is exempt shall be relieved from the payment of the said sum and shall pay the remainder of such contribution only

23.40 Northern Ireland members who are statutorily exempt from the obligation to contribute to the political fund of the Union shall not be excluded from any benefits of the Union, or placed in any respect either directly or indirectly under any disability or disadvantage as compared with other members of the Union (except in relation to the control or management of the political fund) by reason of their being exempt.

23.41 Contribution to the political fund of the Union shall not be made a condition for admission to the Union.

23.42 If any Northern Ireland member alleges that he/she is aggrieved by a breach of any of the rules made pursuant to Article 59 of the Trade Union and Labour Relations (Northern Ireland) Order 1995 he/she may complain to the Northern Ireland Certification Officer, 10-16 Gordon Street, Belfast, BT1 2LG, under Article 57 (2) to (4) of that Order.

23.43 If after giving the complainant and a representative of the Union an opportunity to be heard, the Certification Officer considers that a breach has been committed, he/she may make an order for remedying it as he/she thinks just in the circumstances. Under Article 70 the Industrial Relations (N.I.) Order 1992 (as amended) an appeal against any decision of the Certification Officer may be made to the Court of Appeal on a question of law.

23.44 Additionally, if any Northern Ireland member alleges that he/she is aggrieved by a breach of the political fund rules made pursuant to section 82 of the Trade Union and Labour Relations (Consolidation) Act 1992 he/she may complain to the GB Certification Officer, Certification Office, 8th Floor, Windsor House, 50 Victoria Street, London SW1H 0TL.. If, after giving the complainant and representative of the Union an opportunity of being heard, the GB Certification Officer considers that a breach has been committed, he/she may make an order for remedying it as he/she thinks just in the circumstances. Any such order of the GB Certification Officer is subject to the right of appeal provided for by section 82 (4) of the 1992 Act.

Political Fund – Republic of Ireland

23.45 Clauses (1) – (19) (bar 5 and 6) of this rule shall have effect for all members in the Republic of Ireland subject to the following modifications:

23.45.1 all references to statutory provisions therein shall be construed as references to the appropriate legislation in the Republic of Ireland.

23.45.2 “political office” means the office of President, member of Dail Eireann, member of Seanad Eireann, member of the European Parliament, or any member of a local authority.

23.45.3 Forms of exemption notice may be obtained at or by post from any Union office within the Republic of Ireland.

23.45.4 A sufficient number of the forms of exemption notice shall be available at each office of the Union within the Republic of Ireland and any member shall be provided with a copy of such form on his/her request.

RULE 24. IRELAND

24.1 There shall be an Irish Executive Committee which shall make decisions in matters of an industrial or political nature which arise out of and in connection with the economic or political condition of the Republic of Ireland or Northern Ireland and which are of direct concern to members of the Union resident in the Republic of Ireland or Northern Ireland and which do not affect members of the Union not so resident. Each member of the Irish Executive Committee shall be resident in the Republic of Ireland or Northern Ireland.

24.2 The Irish Executive Committee shall be composed of elected lay members who are resident in the Republic of Ireland or Northern Ireland.

24.3 The size and composition of the Irish Executive Committee shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

24.4 The procedure for qualifications, election and nomination of representatives to the Irish Executive Committee shall be determined by the Executive Council. The Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with appropriate constitutional committees in Ireland.

24.5 The Irish Executive Committee shall take the place and have the powers, duties and responsibilities of the Regional Committee for Ireland. The Regional Secretary shall act as secretary to the Irish Executive Committee and shall be responsible for implementing its decisions.

24.6 The Irish Executive Committee shall meet once a quarter or more frequently if, in the opinion of the Regional Secretary, the business renders it necessary. The Regional Secretary is responsible for convening all meetings.

24.7 The Irish Executive Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.

24.8 The Executive Council, in consultation with the Irish Executive Committee, shall determine the number of delegates to be elected to the conferences/congresses of organisations in Ireland to which the Union is affiliated.

24.9 In alternate years to the Union's Policy Conference there shall be an Irish Policy Conference, the size and composition of which shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

24.10 For the purpose of electing delegates to the Irish Policy Conference the Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with Irish Executive Committee.

24.11 The procedure for qualifications, election and nomination of representatives to the Irish Policy Conference shall be determined by the Executive Council in consultation with the Irish Executive Committee.

24.12 The Irish Executive Committee shall determine the number of policy motions which may be submitted by the Branch; area regional; industrial and equalities structures, and from the Irish Executive Committee itself. The Irish Executive Committee shall submit a report to the Irish Policy Conference on the activities of the Union within Ireland.

24.13 The chair of the Irish Executive Committee shall chair the Irish Conference.

24.14 Resolutions of the Irish Conference concerning general policy matters affecting members employed in the Republic shall, provided they are not inconsistent with the general policy and objectives of the Union, constitute the policy of the Union in the Republic and shall be binding upon the Irish Executive Committee.

24.15 In respect of each Industrial Sector, the Executive Council shall determine, in consultation with the Irish Executive Committee, whether to convene separate Sector Conferences for the Republic of Ireland and Northern Ireland instead of convening a Regional Sector Conference for the whole of Ireland. Policy decisions of a Sector Conference for the Republic of Ireland shall decide the Union's policy in the Republic for that sector provided they are not inconsistent with the general policy and objectives of the Union.

RULE 25. REPUBLIC OF IRELAND – STRIKES AND OTHER INDUSTRIAL ACTION

25.1 The provisions of this rule shall apply notwithstanding any other provision contained in these rules.

25.2 In this rule the terms “strike” and “industrial action” shall have the same meaning as in the Industrial Relations Act 1990 of the Republic of Ireland.

25.3 In this rule the term “member” shall have the same meaning as elsewhere in these rules.

25.4 The provisions of this rule shall apply to the Republic of Ireland only.

25.5 The Union shall not organise, participate in, sanction or support a strike or other industrial action without a secret ballot, entitlement to vote in which shall be accorded equally to all members whom it is reasonable at the time of the ballot to believe will be called upon to engage in the strike or other industrial action.

25.6 The Union shall take reasonable steps to ensure that every member entitled to vote in the ballot votes without interference from, or constraint imposed by, the Union or any of its members, officials or employees and, so far as is reasonably possible, that such members shall be given a fair opportunity of voting.

25.7 The Irish Executive Committee shall have full discretion in relation to organising, participating in, sanctioning or supporting a strike or other industrial action notwithstanding that the majority of those voting in the ballot, including an aggregate ballot referred to in clause (8) of this rule, favours such strike or other industrial action.

25.8 The Irish Executive Committee shall not organise, participate in, sanction or support a strike or other industrial action against the wishes of a majority of the Union’s members voting in a secret ballot, except where, in the case of a ballot by more than 1 trade union, an aggregate majority of all the votes cast favours such strike or other industrial action.

25.9 Where the outcome of a secret ballot conducted by the Union or in the case of ballots conducted by the Union and any number of other trade unions which are affiliated to the Irish Congress of Trade Unions an aggregate majority of all the votes cast is in favour of supporting a strike organised by another trade union, a decision to take such supportive action shall not be implemented by the Union without the sanction of the Irish Congress of Trade Unions.

25.10 As soon as practicable after the conduct of a secret ballot the Union shall take reasonable steps to make known to the members of the Union entitled to vote in the ballot:

25.10.1 the number of ballot papers issued

25.10.2 the number of votes cast

25.10.3 the number of votes in favour of the proposal

25.10.4 the number of votes against the proposal, and

25.10.5 the number of spoiled votes.

25.11 Nothing in this rule shall constitute an obstacle to negotiations for the settlement of a trade dispute nor the return to work by members of the Union party to the trade dispute, and any decision take in accordance with this rule to organise, participate in, sanction or support a strike or industrial action may be rescinded or amended without the necessity of a further ballot of the members concerned.

RULE 26. ISLE OF MAN

The Union shall Register with the relevant Isle of Man authorities in accordance with the laws applying thereto including the Trade Unions Act 1991.

RULE 27. MEMBERSHIP DISCIPLINE

27.1 A member may be charged with:

27.1.1 Acting in a way contrary to the rules or any duty or obligation imposed on a member by or pursuant to these rules whether in his/her capacity as a member, a holder of lay office or a lay representative of the union or otherwise bringing the union into disrepute.

27.1.2 Being a party to any fraud on the Union or any misappropriation or misuse of its funds or property.

27.1.3 Knowingly, recklessly or in bad faith providing the Union with false or misleading information relating to a member or any other aspect of the Union's activities.

27.1.4 Inciting, espousing or practising discrimination, harassment or intolerance amongst members on grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, or sexual orientation.

27.1.5 Bringing about injury to or discredit upon the Union or any member of the Union including the undermining of the Union, branch or workplace organisation and individual workplace representatives or branch officers.

27.1.6 Obtaining membership of the Union by false statement material to their admission into the Union or any evasion in that regard.

27.1.7 Breach of Union policy on harassment, dignity and respect, which will include cyber bullying and harassment.

27.2 Disciplinary Hearings shall be organised and conducted under directions issued by the Executive Council. These directions ensure that the process is fair and conducted in accordance with the principles of natural justice.

27.3 A charge under this rule may be heard by a Branch, Branch Committee (where so determined by the Branch), Regional Committee or the Executive Council. The

Executive Council may delegate to a sub-committee of the Executive Council. It would be usual practice that disciplinary charges would be heard at branch level in the first instance. Disciplinary charges deemed to be of a serious nature may be initiated by the Regional committee or Executive Council.

27.3.1 Serious allegations of breach of Clauses 27.1.1. to 27.1.7 may be referred directly to the General Secretary. The General Secretary will appoint a senior employee of the Union to conduct an investigation which may lead to disciplinary charges being laid on behalf of the Executive Council.

27.3.2 Allegations of serious breaches of clauses 27.1.1 to 27.1.7 which are considered to be vexatious, malicious or defamatory may be considered a breach of Rule and liable to be referred to this disciplinary procedure.

27.4 The Executive Council or the relevant Regional Committee may suspend a member charged under this rule from holding any office or representing the Union in any capacity pending its decision. A member shall be given written notice (or, if the member was informed verbally confirmation in writing) of any such suspension as soon as is reasonably practicable. In cases of a serious nature, as a precautionary measure, a member under investigation prior to disciplinary charges being laid may be suspended from holding office or representing the union in any capacity.

27.4.1 A member under disciplinary investigation or charged with a disciplinary offence, including workplace representatives or branch officers suspended from holding office, may not attend:

- Meetings of his/her own branch;
- Meetings of other branches of the Union; or,
- Constitutional committee meetings of the Union

Other than as part of the disciplinary process as set out in this Rule.

27.4.2 If allegations against a member are proven to be unfounded they will be restored in good standing. If appropriate, their credentials will be restored.

27.5 The range of disciplinary sanctions shall include the following:

27.5.1 censure;

27.5.2 withdrawal of workplace credentials;

27.5.3 removal from office;

27.5.4 barring from holding office and

27.5.5 expulsion.

27.6 The full range of disciplinary sanctions shall be available to the Executive Council and Regional Committees; however the range of disciplinary sanctions for other bodies shall be limited to the following:

27.6.1 Branch, shall have the power to censure;

27.7 Appeals

27.7.1 A member shall have the right to appeal against any disciplinary sanctions.

27.7.2 In the case of a sanction imposed by a Branch, or Branch Committee, the appeal shall be to the Regional Committee, whose decision shall be final.

27.7.3 In the case of a sanction imposed by a Regional Committee the appeal to shall be to the Executive Council, whose decision shall be final.

27.7.4 In the case of disciplinary action initiated by the Executive Council the appeal shall be to an Appeals Committee elected from the Policy Conference, whose decision shall be final. Such an Appeals Committee shall be constituted on the basis of at least one delegate from each Region, under a procedure to be agreed by the Executive Council. There shall be an eligibility criterion to serve on the Appeals Committee of at least 5 years continuous membership of the Union .

27.8 An employee may not be charged under this rule in respect of any alleged act or omission in connection with the performance of his/her duties as a full time officer and/or employee of the Union. Complaints against employees shall be investigated under the Members' Complaints Procedure agreed by the Executive Council and if disciplinary action is deemed appropriate this shall be executed under the procedures negotiated with employees' representative bodies for that purpose.

RULE 28 COMMUNITY/STUDENT MEMBERS

28.1 Unite Community Membership shall be open to all not in paid employment as well as those not seeking employment. The sections aims are to organise, campaign, protest and mobilise, both independently as well as alongside our industrial, young and retired members, in order to progress matters of interest and/or concern to our community and wider industrial membership, provided that such activities are not inconsistent with the general policy and objectives of the Union.

28.2 Other than vocational students, who shall be organised within the appropriate industrial sector, Community and Student Members shall be organised in local groups and wider Area Community Branches. In each Region there shall be Regional Community Campaign Forum meetings as appropriate, in order to plan, coordinate, organise and evaluate campaigns and activities. There shall be National Community Campaign Forum meetings as appropriate, drawn from activists at the regional level.

28.3 Each Regional Community Campaign Forum shall elect an observer to sit on the Regional Committee, who shall not have voting rights at that committee.

28.4 Each Regional Community Campaign Forum may submit a motion to be considered by the Regional Committee.

28.5 Where there is a Regional Community Campaign Forum and the Community Membership is large and resilient enough the Executive Council may decide to transform the forum into a Regional Community Membership Committee.

28.6 There shall be a national conference of Community Members held every two years. The Executive Council shall be responsible for convening this conference which shall be made up of delegates elected by the Regional Community Campaign Forums. The decisions of this conference will be subject to ratification by the Executive Council.

28.7 The National Community Campaign Forum shall elect an observer to the National Labour Party Liaison Committee.

28.8 When the Executive Council is content that the Community Membership is of a sufficient size they may elect an observer from the National Community Campaign Forum to the Executive Council.

28.9 Community/Student Member activists are entitled to attend Area Activists Meetings and the Regional Labour Party Liaison Conference (if Unite GC delegates) and to stand for election for at least 2 defined Community/Student Member seats on Area Activist Committees and Regional Labour Party Liaison Committees, elected by Community/Student Members attending the Meeting.

RULE 29 SCOTLAND

29.1 There shall be a Scottish Executive Committee which shall make decisions in matters of an industrial or political nature which arise out of and in connection with the economic or political condition of the Scotland and which are of direct concern to members of the Union in Scotland and which do not affect other members of the Union.

29.2 The size and composition of the Scottish Executive Committee shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

29.3 The procedure for qualifications, election and nomination of representatives to the Scottish Executive Committee shall be determined by the Executive Council. The Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with appropriate constitutional committees in Scotland.

29.4 The Scottish Executive Committee shall take the place and have the powers, duties and responsibilities of the Regional Committee for Scotland. The Regional Secretary shall act as secretary to the Scottish Executive Committee and shall be responsible for implementing its decisions.

29.5 The Scottish Executive Committee shall meet once a quarter or more frequently if, in the opinion of the Regional Secretary, the business renders it necessary. The Regional Secretary is responsible for convening all meetings.

29.6 The Scottish Executive Committee shall have power to appoint one or more sub-committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations

or any other proceedings or functions whatever which it is authorised by these rules to undertake.

29.7 The Executive Council, in consultation with the Scottish Executive Committee, shall determine the number of delegates to be elected to the conferences/congresses of organisations in Scotland to which the Union is affiliated.

29.8 In alternate years to the Union's Policy Conference there shall be a Scottish Policy Conference, the size and composition of which shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

29.9 For the purpose of electing delegates to the Scottish Policy Conference the Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with Scottish Executive Committee.

29.10 The procedure for qualifications, election and nomination of representatives to the Scottish Policy Conference shall be determined by the Executive Council in consultation with the Scottish Executive Committee.

29.11 The Scottish Executive Committee shall determine the number of policy motions which may be submitted by the Branch; area regional; industrial and equalities structures, and from the Scottish Executive Committee itself. The Scottish Executive Committee shall submit a report to the Scottish Policy Conference on the activities of the Union within Scotland.

29.12 The chair of the Scottish Executive Committee shall chair the Scottish Conference.

29.13 Resolutions of the Scottish Conference concerning general policy matters affecting members employed in the Scotland shall, provided they are not inconsistent with the general policy and objectives of the Union, constitute the policy of the Union in the Scotland and shall be binding upon the Scottish Executive Committee.

RULE 30 GIBRALTAR

30.1 Gibraltar shall have an Area Activist Meeting of lay members comprised of elected representatives from companies, sectors and branches based in Gibraltar. The first of these meetings in an electoral period shall elect a Gibraltar Committee for the purposes of local administration; the size and composition of which will be subject to the approval of the Executive Council. The Gibraltar Committee shall elect from its number an observer delegate to the Executive Council and who will brief the Gibraltar Committee after each Executive Council.

30.2 The Executive Council can agree where industrially, organisationally or politically relevant for observer or voting delegates to attend other constitutional committees and/or conference whether permanently or periodically. Such an undertaking would also extent to other appropriate delegations elected from regional constitutional committees.

RULE 31. OFFICIAL ANNOUNCEMENTS

The Union shall maintain a website and posting information on this website, together with either by post or e-mail to branch secretaries, all members of Regional Industrial Sector Committees, National Industrial Sector Committees, regional and national committees, shall be the official means of making announcements to members on matters of general interest concerning the affairs of the Union.

RULE 32. VOLUNTARY DISSOLUTION

32.1 The Union may be dissolved by a resolution supported by not less than 80% of votes cast in a postal ballot of all the members.

32.2 After discharging all debts and liabilities the remaining assets of the Union, if any, shall be distributed equally between the members at the date of dissolution on the basis of their complete years of membership, each year comprising one share, unless the members when voting for dissolution shall have resolved to the contrary.

RULE 33. EXERCISE OF UNION POWERS IN THE PENSION SCHEMES

Any power which continues to be exercisable by a sponsoring employer or by any body, officer or employee of that sponsoring employer by reference to the trust deeds and rules of the Unite Ireland Pension Scheme or of any legacy union pension scheme which has been merged directly or indirectly into the Unite Pension Scheme shall be exercisable by the Union. Any power which is exercisable by the Union under these trust deeds and rules or under the trust deeds and rules which govern the Unite Pension Scheme from time to time shall be exercisable by the Executive Council or by an individual or body to whom the Executive Council has delegated this power in writing on any basis which it decides.

RULE 34. HEALTH AND SAFETY

34.1 Each Region shall have an annual Regional Health and Safety Conference' all accredited Health and Safety representatives within the region to be invited to the Regional Conference.

34.2 Each Regional Committee to constitute a Regional Health & Safety Committee.

34.3 Two Health and Safety representatives from each region to be elected to a National Health & Safety Committee that will meet annually and provide a report to the Executive Council.

34.4 There will be one National Health and Safety Conference every three years made up from 20 accredited Health and Safety Representatives per Region.

RULE 35. WALES

35.1 There shall be a Welsh Executive Committee which shall make decisions in matters of an industrial or political nature which arise out of and in connection with the economic or political condition of Wales, which are of direct concern to members of the Union in Wales and which do not affect other members of the Union.

35.2 The size and composition of the Welsh Executive Committee shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

35.3 The procedure for qualifications, election and nomination of representatives to the Welsh Executive Committee shall be determined by the Executive Council. The Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with appropriate constitutional committees in Wales.

35.4 The Welsh Executive Committee shall take the place and have the powers, duties and responsibilities of the Regional Committee for Wales. The Regional Secretary shall act as secretary to the Welsh Executive Committee and shall be responsible for implementing its decisions.

35.5 The Welsh Executive Committee shall meet once a quarter or more frequently if, in the opinion of the Regional Secretary, the business renders it necessary. The Regional Secretary is responsible for convening all meetings.

35.6 The Welsh Executive Committee shall have power to appoint one or more sub Committees from among its members and, except where otherwise determined by the Executive Council, shall have the power to delegate to any such sub-committee all or any of its powers including therein the conduct of hearings, appeals, inquiries, investigations or any other proceedings or functions whatever which it is authorised by these rules to undertake.

35.7 The Executive Council, in consultation with the Welsh Executive Committee, shall determine the number of delegates to be elected to the conferences/congresses of organisations in Wales to which the Union is affiliated.

35.8 In alternate years to the Union's Policy Conference there shall be a Welsh Policy Conference, the size and composition of which shall be determined by the Executive Council provided that the gender and ethnic balance of elected representatives at least reflect proportionality of the membership they represent.

35.9 For the purpose of electing delegates to the Welsh Policy Conference the Executive Council may organise constituencies both by reference to Industrial Sectors and geographic area following consultation with the Welsh Executive Committee.

35.10 The procedure for qualifications, election and nomination of representatives to the Welsh Policy Conference shall be determined by the Executive Council in consultation with the Welsh Executive Committee.

35.11 The Welsh Executive Committee shall determine the number of policy motions which may be submitted by the Branch; area regional; industrial and equalities structures, and from the Welsh Executive Committee itself. The Welsh Executive Committee shall submit a report to the Welsh Policy Conference on the activities of the Union within Wales.

35.12 The chair of the Welsh Executive Committee shall chair the Welsh Conference.

35.13 Resolutions of the Welsh Conference concerning general policy matters affecting members employed in Wales shall, provided they are not inconsistent with the general policy and objectives of the Union, constitute the policy of the Union in the Wales and shall be binding upon the Welsh Executive Committee.

EXECUTIVE COUNCIL GUIDANCE - NOTICE TO MEMBERS:

The Executive Council issues guidance on the implementation of several of the rules contained in this book. This guidance is updated from time to time as required. The rule book should therefore be read in conjunction with the Executive Council Guidance on Rules.

The Executive Council Guidance is published on the Unite website. The relevant page can be reached using this link:

http://www.unitetheunion.org/growing-our-union/about-us/structure/

Appendix to Rule Book - List of Industrial Sectors:

- Aerospace and Shipbuilding
- Automotive Industries
- Chemical, Pharmaceuticals, Process and Textiles
- Civil Air Transport
- Community, Youth Workers and Not for Profit
- Docks, Rail, Ferries and Waterways
- Education
- Engineering, Manufacturing and Steel
- Energy and Utilities
- Finance and Legal
- Food, Drink and Agriculture
- Graphical, Paper, Media and Information Technology
- Health
- Local Authorities
- Government, Defence, Prisons & Contractors Industrial Sector
- Passenger Transport
- Road Transport Commercial, Warehousing and Logistics
- Service Industries
- Unite Construction, Allied Trades and Technicians

Annex 14

The Global Voice of Business

INTERNATIONAL ORGANISATION OF EMPLOYERS

DO ILO CONVENTIONS 87 AND 98 RECOGNISE A RIGHT TO STRIKE?

October 2014

DEAR MEMBERS,

In 2012, the International Labour Conference Committee on the Application of Standards (CAS) witnessed a "deadlock" which arose from the differing views of the Employers' and Workers' Groups on the issue of the right to strike.

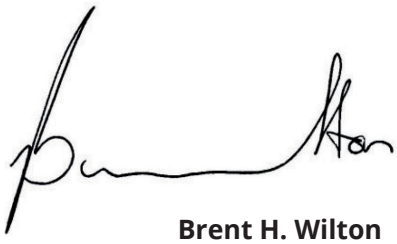
The controversy related to the way in which the right to strike is extensively interpreted by the Committee of Experts on the Application of Conventions and Recommendations (CEACR) on the basis of the 1949 "Freedom of Association and Protection of the Right to Organise" Convention (No. 87). For many years, the Employers have challenged the extension of the CEACR's mandate to provide interpretations of ILO Conventions, particularly Conventions 87 and 98, which in the Employers' view neither contain nor implicitly recognise any right to strike.

This paper aims to set out in detail the Employers' Group position vis-à-vis the CEACR's extensive interpretations on the right to strike and related regulation. For those entering this area of discussion for the first time, you may find it useful to refer to the glossary at the end of the paper, which defines many of the more technical terms used.

In the coming months, important discussions will take place in the ILO Governing Body to explore whether the constituents should resolve this issue by making recourse to the International Court of Justice, by establishing an ad-hoc internal tribunal, or by addressing the controversy through tripartite dialogue in line with the inherent structure of the Organization.

I hope you will find the paper useful in your engagements in this debate. Your comments and feedback are most welcome.

Yours sincerely,



Brent H. Wilton
Secretary-General

ILO Conventions 87 and 98

A RIGHT TO STRIKE IS NOT PROVIDED FOR IN ILO CONVENTIONS 87 OR 98 – NOR DID THE TRIPARTITE CONSTITUENTS INTEND THERE TO BE ONE AT THE TIME OF THE INSTRUMENTS' CREATION AND ADOPTION.

The legislative history of Convention No. 87 is indisputably clear. The 1948 preparatory ILO report states that *"the proposed convention relates only to freedom of association and not to the right to strike"*[1]. Moreover, in the discussions on C. 87 at the International Labour Conference (ILC) of 1947 and 1948, no amendments relating to a right to strike were adopted or even submitted.[2] Furthermore, when the Right to Organise and Collective Bargaining Convention,1949 (No. 98) was adopted, this subject was again examined *expressis verbis*.

In the course of subsequent discussions, the Chairman considered "not receivable" amendments tabled by two Workers and one Government delegate aimed at having a right to strike guaranteed in the Convention on the ground that *"the question of the right to strike was not covered by the proposed text, and that its consideration should therefore be deferred until the Conference took up item V of its agenda relating, inter alia, to the question of conciliation and arbitration."*[3] This question was not pursued the following year.

Paragraph 4 of the Voluntary Conciliation and Arbitration Recommendation No. 92 adopted in 1951 refers to strikes and lockouts in neutral language and does not attempt to regulate them.[4] Paragraph 7 of that Recommendation states that

> "A right to strike is not provided for in ILO Conventions 87 or 98 - nor did the tripartite constituents intend there to be one at the time of the instruments' creation and adoption."

1 ILC: 31st Session, 1948, Report VII, p. 87.
2 ILC, 81st session, 1994, Report III (Part 4B), para. 142
3 ILC, 32nd Session, Record of Proceedings, 1949, p. 468.
4 See text of Recommendation 92 of 1951 http://www.ilo.org/dyn/normlexen/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312430:NO

"No provision of this Recommendation may be interpreted as limiting, in any way whatsoever, the right to strike."[5] However, in addition to the fact that it is not binding, it does not itself recognise or regulate the right to strike. Convention No. 105 contains a reference to "strikes", but not to a "right to strike".

The Employers do not therefore dispute that references to strike action have been inserted in subsequent ILO Conventions, Recommendations and Resolutions. However, this does not alter the fact that there is no regulation of strike action in C. 87 or any other ILO instrument.

The ILO *"Resolution concerning trade union rights and their relation to civil liberties"*, adopted in 1970, invited the ILO Governing Body to undertake a study on the right to strike. It is noteworthy that worker and government members of the drafting committee stated that: *"while the right to strike was provided for in certain instruments adopted by other international organisations, no ILO instrument dealt with this right and the adoption of standards on this subject should be considered by the ILO"*[6].

Despite this background, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) maintains that the right to strike is based on Art. 3 of Convention No. 87, which states that: *"Workers' and employers' organizations shall have the right... to organize their administration and activities and to formulate their programmes"*, and Art. 10 which defines *"organization"*, within the meaning of the Convention, as any organization *"for furthering and defending the interests of workers or of employers"*[7].

The CEACR mentioned a right to strike for the first time in its third General Survey on the subject in 1959 in only one paragraph, and only with respect to public services. In subsequent surveys, the CEACR gradually expanded its views on the matter to seven paragraphs in 1973, 25 in 1983 and with a separate chapter of no fewer than 44 paragraphs in 1994 and 2012, including a number of new subjects. Worryingly, the CEACR in its 1994 General Survey paragraph 145 stated that: *"in the absence of an express provision on the right to strike in the basic text, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject"*. Such an assumption of prerogative has never been approved by either the Governing Body or the International Labour Conference (ILC).

On the basis of this interpretation, every year, the CEACR looks into numerous cases involving specific national provisions or practices restricting strike action. In approximately 90 to 98 per cent of these cases, the Experts conclude that restrictions on strike action, be they *de facto* or *de jure*, are not compatible with the Convention[8]. Thus they have formulated a comprehensive corpus of minutely-detailed strike law which amounts to a far-reaching, almost unrestricted, freedom to strike[9]. The occasional, theoretical restrictions are regarded as being hardly ever applicable to the actual situations reviewed.

"On the basis of this interpretation.... the CEACR looks into numerous cases involving specific national provisions or practices restricting strike action."

[5] See text of Recommendation 92 of 1951 http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312430:NO

[6] ILC record of Proceedings, 54th Session, 1970, Seventh Item on the Agenda, paragraph 12 and 25

[7] See in detail CEACR General Survey 1994 paras 136-179 and CEACR General Survey 2012 para 117

[8] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 283; see also Wisskirchen/Hess, Employers' handbook on ILO standards-related activities, Geneva 2001, p. 35.

[9] The 2012 and 1994 CEACR General Surveys devote 44 paragraphs to strikes. By contrast, in their 1959 report the experts referred to the possibility of a right to strike in only one paragraph, ILC, 43rd Session, 1959, Report III (Part IV), para 68.

The conclusion that strikes are not regulated by Convention 87 is confirmed by the preparatory work of the Convention and the circumstances of its conclusion. It is rightly pointed out by the Experts in the 1994 General Survey that the right to strike was referred to several times in the preparatory work, but there was no explicit proposal during the debate in the Conference[10]. However, the Experts' comments on the genesis of the Convention are incomplete, as the Office's preparatory report on the planned Convention on freedom of association excluded regulation of the right to strike after analysing governments' responses[11]. *"Several governments, while giving their approval to the formula, have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association"*[12]. This was again confirmed during debates in plenary. *"The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organise, but rather a concise statement of certain fundamental principles."*[13]

As stated above, when the Right to Organise and Collective Bargaining Convention was adopted, this subject was again examined *expressis verbis*. In the course of subsequent discussions, two Workers' delegates' and one Government delegate's proposals to have the right to strike guaranteed in the Convention were rejected. The record of proceedings noted: *"The Chairman ruled that this amendment was not receivable, on the ground that the question of the right to strike was not covered by the proposed text, and that its consideration should therefore be deferred until the Conference took up item V of its agenda relating, inter alia, to the question of conciliation and arbitration."*[14] This question was not pursued the following year.

It is also worth noting that the CEACR in its 2013 General Survey entitled "Collective bargaining in the public service: a way forward", covering the Labour Relations (Public Service) Convention, 1978 (No. 151), recalled that during the preparatory work for Convention No. 151 it was established that the Convention does not cover the right to strike.[15]

The CEACR also recalled that concerning the question of the right to strike and Convention No. 154, during the preparatory work for that Convention in 1980, an amendment was proposed by the Worker members and sub-amended by the Government member for Italy, adding: "The right to strike should not be affected by any measure taken by the public authorities with a view to promoting collective bargaining." However, it was rejected following a record vote requested by the Employers' members.[16]

At the time of the discussion of the General Survey in the Conference

[10] General Survey 1994, para 142.
[11] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 284.
[12] Report VII, 31st Session of the International Labour Conference, 1948, p. 87.
[13] ILC: 31st Session, 1948, Record of Proceedings, Appendix X, p. 477.
[14] ILC: 32nd Session, Record of proceedings, 1949, p. 468.
[15] International Labour Conference (ILC), 64th Session, 1978, Record of Proceedings , p. 25/9, report of the Committee on the Public Service, para. 62. See also the text of the CEACR General Survey 2013 ILC.102/III/1B, Para. 88 308 and 406
[16] See ILC, 66th Session, 1980, Record of Proceedings p. 41/9, Report of the Committee on Collective Bargaining, para. 66). See also the text of the CEACR General Survey 2013 ILC.102/III/1B, Para. 88 308 and 406

Committee on the Application of Standards (CAS) in 2014, the Employers' Group highlighted that it was positive to see that the CEACR considers the preparatory work in its explanations on the scope of the Convention. However, **Employers made it clear that they fail to understand why the CEACR did not consider the preparatory work on the same issue for C. 87, according to which it was also established that C. 87 would not deal with the right to strike.**

Other international instruments

IN 1994, THE CEACR MADE A VAGUE ALLUSION TO THE FACT THAT STRIKES ARE MENTIONED IN OTHER INTERNATIONAL INSTRUMENTS[17].

However, the Universal Declaration of Human Rights of 1948 is not relevant to this issue. Although it sets out many fundamental rights in general terms, these are only recommendations, and compliance is not obligatory[18].

Art. 22, para 1 of the International Covenant on Civil and Political Rights[19], and Art. 8, para 1 (d) of the International Covenant on Economic, Social and Cultural Rights[20] are more apposite. For several years, these Covenants formed the subject of negotiations aimed at drafting a single United Nations Human Rights Covenant. A motion to introduce a right to strike alongside freedom of association was, however, rejected.

After the text was split into the two above-mentioned Covenants, Art. 8 was given the wording quoted in footnote 15. On the whole, these rules have less binding force and the monitoring machinery is weaker than those of ILO Conventions[21]. The United Nations Human Rights Committee, in its decision of 18 July 1986[22], which expressly relied on the interpretation rules of the Vienna Convention on the Law of Treaties, concluded that the right of freedom of association embodied in Art. 22 of the International Covenant on Civil and Political Rights did not necessarily imply the right to strike and the authors of the Covenant did not have the intention of guaranteeing the right to strike. A comparative analysis of Art. 8, para 1 (d) confirmed that the right to strike could not be regarded as an implicit element of the right to form and join trade unions. And the right to strike under Art. 8, para 1 was clearly and expressly subordinated to the law of the country[23].

> "In 1994, the CEACR made a vague allusion to the fact that strikes are mentioned in other international instruments.... However, the Universal Declaration of Human Rights of 1948 is not relevant to this issue."

[17] General Survey, 1994, para 143: Art. 8 (1) of the International Covenant on Economic, Social and Cultural Rights refers to "...the right to strike, provided that it is exercised in conformity with the laws of the particular country".
[18] See Brupbacher, Fundamentale Arbeitsnormen der Internationalen Arbeitsorganisation, Eine Grundlage der sozialen Dimension der Globalisierung, Bern 2002, p. 10.
[19] United Nations: Human rights: A compilation of international instruments, Vol. I (First Part), Universal Instruments, Centre for Human Rights, ST/HR/Rev. 5 (Vol. I/Part 1), Geneva, 1994, p 28. Art. 22, para 1, reads *"Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests"*.
[20] United Nations: Human rights: A compilation of international instruments, Vol. I (First Part), Universal Instruments, Centre for Human Rights, ST/HR/Rev. 5 (Vol. I/Part 1), Geneva, 1994, p. 11. Art. 8, para 1 (d) reads: *"The States Parties to the present Covenant undertake to ensure: ... (d) The right to strike, provided that it is exercised in conformity with the laws of the particular countries."*
[21] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 286.
[22] United Nations Human Rights Committee: Report of the Human Rights Committee, General Assembly, 41st Session, Document A41/40, New York, 1986.
[23] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 286.

In proceedings before the United Nations Human Rights Committee, the complainants asserted that ILO organs had arrived at the conclusion that, in light of ILO Convention No. 87, the right of freedom of association necessarily presupposed the right to strike. The Committee replied that every international treaty had a life of its own and must be interpreted by the body entrusted with the monitoring of its provisions. In addition to these clear observations, the Committee stated that *"it has no qualms about accepting as correct and just the interpretation of those treaties by the organs concerned"*. The observations of the United Nations Human Rights Committee as to the separate lives of international treaties and that they must be interpreted by the competent body, can only be described as an amicable diplomatic statement without any binding force[24]. It was an obiter dictum from a committee which was, by its own avowal, not competent to deal with this matter. This is all the more true given that, according to Art. 37 of the ILO Constitution, the International Court of Justice alone can give binding interpretation of ILO standards.

In para 35 of the 2012 General Survey the CEACR stated *"it is also noteworthy that the right to strike is recognised in the Charter of the Organization of American States (Article 45(c)) and the Charter of Fundamental Rights of the European Union (Article 28), as well as in Article 27 of the Inter-American Charter of Social Guarantees, Article 6(4) of both the European Social Charter and the European Social Charter (Revised), Article 8(1)(b) of the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social and Cultural Rights ("Protocol of San Salvador", 1988) and Article 35(3) of the Arab Charter on Human Rights"*.

Without exception, these international instruments state that the right to strike is to be regulated by national laws and regulations, thus none constitute a source of authority for the recognition internationally of a right to strike, let alone one inhabiting C 87:

- **Charter of the Organisation of American States** Article 45 - The Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms:... c) Employers and workers, both rural and urban, have the right to associate themselves freely for the defence and promotion of their interests, including the right to collective bargaining and the workers' right to strike, and recognition of the juridical personality of associations and the protection of their freedom and independence, *all in accordance with applicable laws* [emphasis added];
- **Charter of Fundamental Rights of the European Union** Article 28 - Right of collective bargaining and action - Workers and employers, or their respective organisations, have, *in accordance with Community law and national laws and practices* [emphasis added], the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflicts of interest, to take collective action to defend their interests, including strike action.
- **Inter-American Charter of Social Guarantees** Article 27 - Workers have the right to strike. *The law shall regulate the conditions and exercise of that right [emphasis added].*
- **European Social Charter and European Social Charter**

"Without exception.... international instruments state that the right to strike is to be regulated by national laws and regulations."

[24] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 286.

(Revised) Article 6 – The right to bargain collectively - With a view to ensuring the effective exercise of the right to bargain collectively, the Parties undertake: ...3. to promote the establishment and use of appropriate machinery for conciliation and voluntary arbitration for the settlement of labour disputes; and recognise: 4. the right of workers and employers to collective action in cases of conflicts of interest, including the right to strike, *subject to obligations that might arise out of collective agreements previously entered into* [emphasis added].

- **Additional Protocol to the American Convention on Human Rights** in the area of Economic, Social and Cultural Rights Article 8 - Trade Union Rights - 1. The States Parties shall ensure: ...b. The right to strike. 2. The exercise of the rights set forth above may be *subject only to restrictions established by law, provided that such restrictions are characteristic of a democratic society and necessary for safeguarding public order or for protecting public health or morals or the rights and freedoms of others. Members of the armed forces and the police and of other essential public services shall be subject to limitations and restrictions established by law* [emphasis added].
- **Arab Charter on Human Rights** Article 35 - 3. Each State Party shall ensure the right to strike *provided that it is exercised in conformity with its laws* [emphasis added].

In 2002, the European Court of Human Rights (ECHR) deemed inadmissible a court case brought by the (Norwegian) Federation of Offshore Workers' Trade Unions against a negative decision by the Norwegian Supreme Court. The Norwegian Supreme Court determined that neither Convention No. 87, nor the International Covenant on Civil and Political Rights, contained detailed standards limiting State restrictions on the right to strike.[25]

The fact is that, when it came to setting standards in the ILO, a clear distinction was made between "freedom of association" on the one hand, and the "right to strike" on the other, to quote just the preparatory Office report regarding standard-setting on Convention 87: *"... Several Governments, while giving their approval to the formula, have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association."*[26]

Nevertheless, the CEACR assumes that there is a general principle allowing an extensive regulation on a right to strike. In its opinion, limitations require special justification which must be interpreted restrictively[27]. Two examples can be recalled: limitation of the right to strike by *"essential services"* is regarded as permissible **only** when the interruption of these services endangers the personal safety or health of the whole population or sections of the population. Thus, the national legislator is denied the right, in respect of the consequences of strikes, to fulfill a wider duty to protect and provide for the welfare of its citizens extending beyond their life and health. While the CEACR basically

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[25] Federation of Offshore Workers' Trade Unions v. Norway, Case No. 38190/97
[26] International Labour Conference, Record of Proceedings, 1948, Report VII, page 87
[27] General Survey 2012 para 127 and General Survey 1994, para 159.

considers the right to all forms of strikes to be guaranteed, it believes that an exception might be possible in the case of purely political strikes[28]. This wording is, however, virtually meaningless in findings concerning actual cases. The CEACR contends that strikes against government policy should always be permissible and that in practice this right to strike also encompasses strikes against a law on the day it is discussed in parliament[29]. The Experts are silent about the questionable nature of strikes against a freely elected parliament in a State governed by the rule of law.

"By applying this assumed right of interpretation, the CEACR is putting itself in the role of the constituents in determining the content of an international labour standard."

CEACR and the Committee on Freedom of Association

THE CEACR RELIES ON STATEMENTS FROM THE COMMITTEE ON FREEDOM OF ASSOCIATION (CFA) TO UNDERPIN ITS VIEWS.[30]

"The CEACR relies on statements from the Committee on Freedom of Association (CFA) to underpin its views."

This tripartite body was set up in 1951 by the Governing Body of the ILO. Its official duties are more or less identical to those of the Fact-Finding and Conciliation Commission on Freedom of Association, which was established in 1950.[31] The Fact-Finding Commission consisted of independent experts. Its job was to ascertain facts and to try to act as mediator and conciliator. However, as it could act only with the consent of the government concerned, it did not acquire the weight it was intended to have and was abandoned.

The CFA also concerns itself with questions of freedom of association in member States which have not ratified the relevant Conventions, i.e. Nos 87 and 98. For this reason, its recommendation cannot be deemed to be *"case law"* in the sense of an interpretation of the standards laid down in Conventions.

The work of the CFA is based on the call in the ILO Constitution to recognise the principle of freedom of association[32]. Even the representative of the World Federation of Trade Unions, Mr. Fischer, during the discussion prior to the creation of the CFA in 1950, stated that *"the proposed commission should have no connection, either as regards its terms of reference or as regards its activity, with the Convention concerning freedom of association adopted by the ILC. The World Federation of Trade Unions had persistently drawn attention to the inadequacy of these Conventions, which had in fact been ratified by only a very small number of countries. The Commission should carry out its work quite apart from these Conventions in such a manner as to afford an effective guarantee for the observance of trade union rights"*[33].

In short, the CFA has a broader political brief and cannot be seen to be either legislating or restricting itself to the disciplines of interpretation that would establish jurisprudence or a definitive application of the Convention as enacted.

"In 1994, the CEACR made a vague allusion to the fact that strikes are mentioned in other international instruments.... However, the Universal Declaration of Human Rights of 1948 is not relevant to this issue."

[28] In paragraph 165 of the 1994 General Survey the CEACR stated: " The Committee has always considered that strikes that are purely political in character do not fall within the scope of freedom of association. However, the difficulty arises from the fact that it is often impossible to distinguish in practice between the political and occupational aspects of a strike, since a policy adopted by a government frequently has immediate repercussions for workers or employers;....."

[29] See Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 287.

[30] See 2014 CEACR Report III (Part 1A) para 92 and 2012 General Survey para 117

[31] Minutes of the 110th Session of the Governing Body, 3-7 Jan. 1950, Appendix VI, para 4; ILC: 33rd Session, Record of Proceedings, 1950, pp 172 and 254-255.

[32] See Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 288.

[33] See Mr. Fischer intervention in Minutes of the 110th session fo the GB, 3-7 January 1950, p. 75

The Employers protested unambiguously at an early stage against deviations[34]. To provide two examples, in 1953, the CFA report stated concerning Mr Pierre Waline, Employer member of the Governing Body Committee on Freedom of Association (CFA): "(...) *Thirdly, the Committee had also had to deal with cases which, while they appeared to involve events of a social complexion, did not relate directly to freedom of association but rather to the right to strike, and whereas there were existing Conventions in the field of freedom of association, even though they could serve only for guidance and not as absolute rules, there were no provisions concerning the right to strike either in the Constitution or in any of the Conventions adopted by the International Labour Conference. In many cases the right to strike was the basic justification of the demands made by the workers. Personally he did not oppose it, but it was legitimate to take the view, which had in fact been taken by those responsible for drafting the French Constitution, that the right to strike should be subject to regulation. There was, however, no international instrument regulating the right to strike which would authorise bodies related to the ILO to pass judgment on the national regulations in force in any given country (emphasis added). That being so, he was bound to oppose any attempt by the Committee of Freedom of Association to depart from the field of freedom of association proper and to encroach on that of the right to strike, which in his view should be considered only in so far as it affected freedom of association."*[35]. Also in 1953, in a case regarding Turkey (No. 59), the Committee on Freedom of Association considered: *"…. admittedly, Convention No. 87 does not deal with the right to strike…"*[36].

For obvious reasons, no issue was made of strike action during the Cold War in the ideological conflict between Western democracies and the Communist Eastern bloc, which also strongly influenced discussions in the ILO. However, even during this period, the Employers never agreed with the CEACR views on the "right to strike". The Workers' claim of the Employers' silence on this question is not only inaccurate – in any case, silence does not equal consent – but is also arbitrary and inadmissible. Workers also withhold the fact that since 1992, i.e. more than two decades, the Employers have regularly reminded the CAS - and have provided supporting arguments - that strike action is not regulated in C. 87 or any other ILO instrument. Employers explained their position in very great detail in 1994 when the CEACR General Survey was discussed[37]. At that time, it was suggested that, after careful preparation, this subject should be removed from the grey-zone of non-binding extra or contra legem interpretations and officially submitted for discussion by the legitimate legislator of the ILO: the International Labour Conference. So far, this proposal by the Employers has gone unanswered. It is also astonishing that the Experts have never addressed the numerous Employers' arguments on the subject, which have been put forward in ILO bodies and in legal writings. Instead, the Experts persist in reiterating their observations from their earlier reports and General Surveys, which are quoted as if they were the texts of law[38].

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[34] See the statements of Mr. Waline. International Labour Office, Minutes of the 121st Session of the Governing Body, 3-6 Mar. 1953, pp. 37 et seq.
[35] International Labour Office, Minutes of the 121st session of the Governing Body, Geneva, 3-6 March 1953
[36] Sixth Report of the Committee on Freedom of Association, 1953, para. 864
[37] ILC: 81st Session, 1994, Record of Proceedings, pp 25/31-25/37, paras 115-134 and pp. 28/9-28/10.
[38] Wisskirchen, The standard-setting and monitoring activity of the ILO, International Labour Review, Vol 144 (2005), No. 3. p. 288.

CEACR and the Committee on the Application of Standards

FOR MANY YEARS THERE WAS AGREEMENT BETWEEN THE EMPLOYERS' AND WORKERS' SPOKESPERSONS OF THE CAS NOT TO DISCUSS RIGHT TO STRIKE CEACR OBSERVATIONS, OR INDEED HAVE THIS ISSUE REFLECTED IN THE CONCLUSIONS, BECAUSE OF THE PROFOUND DISAGREEMENT ON THIS ISSUE.

The 2012 CEACR General Survey destroyed this agreement because of the Experts' response to the Employers' objection, which led to the Employers publicly reaffirming their long held objection.

In 2012, CAS witnessed a "deadlock" which arose in relation to strike action and the way in which it has been extensively interpreted by the CEACR on the basis of Convention 87. The 2012 General Survey, which dealt with the eight fundamental Conventions, contained a comprehensive compilation of the Experts' interpretations on a "right to strike" and the specific modalities of its exercise. For many years, Employers have challenged the extension of the mandate of the CEACR to give interpretation to ILO Conventions, and particularly to Convention 87. Therefore, the 2012 discussion on the General Survey was fundamental for Employers, and the Group reiterated their longstanding position at the 2012 ILC by strongly rejecting the Experts' views on a "right to strike". The Employers' rejection of the CEACR approach extended to a refusal to cooperate in the supervision of cases that included the Experts' interpretations on right to strike cases, unless a clarification of the Experts' mandate was inserted in the first page of the Experts' General Survey and General Report. Employers and Workers reached a provisional agreement on the following text: *"The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents"*. However, subsequent negotiations were unsuccessful and no list of individual cases to be discussed during the Conference was agreed.

Despite the deadlock, the Employers noted that the CEACR continued as usual its practice of interpretation on a "right to strike". In its 2013 Report, out of 63 CEACR observations on C. 87, 55 concerned the "right to strike" and the related detailed rules that the CEACR unilaterally developed over time. This share was similar to that of preceding years and showed that a "right to strike", although not contained in C. 87, has become a cornerstone of the CEACR's supervision of C. 87. What is more, in the Introduction to its 2013 Report, the CEACR, did not address the substance of the Employers' position. The main reason given for maintaining its position (para. 31) was that, once it had recognised a "right to strike" in principle as protected by C. 87, it had to determine its limits.

This was rejected by the Employers. If it were indeed the case, the CEACR could upset the consensus inherent in the adoption of a Convention and have far-reaching consequences for the setting of international labour regulation, effectively by-passing ILO constitutional rules on standard-setting and undermining the responsibility of Constituents and their governance role (Art. 19 of the ILO Constitution).

The Experts' job is to look at the application of the Convention, as it is written, against law adopted to give it force and practice - not to add obligations that were explicitly excluded from the text by the social partners at the time of adoption.

The Employers trust that the CEACR will reconsider its views on this subject considering the consequences for the right to strike discussion in the CAS, and in particular the conclusions.

It should be recalled that, in the 2013 CAS, the following wording was

"For many years there was agreement between the Employers' and Workers' spokespersons ... not to discuss right to strike CEACR observations, or indeed have this issue reflected in the conclusions, because of the profound disagreement on this issue."

"The Employers trust that the CEACR will reconsider its views on this subject considering the consequences for the right to strike discussion in the CAS, and in particular the conclusions."

inserted into the conclusions of all the (discussed) cases in which the right to strike was commented by the Experts (Bangladesh, Canada, Egypt, Fiji, Guatemala and Swaziland): ***"The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognised in Convention 87"***. Furthermore, in order to remain consistent with their position, the Employers did not support proposals for conclusions which, explicitly or implicitly, call upon governments to bring their law and practice in line with the "right to strike" rules of the CEACR. The Employers no longer accept any ambiguity on this point.

As recently as June 2014, the CAS disappointingly could not adopt conclusions for 19 of the cases discussed because of the Workers' refusal to insert the sentence agreed in 2013 into the conclusions of three cases. The Employers also made it clear that, while CAS conclusions should reflect consensus recommendations whenever possible, differing views by Employers and Workers must be transparent and be reflected in the conclusions.

It is important to clarify that the Employers did not propose a new approach in the 2014 CAS. Rather, given that the non-recognition of a right to strike in Convention 87 and the extensive CEACR interpretation of this issue remained unresolved before the ILO Governing Body, the Employers expected the sentence quoted above to be used again. The Employers went so far as to make alternative proposals which were systematically rejected by the Workers (including wording that provides equivalent recognition of the Workers' position, or wording contained in paragraph 91 of the CEACR Report which states that the views of the two Groups on the issue "continue to be diametrically aopposed").

Conclusions

THE EMPLOYERS' GROUP DOES NOT QUESTION THE DIVERSE WAYS IN WHICH DIFFERENT JURISDICTIONS HAVE PROTECTED STRIKE ACTION OR RECOGNISE A RIGHT TO STRIKE.

Employers recognise that strike action is a real issue in the world of work and that countries have established specific legislative processes and practices to deal with it.

However, the Employers have consistently argued that a right to strike is not provided for in the text of ILO Conventions 87 and 98 and, according to all applicable methods of interpretation stated in the Vienna Convention on the Law of Treaties, it would be difficult to consider it to be implicit or customary law.

The Employers' objections have been accompanied by various requests for clarification. For instance, for the CEACR to explain how it arrived at its interpretations of a right to strike in its 2012 General Survey using the applicable methods of interpretation; and for a review of the circumstances which create such sustained and profound inconsistency between the views of the Experts and the practice of governments and legislatures.

Moreover, from the time of the 2012 deadlock, the CEACR has continued to provide national governments with observations based on the view that a right to strike is a fundamental right of workers and their organisations and that it is part of C. 87. This view has been incorporated into ILO training materials and advice to governments on labour law and has had a direct impact on legal thinking across jurisdictions. As a result, confusion has been spread over obligations arising from a ratified Convention *vis-à-vis* legal developments of

> "The Employers' Group does not question the diverse ways in which different jurisdictions have protected strike action or recognise a right to strike."

strike action at national level. This confusion also impacts non-ratifying ILO Member States' obligations to respect, to promote and to realise, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights at work and has undermined the role of the constituents of the Organization to set international labour standards.

In addition to the confusion, national authorities have to face the intrinsic difficulty of how to regulate strikes while reconciling the conflicting interests of the strikers and those of others and the public interest. ILO Member States have to find adequate solutions in line with their respective situations. Whether, and to what extent, there is a need for rules on strike action at international level has not been determined by the ILO's own constituents. In the process of elaborating C. 87 and a number of subsequent ILO Conventions and Recommendations, such a need has however been expressly rejected. In this regard, paragraphs115 to 134 of report No. 25 (Provisional Record) of the 81st ILC session 1994, document that the Employers' Group proposed to discuss the question of whether a right to strike should be included in an ILO instrument at the ILC. There was no follow up.

In paragraph 92 of its 2014 Report, the CEACR accepts that the diversity of views on strike action requires a more flexible approach when it states: *"The committee recognises that these observations [on strike action] can be questioned by the tripartite constituents or recourse may be made to article 37 of the ILO Constitution"*. The Employers will continue to question any observations relating to strike action in the context of Convention No. 87.

As matters stand, the Workers' Group has rejected all options for reaching an agreement on a possible solution on strike action at ILO level, despite the fact that, with its unique tripartite structure, the ILO would be the appropriate and legitimate arena for solving this issue.

The Employers reiterate their concern over the differences of opinion between the CAS and the CEACR, which is compromising the authority of the ILO supervisory system as a whole. In this context, the Employers have expressed their disagreement with the CEACR that the following sentence, included in most of the C. 87 conclusions adopted by the CAS in 2013, just *"contains a statement of the position of the Employers"*.

"The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognised in Convention 87."[39]

The sentence makes it explicitly clear that "right to strike" issues have been excluded from the CAS conclusions, which are traditionally adopted by tripartite consensus.

For further information or advice, please contact IOE Secretary-General Mr. Brent Wilton, at wilton@ioe-emp.org

"The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognised in Convention 87."

[39] Extract from the official Conclusions of the Committee on the Application of Standards at the 2013 International Labour Conference on cases citing ILO Convention 87

Glossary of Key Terms

THIS GLOSSARY PROVIDES DEFINITIONS OF MANY OF THE TERMS USED IN THIS PAPER.

INTERNATIONAL LABOUR CONFERENCE (ILC)

The ILC is the "General Assembly" of the ILO. It takes place annually and comprises government, worker and employer representatives from ILO Member States (currently 185 countries). The ILC has various functions, including: the adoption of international labour standards (ILS); the supervision of their implementation (performed in collaboration with other ILO supervisory bodies); the discussion of social and labour issues of global importance; and the adoption of the general policies of the ILO.

INTERNATIONAL LABOUR STANDARDS (ILS)

ILS are legal instruments which set international rules on social and working conditions. ILS take the form of International Labour Conventions and Recommendations. ILO Conventions are international treaties that impose legally-binding obligations upon the ILO Member States that choose to ratify them. ILO Recommendations are non-binding guidelines, although they may be influential in the interpretation of international and domestic labour law.

ILO SUPERVISORY MECHANISMS

The ILO system for monitoring standards is composed of regular and special procedures. Although the ILO has no real enforcement measures at its disposal, political and moral pressure exerted through the public discussions can play an important role in encouraging the implementation of ILS by governments.

The regular procedures – carried out by the CAS and the CEACR (see below) - allow for legal assessment and scrutiny of the information furnished by States through the submission of reports. The special procedures complement the regular ones and are contentious in character: representations and complaints of non-observance of ratified Conventions are submitted to the ILO Governing Body (GB) which may decide to set up a tripartite Committee or a special commission (Commission of Inquiry) to examine the matter and present their recommendation. In addition, the ILO Committee on Freedom of Association (see below) was set up specifically to deal with freedom of association matters. The examination of complaints under this procedure may be carried out simultaneously with the examination under the regular supervisory mechanisms.

CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS (CAS)

The CAS is a standing tripartite body of the ILC vested, together with the Committee of Experts (see below), with the responsibility for the regular supervision of compliance with ILS. It examines measures taken by ILO Members States to give effect to the Conventions they have ratified, and discusses a General Survey that compiles more detailed information on a group of selected Conventions on a particular topic.

COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS (CEACR)

The CEACR is a group (currently 16) of legal experts from around the world tasked with providing an impartial and technical evaluation of the state

of application of international labour standards (ILS). The CEACR issues an annual report, which is presented in the first instance to the ILO Governing Body (GB) and then to the International Labour Conference (ILC).

This Report is published each year in March and consists of three parts:

1. GENERAL REPORT

The General Report provides the CEACR's comments on matters of general interest, such as the application of fundamental Conventions; the ratification and denunciations of Conventions; cases of progress; Governments' compliance with reporting obligations; information on technical assistance the ILO provides on ILS, and the role of employers' and workers' organisations.

2. OBSERVATIONS CONCERNING PARTICULAR COUNTRIES

This is the Experts' assessment of Governments' reports submitted to the ILO on the effect given, in law and in practice, to the ratified Conventions (Art. 22 of the ILO Constitution), and of employers' and workers' organisations' comments on the implementation of specific Conventions. These observations provide the basis for the CAS to discuss at the ILC some 25 individual national cases – generally of failure to comply with ILO Conventions.

3. GENERAL SURVEY

This is a survey of Member States' national law and practice on specific subjects chosen by the ILO Governing Body. Under Article 19 of the ILO Constitution, Member States are required to report at regular intervals on measures they have taken to give effect to any provision of certain Conventions or Recommendations, and to indicate any obstacle which has prevented or delayed the ratification of a particular Convention. The General Survey allows the CEACR to examine the impact of Conventions and Recommendations, to analyse the difficulties indicated by governments as impeding their application, and to identify means of overcoming these obstacles.

COMMITTEE ON FREEDOM OF ASSOCIATION (CFA)

The CFA was set up in 1950-51 by the GB to examine complaints on or allegations of the violation of the principles of freedom of association contained in the ILO Constitution and the Declaration of Philadelphia. It has a tripartite composition and receives complaints submitted by workers' and employers' organisations, even where the country in question has not ratified the relevant freedom of association Conventions.

The Committee presents to the GB a report containing conclusions and recommendations for action. These findings are highly influential with governments, employers and trade unions, and can succeed in changing law and practice at the national level.

For further information, please visit the International Labour Standards page of the IOE website or contact the IOE directly at ioe@ioe-emp.org

Notes

Notes

The IOE is the largest network of the private sector in the world. With 150 business and employer organisation members in 143 countries, it is the global voice of business.

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