

REPUBLIC OF KENYA



THE NATIONAL ASSEMBLY

TWELFTH PARLIAMENT

*Paper laid by the
Chairperson Departmental
Committee on Labour &
Social Welfare on
08/11/18 (pm) @*

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DEPARTMENTAL COMMITTEE ON LABOUR AND SOCIAL WELFARE

REPORT ON THE 107TH SESSION OF THE INTERNATIONAL LABOUR
CONFERENCE, GENEVA SWITZERLAND

MAY 27TH TO 8TH JUNE, 2018



*Approved for table
DSNA
K/AB
08/11/18*

Clerk's Chambers
Directorate of Committees Services
National Assembly
NAIROBI

November, 2018

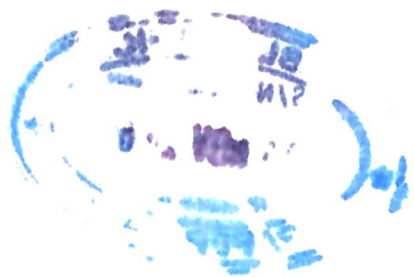


Table of Contents

1.0 INTRODUCTION.....	1
1.1 Establishment and Mandate of the Committee.....	2
2.0 Forward.....	5
3.0 PROCEEDINGS OF THE CONFERENCE THEMATIC AREAS	7
3.1 Introduction.....	7
3.2 Proceedings on the thematic areas.....	7
3.2.1 Violence and harassment at the place of work.....	7
3.2.2 Effective Development Cooperation.....	8
3.2.3 Social Dialogue and Tripartism.....	9
3.2.4 Committee on the Application of Standards.....	10
3.2.5 Address by the head of the Kenyan delegation	11
3.2.6 Abrogation of conventions/ recommendations.....	11
3.2.7 Amendments to the Martine Labour Convention.....	11
3.3 Side Events	11
3.3.1 World Day against Child Labour	11
3.3.2 World of Work Summit	12
4.0 OBSERVATIONS AND RECOMMENDATIONS	
4.1 Observations	13
4.1.2 On social dialogue and tripartism	13
4.1.3 On violence and harassment against men and women in the world of work	13
4.1.4 On effective ILO cooperation	13
4.2.1 Recommendations pertaining to promotion of social Dialogue and Tripartism.....	13
4.2.2 Recommendation pertaining to violence and harassment against women and men in the world of work	14
4.2.3 Recommendations pertaining to effective Development co-operation.....	15



1.0 INTRODUCTION

1.1 Establishment and Mandate of the Committee

The Departmental Committee on Labor and Social Welfare is established in accordance with the provisions of Standing Order 216 of the National Assembly. Its mandate as provided for in Standing order 216(5) is to *inter-alia*:-

- i. Oversight over the day to day running and administration of Ministries, Departments and Agencies under its purview;*
- ii. Consider Estimates of the said Ministries, Departments and Agencies;*
- iii. Consider relevant legislation and recommend enactment of laws; and,*
- iv. Carry out vetting of State/Public Officers as required by law.*

The Committee is mandated to consider the following subjects:-

- i. Labor,
- ii. Labor relations,
- iii. Manpower or Human resource Planning,
- iv. Gender,
- v. Youth,
- vi. Social Welfare and Security,
- vii. Children`s Welfare,
- viii. And Persons Living With Disabilities.

Oversight

In executing its mandate, the Committee oversees the following government Ministries, departments and or agencies, namely:

- i. Ministry of Labor
- ii. The State Department for Social Security and services
- iii. The State Department for Gender
- iv. The State Department for Youth
- v. The State Department for Arid and Semi- Arid Lands



Committee Membership

1. The Hon. Ali Wario, MP - **Chairperson**
2. The Hon. Joyce Korir, MP - **Vice Chairperson**
3. The Hon. Gladys Wanga, MP
4. The Hon. Janet Marania Teyiaa, MP
5. The Hon. Janet Nangabo Wanyama, MP
6. The Hon. Ronald Kiprotich Tunoi, MP
7. The Hon. James Onyango Koyoo, MP
8. The Hon. Rose Museo, MP
9. The Hon. Alfred Kiptoo Keter, M.P
10. The Hon. Charles Kanye Njagua, MP
11. The Hon. Catherine Wambilyanga, MP
12. The Hon. Fabian Kyule Muli, MP
13. The Hon. Ole Sankok David, MP
14. The Hon. Abdi Mude Ibrahim, MP
15. The Hon. Michael Mwangi Muchira, MP
16. The Hon. Safia Sheikh Adan, MP
17. The Hon. Tom Odege, MP
18. The Hon. Wilson Sossion, MP
19. The Hon. Omboko Milemba, MP



COMMITTEE SECRETARIAT

- | | |
|------------------------------|---------------------|
| 1. First Clerk Assistant | Mr. Adan Gindicha |
| 2. Clerk Assistant | Mr. John Mugoma |
| 3. Senior Legal Counsel | Ms. Marlene Ayiro |
| 4. Research & Policy Analyst | Mr. Said Osman |
| 5. Fiscal Analyst | Ms. Amran Mursal |
| 6. Media Relations | Ms. Noelle Chelagat |



2.0 Forward

Hon speaker,

It is my great pleasure to forward this report to the House for consideration. The International Labor Organization (ILO) Conference is the highest decision making body. This is an annual gathering of tripartite delegations from the organization's 187 member states and a number of observers from other international actors to consider a series of topics related to the world of work. The 2018 conference was the 107th session of the ILO. Hon. Speaker, as a Committee tasked with the oversight of the Labor sector; this was a very appropriate forum to interact with international players in the sector.

Hon. Speaker, the conference had several key thematic areas such as social dialogue and tripartism, measures and strategies to be adopted to curb violence and harassment at the world of work and effective development cooperation in support of Sustainable Development Goals.

Kenya was represented at the conference by all the social partners: that is the ministry of Labor and Social Protection, The Federation of Kenya Employer (FKE) and The Central Organization of Trade Unions (COTU). Among key issues of interest to the country was the proposed review of the labor laws, many of which were enacted before the dawn of the new constitutional dispensation.

The Committee on Labor and Social Welfare was represented at the Conference by:

- 1) Hon Ali Wario, MP
- 2) Hon Ronald Tonui, MP
- 3) Hon Janet Nangabo, MP
- 4) Hon Tom Odege ,MP
- 5) Hon Safia Adan ,MP
- 6) Ms. Florence Abonyo-Director Committees
- 7) Mr. Adan Gindicha – Delegation Secretary

These laws include: the Labor Relations Act, the Labor Institutions Act, and the Employment Act.



The conference had three key thematic areas, all of which are crucial to the Labor sector in general and industrial relations in particular. These cross cutting themes were: social dialogue, violence and harassment at the world of work and effective ILO co-operation towards the attainment of sustainable development.

I am glad to report that Kenya was rated favorably among the countries that observe the various ILO conventions. 24 countries were found to have been in serious violation of obligations of ratified conventions and were called upon to explain their situation by the conference committee on application of standards.

Overall, the conference made far reaching resolutions touching on all the three thematic areas. My Committee will work in close collaboration with the Ministry and other social partners in following up on the implementation of these resolutions.

The Committee expresses its gratitude to the offices of the Speaker and the Clerk of the National Assembly for the support accorded to members towards effective participation in this important conference. Hon. Speaker on behalf of the delegation, and pursuant to the standing order 199(6) it is now my pleasure to table in the House the Report of the 107th Session of the International Labor Conference.



Hon. Ali Wario, MP

Chairman, Labour and Social Welfare



3.0 PROCEEDINGS OF THE CONFERENCE THEMATIC AREAS

3.1 Introduction

His Excellency Samir Murad, the Minister of Labor of the Hashemite Kingdom of Jordan, officially opened the 107th session of the International Labor Conference on 28th May 2018. In his speech, he called for a strong action to end violence and harassment at the workplace.

Over 5000 delegates representing Governments, employers and workers from the 187 member states of the ILO attended the conference whose key agenda included:

1. General discussion on effective development cooperation in support of the Sustainable Development Goals.
2. Violence and harassment against women and men in the world of work.
3. Discussions on the strategic objective of social dialogue and tripartism, under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.
4. Abrogation of ILO conventions numbers 21, 50, 64, 65, 86 and 104 and withdrawal of ILO recommendations number 7, 61 and 62.
5. Amendments to the Maritime Labor Convention, 2006.

3.2 Proceedings on the thematic areas

3.2.1 Violence and harassment at the place of work

Discussions began on 28th May 2018 after the opening session at the plenary. They began with presentation of opening statements by Employers and Workers representatives followed by statements by Government representatives, Intergovernmental organizations and Non-governmental organizations.

This was followed by general discussions of sections of the report dealing with specific subjects and thereafter discussions of proposed amendments of various provisions of the draft convention and recommendation to be adopted at the end of the discussions during the 108th session of the ILC in 2019.



Kenya Government representatives made interventions during the general discussions of the report and supported the possible adoption of Convention and a recommendation, which is the position that has been taken by the Africa group members at the committee.

It is however noted that there has been strong differences between the workers group and the Africa group on one hand and the Employer's group on the other in relation to nature of the instrument to be adopted, definitions of employers and workers in the instruments and the scope of responsibilities to be attributed to employers in particular if a Convention is to adopted.

After protracted negotiations, the committee was able to reach a consensus on the adoption of a convention supplemented by a convention provided some provisions of the convention relating to the definitions of employers and scope of responsibilities were to be revised to reflect the concerns of the employers group.

In the final resolution on this thematic area the African group noted their objection to the inclusion of lesbian gay, bisexual, transgender, intersex and gender non-confirming workers, among vulnerable groups of workers

3.2.2 Effective Development Cooperation

Discussions at this committee were last held at the conference 12 years ago when it used to be called technical cooperation. It has since been renamed development cooperation. The aim is to adopt conclusions that will guide the ILO to help member states to achieve the sustainable development goals and the social justice as provided for under the social justice declaration for a fair globalization of 2008.

The need to review the mode of delivery of the development cooperation has become imperative following the rapid changes that are taking place in the world driven by the four major drivers, which are, Globalization, demographic changes, technology and climate change. The ongoing reform of the UN system coupled with the fact that development cooperation which currently constitutes 40 % of the ILO budget has made it necessary for the organization to review its current development strategies to ensure that they are aligned with emerging development challenges of the member states.



The committee considered how the ILO can innovatively leverage on its normative agenda and tripartite structure to make development cooperation result into positive and tangible outcomes for member states as contemplated under the agenda 2030 development goals and the Social Justice Declaration of 2008.

On this thematic area, the conference identified the key areas of ILO co-operation as: enhancing employment and livelihood opportunities for all member states, promoting Labor rights and improved Labor market governance together with the development of a comprehensive social security system.

3.2.3 Social Dialogue and Tripartism

Social dialogue is embedded in ILO standards and the decent Work Agenda. It is being discussed in this year's conference in the framework of the follow-up to the Social Justice Declaration of 2008. This is the second recurrent discussion of the fundamental principle with the first discussion having taken place in 2013.

The discussion reviewed trends and developments in all forms of social dialogue including tripartite consultations, collective bargaining, workplace Cooperation and consultations as well as cross border social dialogue. It evaluated how these forms of dialogue are being impacted by the on-going changes affecting the world of work including the increasing inequalities, new forms of employment relationships among other changes.

It also discussed how social dialogue is adjusting to these changes in the world of work, and how it can be made effective as tool to promote Social Justice, Labor rights safe and health work place, protect wages and achieve social justice for all.

The Resolutions and conclusions that were adopted by the committee are expected to guide the ILO action in advancing social dialogue in the framework of 2030 agenda for sustainable development , the achieving the decent objectives under the social justice declaration and the on-going reforms of the United Nation.

Discussions of the committee were concluded with a call for action from all member states to develop and implement decent work programs in collaboration with all the stakeholders.



Kenya representative made interventions during the discussions on the points for decision and echoed the continued relevance of social dialogue as a tool of governance and democracy as the ILO turns into a new centenary.

3.2.4 Committee on the Application of Standards

This is a standing committee of the International Labor Conference and meets every year since its establishment by the ILO Governing Body in 1926. It evaluates member's states compliance with their obligations with respect to ratified conventions.

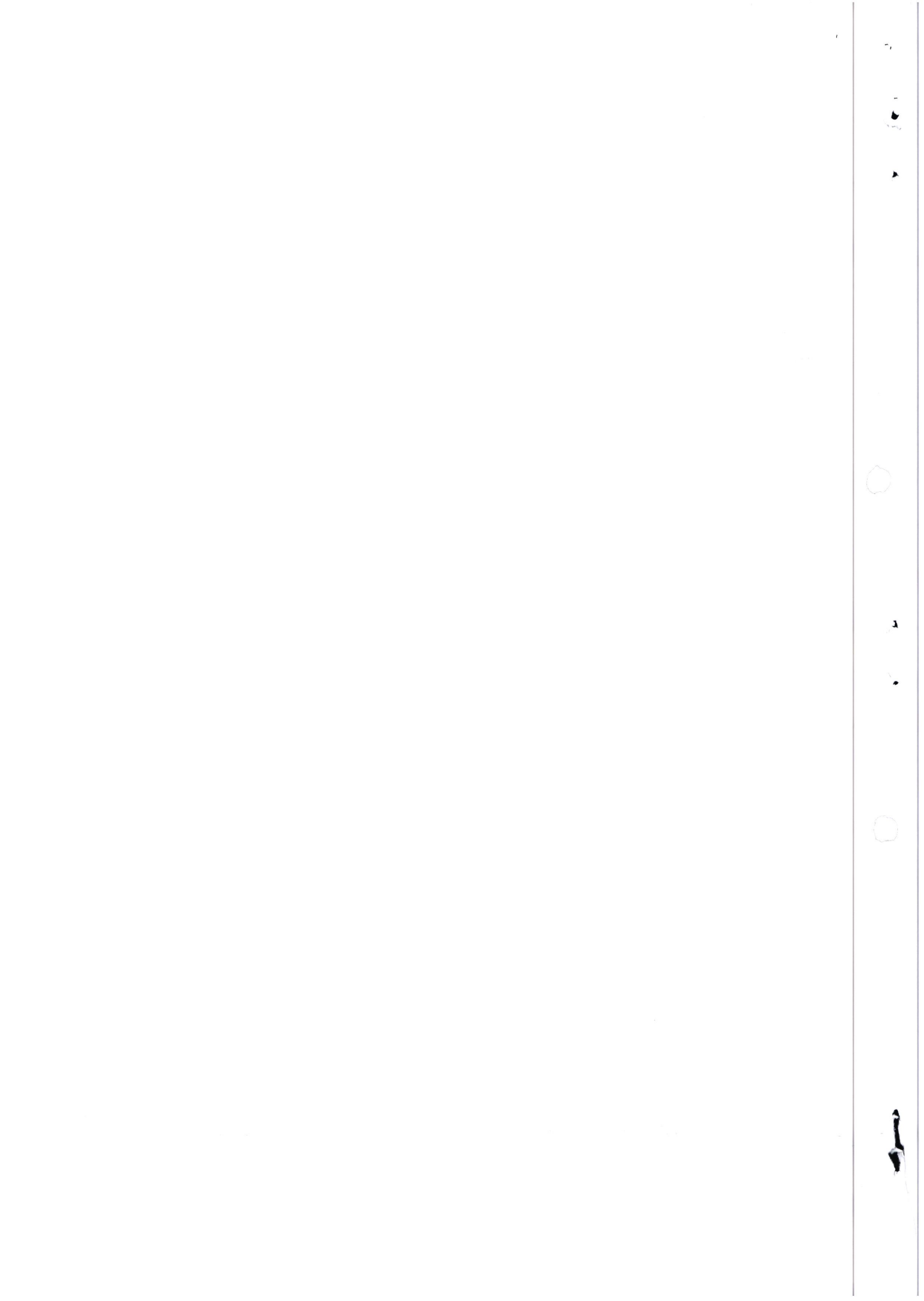
Member states who have failed to comply with these obligations are called upon to explain the challenges they are facing in meeting the obligations and measures they envisaged to overcome them. They are also, asked to avail themselves to technical assistance from the ILO to help them achieve compliance. Discussions are held in a spirit of constructive engagement and dialogue in a tripartite forum consisting of Governments, employers and Workers representatives.

At the present session of the conference, 24 countries were found to have been in serious violation of obligations of ratified conventions and have each been called upon to explain their situation by the committee.4 of those are from Africa and include, Eritrea, Botswana, Algeria and Nigeria. Hearings of the Country cases are still ongoing.

The committee also discussed a general survey report prepared from responses received from member states on a selected convention or number of conventions which are deemed to have low ratification rates among the member states. At this session, it dealt with a report prepared from ILO instruments on working time entitled, "Ensuring Decent Working Time".

The report underscored the need for regulating working time for workers as it constitutes a key indicator of decent work and more especially during this era of rapid changes in the world of work taking various forms including non-standard work, own account workers and the digital platforms among others.

The Kenya Government representative made intervention during the discussions of the general survey report and also during the discussions of some of the individual country cases.



3.2.5 Address by the head of the Kenyan delegation

H.E the Permanent Representative to the Kenya Mission to the UN, Amb. (Dr.) Stephen N. Karau presented the Government statement on the above Report entitled, “The Women at Work Initiative- the Push for Gender Equality”. He congratulated the Director General for the report and stated the measures taken by the Kenya Government to achieve gender equality. He also clarified sentiments expressed by the representatives of Workers and Employers from Kenya on the proposed legislative changes to the National Social Security Fund and the Labour Laws noting that contrary to their assertions, avenues for consultation and dialogue are still available for all stakeholders before any amendments are eventually undertaken.

3.2.6 Abrogation of conventions/ recommendations

The conference abrogated the following conventions (The conventions were revoked as they appear to have lost in purpose and no longer contributes to attaining the objectives of the organizations)

- i. The inspection of the Emigration Convention (1926) No.21
- ii. The recruitment of indigenous workers convention ,1936 (N0.50)
- iii. The Penal Sanctions (Indigenous Workers Convention) 1939(N0.65)
- iv. The Contracts of Employment (Indigenous Workers Convention) ,1947(No.86)
- v. The abolition of Penal Sanctions Convention,1955 (No,104)
- vi. The Hours of Work (finishing) Convention ,1920 (No.70)

3.2.7 Amendments to the Martine Labor Convention

The amendments related to the protection of Seafarers wages and other entitlements while they are held captive on or the ship as a result of acts of piracy or armed robbers against ships

The amendments were adopted.

3.3 Side Events

3.3.1 World Day against Child Labor



The conference marked the 2018 World Day against Child Labor with a joint ILO –Global March Events on 4th June. The march highlighted “Generation Safe and Healthy” theme and the 20th anniversary of the Global March against Child Labor.

The conference noted that more than 168 million are trapped in child labor and more than half of them are in hazardous work according to ILO. The event aimed at shining a spotlight on the global need to improve the safety and health of young workers and end duty labor. The joint campaign aimed at accelerating Sustainable Development Goal.

The campaign called for universal action to:

- i. Promote the universal ratification and application of key ILO conventions on occupational safety and health and on child labor ,in particular ,the minimum Ag Convention,1973(Number 138)
- ii. Promote integrated strategies at all levels to end hazardous child labor and address specific safety and health risks faced by young workers.
- iii. Ensure quality education for all children and integrate occupational safety and health into general education and vocational training programs
- iv. Strengthen the evidence base for improved policies and actions to eliminate hazardous child labor and improve safety and health of young workers
- v. Ensure young workers gain access to trade union membership and are able to exercise their right to freedom of association collective bargaining and safety and health at work
- vi. Address the specific vulnerability of the youngest children and prevent their entry into child labor

3.3.2 World of Work Summit

The World of Work Summit- this was a unique high level event .The panel discussion brought together experts who examined issues of paramount importance in the world of work.

The high level panel provided the opportunity to discuss the role of ILO in the emerging global architecture for sustaining peace, including through new strategic partnerships. It also focused on the relevance and effectiveness of integrated strategies aimed at creating employment, decent work and social dialogue for addressing conflicts including refugee crisis and supporting peace building.



4.0 OBSERVATIONS AND RECOMMENDATIONS

4.1 Observations

4.1.2 On social dialogue and tripartism

That Tripartite and bipartite social dialogue plays an important role in setting wages and working conditions, promoting decent work, gender, equality and non-discrimination social protection and occupational safety and health, supporting skills development, reducing inequalities and anticipating and managing change.

4.1.3 On violence and harassment against men and women in the world of work

That the state has a cardinal role in protecting all workers both in the formal and informal economy and whether in urban or rural areas including employees as well as persons working irrespective of their contracted status, persons in training, including interns and apprentices, laid off and suspended workers, volunteers, job security and job application.

4.1.4 On effective ILO cooperation

The world of work is experiencing rapid change through, among others, technological transformation, globalization, climate change, demographic trends and Labour migration.

4.2 Recommendations

4.2.1 Recommendations pertaining to promotion of social Dialogue and Tripartism.

The government should:

- i. Ensure that in an evolving world of work, social dialogue and tripartism are granted appropriate resources and become prominent in policy making
- ii. Act on its obligation to represent, promote and realize the principles concerning the fundamental rights of employers and workers and their organizations for effective recognition of the right to collective bargaining as enabling conditions for the attainment of the strategic objective of social dialogue and tripartism.
- iii. Foster an enabling legal and institutional environment to promote effective social dialogue



- iv. Provide the necessary financial, technological and human resources to strengthen the effectiveness and efficiency of national labor administration systems.
- v. Promote gender equality and non-discrimination and encourage the strengthening and increase of participation and engagement of women and youth in social dialogue.
- vi. Promote voluntary collective bargaining in both the private and public sectors to help attain decent work conditions equal pay for work of value, gender equality, as well as developing skills.
- vii. Establish dispute prevention and resolution mechanism that are effective, accessible and transparent.

4.2.2 Recommendation pertaining to violence and harassment against women and men in the world of work

The government should develop, implement and disseminate:

- i. Programs aimed at addressing factors that increase the likelihood of violence and harassment, including discrimination, unequal power relations and gender, cultural and social norms that support violence and harassment.
- ii. Gender responsive guidelines and training programmers to assist judges, labor inspectors, police officers, prosecutors and other public officials in fulfilling their mandate regarding violence and harassment as well as to assist employers, workers and their organizations in preventing and addressing violence and harassment.
- iii. Awareness raising campaigns in various languages of the country including those of the migrant workers residing in the country ,that convey the unacceptability of violence and harassment, in particular gender based violence, address discriminative attitudes and prevent stigmatization of victims, witnesses and whistle blowers.
- iv. Gender responsive curricula at all levels of education and vocational training
- v. Training programs and material for journalists, and the other media personnel on gender based violence including its underlying causes.
- vi. Campaigns aimed at fostering safe, healthy and harmonious workplaces from violence and harassment.



4.2.3 Recommendations pertaining to effective Development co-operation

- i. The government should promote engagement with the private sector as the key driver of growth and jobs while safeguarding the interest of employers and workers
- ii. The government should create an enabling environment in which employers and workers organizations can develop and function independently.

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