



Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART TWO

INFORMATION AND DISCUSSION ON COMPLIANCE BY CERTAIN COUNTRIES WITH THEIR STANDARDS-RELATED OBLIGATIONS

Contents

	<i>Page</i>
A. Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations, including submission to the competent authorities of the instruments adopted by the International Labour Conference	3
B. Information and discussion on the application of ratified Conventions (individual cases)	8
Forced Labour Convention, 1930 (No. 29)	8
ERITREA (ratification: 2000)	8
MAURITANIA (ratification: 1961)	12
QATAR (ratification: 1998)	17
Labour Inspection Convention, 1947 (No. 81)	25
HONDURAS (ratification: 1983)	25
INDIA (ratification: 1949)	30
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)	37
ALGERIA (ratification: 1962)	37
BANGLADESH (ratification: 1972)	42
BELARUS (ratification: 1956)	49
EL SALVADOR (ratification: 2006)	56
GUATEMALA (ratification: 1952)	62
KAZAKHSTAN (ratification: 2000)	68
MEXICO (ratification: 1950)	71
SWAZILAND (ratification: 1978)	78
BOLIVARIAN REPUBLIC OF VENEZUELA (ratification: 1982)	84

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)	94
MAURITIUS (ratification: 1969)	94
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)	98
REPUBLIC OF KOREA (ratification: 1998)	98
Employment Policy Convention, 1964 (No. 122)	104
ITALY (ratification: 1971)	104
SPAIN (ratification: 1970).....	115
Minimum Age Convention, 1973 (No. 138)	124
PLURINATIONAL STATE OF BOLIVIA (ratification: 1997)	124
Occupational Safety and Health Convention, 1981 (No. 155)	128
TURKEY (ratification: 2005).....	128
Safety and Health in Mines Convention, 1995 (No. 176)	133
PHILIPPINES (ratification: 1998).....	133
Worst Forms of Child Labour Convention, 1999 (No. 182)	138
ALBANIA (ratification: 2001).....	138
CAMBODIA (ratification: 2006)	140
CAMEROON (ratification: 2006)	145
Appendix I. Table of reports on ratified Conventions due for 2014 and received since the last session of the CEACR (as of 13 June 2015) (articles 22 and 35 of the Constitution).....	151
Appendix II. Statistical table of reports received on ratified Conventions (article 22 of the Constitution)	154
Index by country	157

Index by countries

	<i>Page</i>
ALBANIA	138
ALGERIA.....	37
BANGLADESH	42
BELARUS	49
BOLIVARIAN REPUBLIC OF VENEZUELA	84
CAMBODIA	140
CAMEROON	145
EL SALVADOR	56
ERITREA	8
GUATEMALA	62
HONDURAS	25
INDIA	30
ITALY	104
KAZAKHSTAN.....	68
MAURITANIA.....	12
MAURITIUS.....	94
MEXICO.....	71
PHILIPPINES	133
PLURINATIONAL STATE OF BOLIVIA.....	124
QATAR.....	17
REPUBLIC OF KOREA	98
SPAIN.....	115
SWAZILAND.....	78
TURKEY	128

**A. DISCUSSION OF CASES OF SERIOUS FAILURE BY MEMBER STATES TO RESPECT THEIR REPORTING
AND OTHER STANDARDS-RELATED OBLIGATIONS, INCLUDING SUBMISSION TO
THE COMPETENT AUTHORITIES OF THE INSTRUMENTS ADOPTED
BY THE INTERNATIONAL LABOUR CONFERENCE**

The **Employer members** recalled that non-observance by member States of their constitutional obligations constituted a serious failure. The timely submission of reports was crucial to the functioning of the ILO supervisory system. The failure of some member States to submit reports prevented the Committee of Experts from reviewing the pertinent issues obtaining in their respective national situations; it also had the effect, unjustly, of penalizing those countries that did fulfil their constitutional obligations, as in so doing these member States voluntarily presented themselves for greater scrutiny. While noting that the percentage of requested reports received by the Office this year was slightly greater than that of the year before, the Employer members maintained that the overall reporting situation nevertheless remained unsatisfactory. It was important for member States to treat their reporting duties with the utmost seriousness.

The **Worker members** expressed concern with regard to the still significant number of reports that had not been received. The situation constituted a major obstacle to the proper operation of the supervisory machinery. The failure of governments to fulfil their reporting obligations and to submit the instruments to the competent authorities was sometimes a result of negligence, sometimes an expression of a refusal to cooperate with the supervisory machinery, and in other cases a consequence of delays. The absence of submission to the competent authorities often reflected a regrettable negligence. The failure to send the requested reports as a demonstration of the refusal by certain governments to cooperate with the supervisory mechanisms was all the more serious as the purpose was often to cover up very serious violations of ratified Conventions. Persistent delays in sending reports also seriously undermined the proper functioning of the supervisory bodies. The slight improvement in the proportion of reports provided was insufficient and the governments, of which reference should be made to France, Lebanon, Central African Republic, Germany, Niger and Uganda, should be invited to strengthen their efforts in this regard.

A **Government representative of Afghanistan** acknowledged his country's failure to supply the first reports on the application of four ratified Conventions. He indicated that the delay was due to the political instability affecting his Government in 2014. ILO technical assistance had been requested to strengthen the capacity of the newly elected Government. He hoped that the cooperation would allow reporting obligations to be fulfilled in the near future.

A **Government representative of Angola** said that her country's reports supplying information in reply to the comments made by the Committee of Experts were ready and would be submitted shortly.

A **Government representative of Bahrain** said that the failure to submit instruments to the competent authorities, as noted by the Committee of Experts, was due to a difference of views as to which authorities international labour standards should be submitted. Under the Constitution of Bahrain, as explained in a communication to the Office, the obligation of submission was to the Council of Ministers and not the Parliament. The Government, which would specify the legal details of the situation in a forthcoming report, was willing to cooperate to find a solution to this difference.

A **Government representative of Barbados** reaffirmed his country's commitment to fulfilling its obligations under the ILO Constitution. The failure to submit reports in re-

ply to the comments of the Committee of Experts was due to difficulties recently experienced by the national tripartite committee responsible for producing reports. These difficulties were being addressed, and the reports would soon be submitted. Moreover steps would be taken to ensure such failures were avoided in the future.

A **Government representative of the Comoros** said that his country's failure to send its reports on non-ratified Conventions and on Recommendations for the past five years and to submit ILO instruments to the competent authorities was because the Ministry of Labour was too short staffed, due mainly to the non-replacement of officials who had retired. In 2015, the Ministry was giving priority to the provision of reports on ratified Conventions. Moreover, following the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), four additional ILO Conventions were currently in the process of being ratified.

A **Government representative of Croatia** acknowledged her Government's failure to supply information in reply to the comments made by the Committee of Experts. While reaffirming the commitments undertaken with the ILO, she indicated that the Ministry of Labour and Pension System had been established in 2011 and that the majority of the efforts of the national administration had been focused on the tasks set before her country to join the European Union. She stated that technical capacity had been lost because of the changes in the structure of the public administration and that an expert had been appointed by the Ministry to address this issue. She said that her Government intended to submit to Parliament all the pending ILO instruments by the third quarter of 2015 and she hoped that some of the ratification processes would be completed before the end of 2015. Turning to the question of reporting, she stated that her Government intended to submit to the Office all pending reports by 1 September 2015 and that the first draft reports had been already prepared and were undergoing internal consultations. In this regard, she drew attention to her Government's intention to adopt a regulation concerning the reporting process on ILO standards.

A **Government representative of the Democratic Republic of the Congo** indicated that his Government would fulfil as soon as possible its obligations to send information in response to the comments of the Committee of Experts and to send the reports on the unratified Conventions and the Recommendations. In this regard, the Government requested the technical assistance of the Office in order to strengthen the skills of the officials responsible for that work. With respect to the submission of the instruments to the competent authorities, the relevant reports had been prepared and submitted to the national authorities. A copy of those reports would be submitted to the Office before the closure of the Conference.

A **Government representative of Djibouti** said that steps had been taken to address his country's failure to submit reports on the submission of instruments to the competent authorities. For instance, the Minister of Labour had initiated consultations with all concerned stakeholders as regards the potential ratification of Conventions.

A **Government representative of El Salvador** said that her Government was drawing up a step-by-step workplan for the submission of the relevant instruments to the competent authorities. Meanwhile, administrative arrangements had been made to submit requests for the ratification of the Indigenous and Tribal Peoples Convention, 1989

(No. 169), the Domestic Workers Convention, 2011 (No. 189), and the Maritime Labour Convention, 2006 (MLC, 2006), to the Legislative Assembly in the near future.

A Government representative of France indicated that the failure to send the reports on the application of the ratified Conventions and to send the information in response to the comments of the Committee of Experts concerned the situation of 200 workers aboard some ten registered fishing vessels in the French Southern and Antarctic Territories. On 27 April 2015, France had adopted the Act authorizing the ratification of the Work in Fishing Convention, 2007 (No. 188), with the aim of applying it in the French Southern and Antarctic Territories. Compliance with the obligations relating to the working conditions of sea fishers would thereby be subject to a comprehensive review in the future on the basis of the application of this instrument.

A Government representative of Ghana recognized that his Government was late in submitting the first reports on the application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the Safety and Health in Agriculture Convention, 2001 (No. 184). Recalling his Government's commitment under article 22 of the ILO Constitution, he said that his Government had initiated action and would take further necessary steps at the end of the Conference to submit the reports to the Office.

A Government representative of Guinea indicated that measures were being taken in order that all the information and reports that were due would be submitted to the Office by the end of June 2015 at the latest.

A Government representative of Equatorial Guinea stated that as a result of the adoption of a new Constitution, which extended the constitutional guarantees that citizens enjoyed, wide-reaching reforms were being adopted to labour legislation. He emphasized that his Government would provide information on its compliance with commitments in respect of the ILO after the Conference. Lastly, in this regard, he requested the Organization to provide continuing technical assistance of the ILO on labour matters.

A Government representative of Iraq said that the Ministry of Labour had written to the Council of Ministers, one of the two competent authorities, to present all the Conventions and Recommendations for its consideration and for their possible submission to Parliament, the second competent authority. A copy of the letter had been sent to the Office. The Ministry of Labour hoped that the ILO would provide Iraq with technical assistance, particularly with a view to the adoption of the new Labour Code, which was a result of collaboration between his Government and the Office.

A Government representative of Ireland reaffirmed the high regard in which her Government held the work of the Committee of Experts, and the importance that it attached to replying to specific comments made by the Committee. The information that it had requested would be furnished shortly. She indicated that legislation providing for significant reforms to Ireland's industrial relations framework would be enacted in the near future. The legislation had been drafted further to a programme reflecting her country's commitment to reforming its laws on collective bargaining. Emphasizing that Ireland had just ratified the Maritime Labour Convention, 2006 (MLC, 2006), and the Domestic Workers Convention, 2011 (No. 189), she concluded by affirming that these and all other positive developments would be reflected in the report to be submitted shortly.

A Government representative of Jamaica said that her Government had taken initial steps to submit the ILO instruments to Parliament and that the delay was due to the fact that the Ministry of Labour and Social Security had been in a phase of transition in recent times. Her Gov-

ernment intended to enact new legislation on occupational safety and health prior to the ratification of the respective Conventions. ILO technical assistance had been requested to strengthen the capacity of the Government in drafting the new legislation and she hoped that this fruitful cooperation would advance the Decent Work Agenda in her country.

A Government representative of Jordan said that a letter had been sent to the Office in November 2014 to report that the Ministry of Labour had submitted the instruments adopted by the International Labour Conference during the period 2004–14 to Parliament. She noted that the letter also provided information on Jordan's ratification of the Maritime Labour Convention, 2006 (MLC, 2006).

A Government representative of Kuwait said that letters were being drafted concerning the submission of the relevant instruments to Parliament. The delay in submission was due to purely administrative issues that had recently been resolved. He added that the Office would be kept informed of progress in this regard.

A Government representative of Lebanon said that this year, exceptionally, the Ministry of Labour had not received the Arabic translation of the direct requests and observations of the Committee of Experts. She said that it was willing to prepare the relevant reports as soon as it received the Arabic translations in question.

A Government representative of Mali said that measures had already been taken to ensure full respect for the obligation of submission to the competent authorities. A copy of the acknowledgement of receipt of 15 instruments by the National Assembly would be sent to the Office before October 2015. Furthermore, the Government was in the process of ratifying the Employment Service Convention, 1948 (No. 88), the Occupational Safety and Health Convention, 1981 (No. 155), and its Protocol, and the Private Employment Agencies Convention, 1997 (No. 181). However, Mali still needed technical assistance from the Office to strengthen the capacities of the National Labour Directorate to fulfil all its constitutional obligations.

A Government representative of Mauritania said that the delay in replying to the comments made by the Committee of Experts and in submitting the instruments to the competent authorities had been caused by operational difficulties in the administrative departments responsible for labour issues in Mauritania. The adoption in 2014 of a new organizational chart for the labour directorate the previous year, which had resulted in it being elevated to the rank of directorate general, should help to improve the situation. Similarly, the participation of two staff members in the 2015 pre-Conference course held at the ILO International Training Centre in Turin would facilitate the preparation of the requested reports. Regarding submission to the competent authorities, three information sessions had been held recently with the various institutions concerned, including the Ministry of Parliamentary Affairs. Several instruments had also been submitted to Parliament on 30 April 2015, as indicated in a report sent to the Office recently.

A Government representative of Mozambique said that his Government was trying to address the situation and had transmitted the relevant instruments to the ministries and social partners. Each Convention and Recommendation would be examined by the Consultative Committee, which was a tripartite body, prior to their submission to the competent authorities. Any relevant information would be sent to the Committee of Experts. The Government would continue to count on the ILO's support in this respect.

A Government representative of Nigeria said that his Government was mindful of its obligation to submit the reports requested. The delay was due to the need to ensure accuracy and comprehensiveness in the reports, which required inputs from other stakeholders, including consultations with other government ministries and departments.

The responses were being processed and would be submitted before the end of the current session of the International Labour Conference.

A Government representative of Pakistan said that in 2010 the subject of labour had been devolved to the provinces and that the Ministry of Labour and Manpower at the federal level had been abolished. This had caused an erosion in institutional capacity. The Ministry of Overseas Pakistanis and Human Resources Development had been established in order to coordinate and report on the implementation of international labour standards. It had succeeded in submitting all reports due concerning both ratified and unratified Conventions. The Ministry had recently directed all the provincial governments to submit the instruments adopted by the International Labour Conference to their respective competent authorities and had taken measures to build the capacity of provincial labour departments in that regard.

A Government representative of Papua New Guinea stated that the Ministry of Labour and Industrial Relations had understood the seriousness of the comments of the Committee of Experts and had reviewed all the instruments adopted by the International Labour Conference from 2000 to 2012. In 2014, the Ministry of Labour and Industry Relations had submitted the instruments to the National Executive Council, the competent authority, seeking the Council's endorsement and approval. The National Executive Council had noted this submission, and had made a decision respecting the approval of the instruments for future consideration concerning their ratification by Parliament. A copy of those decisions could be provided. With respect to reporting obligations, the Ministry of Labour and Industrial Relations would submit the reports to the Committee of Experts once they had all been approved and endorsed by the National Executive Council.

A Government representative of Saint Kitts and Nevis expressed regret that his Government had not been able to respond to the requests that had been made by the Committee of Experts and its non-compliance with the obligation to report for the past five years. The situation was due to irregularities in the sitting of Parliament. However, parliamentary elections had been held in February 2015, and a new Government established. The Government would honour its reporting obligations by 1 September 2015, and it would endeavour to comply fully with its obligations under article 19 of the ILO Constitution concerning unratified Conventions in the near future. He requested technical assistance to help the Government meet its international obligations.

A Government representative of Samoa apologized for the failure of her Government to submit the reports requested within the necessary time frame. The challenges faced included obligations relating to the organization of the International Conference of Small Island Developing States in 2014 and administrative constraints related to staff movements and turnover. Internal procedural requirements had also caused delay. Reports had been prepared and would be submitted as soon as clearance was obtained. She expressed appreciation for the technical assistance received in April 2015 on international labour standards reporting.

A Government representative of Sao Tome and Principe said that the instruments had been submitted to the National Assembly on 8 May 2015. It was the objective of the new Government to improve the organization of all matters pertaining to the ILO. During the past six months, it had met its commitments and had been able to respond to the Office's requests. All the instruments that had not been submitted since the 1990s had now been submitted and the Government was making every effort to address the delay. The Government was counting on the ILO's support in this matter, including with regard to capacity building.

A Government representative of Sudan expressed his Government's commitment to submitting the instruments adopted by the International Labour Conference to the competent authorities. The National Assembly was the highest legislative authority in the country. The Ministry of Labour and Administrative Reform had sent several memoranda to the Council of Ministers, the most recent on 20 April 2015, concerning submission to the National Assembly, in accordance with the procedures adopted by the Council of Ministers. The subject had initially been discussed by two committees of the Council of Ministers, the Technical Committee and the Social and Cultural Development Committee, before referral to the Council of Ministers itself, for subsequent submission to the National Assembly. He expressed his Government's appreciation of the visit by the Director of the International Labour Standards Department in October 2014, which had included meetings with relevant government bodies and the social partners, as well as a comprehensive presentation on the importance of ILO Conventions and Recommendations and their timely submission to the competent authorities. In view of the multiplicity of bodies involved in the submission of ILO instruments, and to ensure expeditious processing, the Ministry of Labour and Administrative Reform, in collaboration with the ILO, had sought to strengthen the capacities of the officials of such bodies in order to emphasize the importance of the subject. The Ministry of Labour and Administrative Reform would continue its efforts and follow-up in order to complete the procedure of the submission of ILO instruments to the National Assembly.

A Government representative of Suriname indicated that there had been an administrative miscommunication and that the instruments had not been submitted to the competent authority, the National Assembly. The documents for the submission of the instruments adopted by the International Labour Conference from its 90th to its 103rd Sessions had been submitted to the Council of Ministers, and the Ministry of Labour was awaiting the approval of the Council in order to submit the instruments to the National Assembly. Elections had recently taken place in May 2015, and the matter would be settled once a new National Assembly had been installed.

A Government representative of Uganda said that the instruments adopted by the International Labour Conference had been submitted to the Cabinet.

A Government representative of Zambia apologized for the failure to supply reports, which had been caused by staff capacity constraints. The Ministry of Labour and Social Security had increased the number of labour officers, and the Government appreciated the technical assistance that had been provided by the Office. The Ministry of Labour and Social Security was undergoing a reorganization in order to have a dedicated desk to deal specifically with international affairs, for the purpose of better addressing the issues arising out of its reporting obligations. The Government was undertaking a revision of the labour legislation, which had reached an advanced stage, and it would meet its reporting obligations in the future.

Failure to supply reports for the past two years or more on the application of ratified Conventions

The Committee took note of the information provided and of the explanations given by the Government representative who had taken the floor.

The Committee recalled that the transmission of reports on the application of ratified Conventions was a fundamental constitutional obligation and the basis of the system of supervision. The Committee stressed the importance that the transmission of reports constituted, not only with regard to the transmission itself but also as regards the scheduled deadline. In this respect, the Committee recalled that the ILO could provide technical assistance in helping to achieve compliance with this obligation.

In these circumstances, the Committee expressed the firm hope that the Governments of Burundi, Dominica, France – French Southern and Antarctic Territories, Equatorial Guinea, Gambia, Haiti, San Marino, Somalia and Tajikistan which, to date, had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

Failure to supply first reports on the application of ratified Conventions

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor.

The Committee reiterated the vital importance of the transmission of first reports on the application of ratified Conventions. In this respect, the Committee recalled that the ILO could provide technical assistance to contribute to compliance with this obligation.

The Committee decided to note the following cases in the corresponding paragraph of the General Report:

- Afghanistan
 - since 2012: Conventions Nos 138, 144, 159 and 182;
- Equatorial Guinea
 - since 1998: Conventions Nos 68 and 92.
- Ghana
 - since 2013: Conventions Nos 144 and 184;

Failure to supply information in reply to comments made by the Committee of Experts

The Committee took note of the information provided and of the explanations given by the Government representatives who had taken the floor.

The Committee underlined the vital importance, to permit ongoing dialogue, of clear and complete information in response to comments of the Committee of Experts. In this respect, the Committee expressed serious concern at the large number of cases of failure to transmit information in response to the comments of the Committee of Experts. The Committee recalled that governments could request technical assistance from the Office to overcome any difficulty that might occur in responding to the comments of the Committee of Experts.

The Committee urged the Governments of Angola, Barbados, Belize, Burundi, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, France – French Southern and Antarctic Territories, Gambia, Grenada, Guinea, Guinea-Bissau, Haiti, Ireland, Kyrgyzstan, Lebanon, Liberia, Mauritania, Nigeria, Saint Kitts and Nevis, Samoa, Saint Vincent and the Grenadines, Saint Lucia, San Marino, Sierra Leone, Solomon Islands and Tajikistan to make any effort to transmit as soon as possible the required information. The Committee decided to note these cases in the corresponding paragraph of the General Report.

Failure to supply reports for the past five years on unratified Conventions and Recommendations

The Committee took note of the information provided.

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on unratified Conventions and Recommendations. In effect, these reports permitted a better evaluation of the situation in the context of the General Surveys of the Committee of Experts. In this respect, the Committee recalled that the ILO could provide technical assistance to help in complying with this obligation.

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Comoros, Congo, Democratic Republic of the Congo, Grenada, Equatorial Guinea, Guinea, Guinea-Bissau, Guyana, Liberia, Libya, Kiribati, Marshall Islands, Solomon Islands, Saint Kitts and Nevis, Sao Tome and Principe, Sierra Leone, Somalia, Tuvalu, Vanuatu and Zambia would comply with their future obligations un-

der article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

Submission of instruments adopted by the Conference to the competent authorities

The Committee took note of the information and explanations provided by the Government representatives who had taken the floor. The Committee took note of the specific difficulties mentioned by certain delegates in complying with this constitutional obligation, and in particular the intention to submit shortly to competent authorities the instruments adopted by the International Labour Conference.

The Committee pointed out that a particularly high number of governments had been invited to provide explanations on the important delay in meeting their constitutional obligation of submission. The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to competent authorities. Full compliance with the obligation to submit meant the submission of the instruments adopted by the Conference to national parliaments and was a fundamental requirement in ensuring the effectiveness of the Organization's standards-related activities. The Committee recalled in this regard that the Office could provide technical assistance to contribute to compliance with this obligation.

The Committee expressed the firm hope that the countries mentioned, namely: Angola, Azerbaijan, Bahrain, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Dominica, El Salvador, Equatorial Guinea, Guinea, Haiti, Iraq, Jamaica, Jordan, Kazakhstan, Kyrgyzstan, Kuwait, Libya, Mali, Mauritania, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Syrian Arab Republic, Tajikistan, Uganda and Vanuatu would transmit in the near future information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Employer members expressed appreciation of the explanations and statements made and noted that the Worker and Employer members had a unified position with respect to the cases of serious failure. Member States requiring technical assistance had made requests in that regard, and such requests should continue. The Employer members requested member States to abide by their obligations to submit reports to the Office, and hoped for improved compliance in that respect in the future.

The Worker members thanked Governments for their important explanatory statements. They expressed concern that 17 of 59 governments were absent. The Committee's work was not just a matter of routine, but was a valuable exercise in assessing the current situation and in identifying instances where governments had not complied with their commitments. They invited the governments concerned, and particularly those receiving technical assistance, to submit the reports requested. They emphasized the relevance of the work of the Committee of Experts and the major role it played in the work of the Conference Committee. The Worker members called on governments to follow through with their promises and to respect any moral commitments they had entered into.

*Information received up to the end of the meeting of the Committee on the Application of Standards*¹

Brazil. The Government reported that the 43 instruments adopted by the Conference from the 51st Session (June 1967) to the 103rd Session (June 2014) had been submitted to the National Congress on 28 May 2015.

¹ The list of the reports received is in Appendix I.

Brunei Darussalam. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Cabo Verde. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Germany. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Guinea. Since the meeting of the Committee of Experts, the Government has sent some of the reports due on the application of ratified Conventions.

Madagascar. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Malaysia – Peninsular. Since the meeting of the Committee of Experts, the Government has sent all the reports due on the application of ratified Conventions and replies to all Committee's comments.

Malaysia – Sarawak. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

Niger. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

Papua New Guinea. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Sao Tome and Principe. Since the meeting of the Committee of Experts, the Government has sent the first report due since 2007 on the application of Convention No. 184, replies to the majority of the Committee's comments and has reported that the instruments adopted by the Conference from the 77th Session (June 1990) to the 102nd Session (June 2012) were submitted to the National Assembly on 8 May 2015.

Swaziland. Since the meeting of the Committee of Experts, the Government has sent replies to all Committee's comments.

Tunisia. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

Uganda. Since the meeting of the Committee of Experts, the Government has sent replies to the majority of the Committee's comments.

**B. INFORMATION AND DISCUSSION ON THE APPLICATION OF RATIFIED CONVENTIONS
(INDIVIDUAL CASES)**

The Committee on the Application of Standards (CAS) has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. The CAS has adopted conclusions on the basis of consensus. The CAS has only reached conclusions that fall within the scope of the Convention being examined. If the workers, employers and/or governments had divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions.

Forced Labour Convention, 1930 (No. 29)

ERITREA (ratification: 2000)

A Government representative expressed the view that the national laws were compatible with the requirements of the Convention. Compulsory national service was an exception to the term of forced labour under section 3(17) of the Labour Proclamation of Eritrea (No. 118 of 2001). Not only compulsory national service, but also normal civic obligations, compulsory labour as provided for in the Penal Code, communal services and services rendered in case of emergency could not be considered as forced labour. The Committee of Experts had indicated that, under the Convention, compulsory military service was excluded from the scope of the Convention only where conscripts were assigned to work of a purely military character. The Proclamation on National Service (No. 82 of 1995) was also designed for a military purpose. Furthermore, sections 6 and 8 of the Proclamation, which provided that Eritrean citizens who had attained the age of 18 and above had the obligation to render national services for 18 months, were compatible with the Convention, as Article 2(2)(b) provided that forced or compulsory labour should not include any work or service which formed part of the normal civic obligations of citizens. The Government of Eritrea agreed with the comment of the Committee of Experts according to which in specific circumstances, such as in cases of emergency, conscripts might be called upon to perform non-military activities. The Government also agreed with the indications of the Committee of Experts that the power to call up labour should be confined to genuine cases of emergency or force majeure, that is a sudden and unforeseen happening as provided for in Article 2(2)(d) of the Convention. However, the Conference Committee should understand the peculiar and genuine cases of emergency and the current situation in the country. The ongoing border conflict and the absence of peace and stability had been affecting the labour administration of the country. In view of the “no peace, no war” status, it was not possible to implement the final and binding decision of the Boundary Commission, and the international community was not playing its appropriate role in this regard. Moreover, there were unpredictable weather conditions which further contributed to a “threat of war and famine”. In view of these specific circumstances, the exception in Article 2(2)(d) of the Convention relating to cases of emergency applied. This justified the prolongation of the duration of national service beyond the stipulations in the Proclamation on National Service, and the adoption by the National Assembly in 2002 of the Warsai Yakaalo Development Campaign (WYDC). Compulsory services were strictly limited to the requirements of the current situation and community interests, and were not used for the benefit of private companies or individuals. The relevant post-war development campaign programmes were related mainly to labour in the areas of reforestation, soil and water conservation, as well as reconstruction activities and food security. Concerning the implementation of the Proclamation on National Service, the Government had no problem with conscripts leaving

the service upon completion of their service of 18 months during peacetime, and in fact, before the start of the Eritrean–Ethiopian border conflict in 1998, there had been demobilizations. However, because of that border conflict, conscripts could not leave their service upon completion of the 18 month period. Contrary to the view expressed by the Committee of Experts, there were no large-scale and systematic practices of imposing compulsory labour on the population for an indefinite period of time within the framework of the national service beyond the exceptions provided for in the Convention. Hence, no forced or compulsory labour had been carried out in Eritrea in violation of the Convention. The Government had no intention of using national service in all-round activities or of extending the duration of such service indefinitely. Despite the threat of war and famine, the Government was demobilizing conscripts due to health and other social issues, and was planning in the near future to demobilize conscripts, in accordance with the Proclamation on National Service. However, these positive measures taken by the Government would not be able to achieve a lasting solution unless the major cause that affected the labour administration was tackled. He therefore called upon the ILO and the international community to play their role to influence the implementation of the final and binding decision of the Boundary Commission.

The Worker members said that the systematic and generalized practice of forced labour in Eritrea, which had been criticized for years, but to no avail, had been classified by the Committee of Experts as a double-footnoted case. In its interim report in March 2015, the United Nations Commission of Inquiry on Human Rights on Eritrea had found that compulsory and indefinite national service, combined with abusive government policies and practices, exposed workers to forced labour. Those practices were accompanied by arbitrary arrest and detention, extrajudicial executions and other violations of human rights. In accordance with the Proclamation on National Service, all Eritrean nationals between the ages of 18 and 40 were subject to “the obligation to perform compulsory national service”, which consisted of six months of military training and 12 months of active military service, in addition to economic development work within the armed forces. Moreover, the introduction in 2002 of the WYDC had institutionalized conscription for an indefinite period, as all citizens between the ages of 18 and 50 (40 for women) remained conscripted indefinitely for compulsory national service. There were two categories of conscripts: those who were conscripted into the army and were also assigned to non-military work, particularly in agriculture and construction; and those engaged in civil administration and who were permanently assigned to infrastructure projects, education and construction. Private enterprises were also authorized to have recourse to such labour through the WYDC. In such cases, wages were paid directly to the Ministry of Defence, which paid a much lower wage to the conscripts. That practice was common in the mining industry, and particularly in the Bishna mine.

In accordance with Article 2(2)(a) of the Convention, so as not to constitute forced labour, work exacted in the framework of compulsory military service had to be of a

purely military character, in order to prevent conscripts from being assigned to public works. That limitation had its corollary in Article 1(b) of the Abolition of Forced Labour Convention, 1957 (No. 105), which prohibited the exaction of forced or compulsory labour “as a means of mobilising and using labour for purposes of economic development”. The practices adopted by the Government of Eritrea went well beyond the context of the exception envisaged by Convention No. 29 as they allowed conscripts not only to be used for ordinary public works, but also in the private sector. Persons who did not comply with the requirement to perform national service were liable to severe penalties of up to five years of imprisonment and the suspension of other rights. Indeed, a military police force had been created for that purpose. Those who nevertheless managed to escape from national service left the members of their families at enormous risk, as they were considered by the Government to be guilty “by association” and liable to a fine of ERN50,000 (around US\$3,350). If they could not pay that sum, family members were detained. Other reprisals, such as the non-renewal of commercial licenses, were also exacted. The situation was made worse by the inhuman and degrading prison conditions, in overcrowded prisons, unhealthy cells, and inadequate and insufficient food. As a result, many detainees fell ill, and medical services were inadequate. In addition, torture and ill-treatment were common. Contacts between detainees and their families were difficult, as families were not informed of the place of detention of their relatives, nor the reasons or length of detention. In view of the heavy prison sentences imposed in cases of refusal to perform national service, the conditions of detention and the reprisals against families, there could be no doubt that the work performed in the framework of national service was undertaken under the menace of penalties and that the persons concerned did not offer themselves for such work voluntarily. The Worker members also expressed concern with regard to the incidence of such practices in the case of women and children. Various reports had shown that almost one third of new conscripts at military training centres were under 18 years of age. Students during their last year of secondary school were required to engage in intensive military training in Sawa and students in their 12th year of school received military training before being transferred directly to the national service programme. In the case of women, who were also subject to compulsory military service, they were particularly vulnerable to the risk of harassment and sexual violence, and were forced to carry out domestic work in addition to their military functions. In view of the forced and indefinite conscription, tens of thousands of Eritrean nationals were fleeing their country, often at the risk of their lives, whether to Sudan or in an attempt to reach Europe, as illustrated by the Lampedusa tragedy, where the immense majority of the 359 victims were from Eritrea. As emphasized by the Committee of Experts, the present case was particularly serious and worrying. Eritrea was more of a penal colony than a State. The exaction of forced labour in the framework of national service was not only characterized by terrible abuses and the flagrant exploitation of workers, but also a humanitarian crisis, of which women and children were the principal victims. The Government needed to repeal with immediate effect the Proclamation on National Service and bring an end to the WYDC.

The Employer members welcomed the information provided by the Government. They noted the challenges faced by the Government due to the “no peace, no war” situation and also noted that the Government had requested the Committee to understand the genuine circumstances of the situation in the country. The Government continued to argue that work imposed under national service

was intended for military purposes and that it formed part of the normal civic obligations of citizens as provided for in the exceptions in Article 2(a) and (b) of the Convention. The Government had also explained that the non-existence of peace, “threats of war and famine” and unpredictable weather conditions constituted cases of emergency, an exception provided for in Article 2(d) of the Convention. While the Employer members appreciated that the Government had provided explanations, they remained concerned about them. The Government had admitted that in view of the border conflict, and the “no peace, no war” situation, the original assignment of conscripts between 18 and 40 years of age for a period of 18 months had been extended, and that this practice had been institutionalized with the WYDC adopted in 2002. The Government had also admitted that conscripts could not leave national service. It had further confirmed that the duty of citizens in national service, as required under article 23(3) of the Constitution, not only included work of a military character, but also the building of roads and establishment of services, programmes of reforestation, soil and water conservation, reconstruction activities and food security. As a consequence, the broad scope of national service, encompassing civilian life, exceeded military purposes, as observed by the Committee of Experts. The Employer members recalled the obligation of all ratifying member States to eliminate all forms of forced labour. While the Committee of Experts had been making comments to Eritrea in recent years regarding the implementation of this obligation, the explanations of the Government had been the same for a number of years. The practice of imposing compulsory national service for an indefinite period did not fall within the exceptions set out in the Convention and was therefore incompatible with the Government’s obligations under the Convention to eliminate forced labour for state development. The Employer members urged the Government to amend or repeal the Proclamation on National Service and the WYDC of 2002, and to engage in consultations with the representatives of social partners in this regard. They stated that this was a serious matter requiring immediate action by the Government in order to bring national law and practice into line with the Convention.

The Worker member of Eritrea said that the ongoing process of reconstruction, stability and restoration of peace in Eritrea, following the decimating war, was difficult, slow and frustrating. This had contributed to a situation in which issues related to the world of work were often misrepresented. This was the case with the observation of the Committee of Experts regarding the use of forced labour in Eritrea. Eritrean workers were committed to the goal of reconstructing their communities after the devastation of the war and were ever ready to make sacrifices for it. However, they did not and had not encouraged the fact that those sacrifices were forcefully extracted. While reports containing misinformation and making general conclusions about the situation of forced labour in Eritrea were not helpful, he requested both technical and financial support from the ILO to build capacity in order to reinstate the 18 month national service, including through social national tripartite dialogue and consultation. This assistance was needed and should be provided so that Eritrea could steadily and gradually address these issues. Eritrean workers would welcome that assistance and cooperate with friendly and supportive partners. Finally, he urged the international community to play its role for the implementation of the Border Commission decision, which was final and binding.

The Employer member of Eritrea emphasized that the country was fighting not only for its independence, but also to ensure social justice. After Eritrea had gained independence in 1991, the Government had begun to demo-

Forced Labour Convention, 1930 (No. 29)

Eritrea (ratification: 2000)

bilize ex-fighters and had initiated several economic and social programmes aimed at ensuring their capacity to earn their living. Unfortunately, a border war had been undermining these efforts. As a result, thousands of lives had been lost and tens of thousands of people had been displaced. Following the mediation by the international community, an agreement had been signed leading to a decision of the Boundary Commission, which was final and binding. Nonetheless, that decision had not been implemented for the past 13 years, resulting in a situation of “no peace, no war”. Until those conditions improved, the defence and sovereignty of the country had to remain a priority, requiring a compromise with respect to some national proclamations and ILO Conventions. The international community should play its role in the implementation of the decision taken by the Boundary Commission, which would solve the real cause of the problem.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, emphasized that the promotion and universal ratification and implementation of the eight fundamental ILO Conventions was part of the European human rights strategy adopted in 2012. In the framework of its cooperation with the EU, compliance with the Convention was essential, taking into account that Eritrea had expressed its commitment to the respect of human rights, including the abolition of forced labour, under the Cotonou Agreement. The Committee of Experts had requested the Government to take all necessary measures to amend or repeal the Proclamation on National Service and the WYDC of 2002 in order to remove all legislative provisions allowing for the exaction of forced labour within the context of national service. She called on the Government of Eritrea to respond to the requests of the Committee of Experts and to cooperate with the ILO. She also expressed the readiness of the EU to cooperate to ensure the full enjoyment and development of human rights in the country.

The Worker member of Sweden said that some of the reasons for the desperate and dangerous decisions taken by Eritrean migrants were forced labour, prolonged military conscription, arbitrary arrests, torture, appalling detention conditions, disappearances and severe restrictions on freedom of movement in the country. She recalled that many victims of the Lampedusa disaster had been Eritreans who had run away from servitude-like conditions. Furthermore, according to the United Nations High Commissioner for Refugees (UNHCR), an average of 5,000 Eritrean refugees, including unaccompanied minors, fled the country every month. This number did not include non-registered migrants, many of whom resorted to smugglers and traffickers to leave the country in order to avoid the heavy sanctions imposed for unauthorized travel. Eritrean migrants were reported to be victims of massive extortion, kidnapping, sexual assault, and the trafficking of body parts. Although the country should have shown the necessary responsibility to bring this situation to an end, the regime continued to deny entry to the United Nations Special Rapporteur on the situation of human rights abuses in Eritrea. In her 2014 report, she had indicated that the refugee exodus was being fuelled by alleged abuses, including extrajudicial executions, torture and forced military conscription of indefinite duration. Finally, she had called on the Eritrean regime to act responsibly on the issue, cooperate with partners committed to ending such abuses and to progressively review procedures and practices regarding refugees and migration issues.

The Worker member of Canada addressed the issue of the use of national compulsory service for non-military economic development, and indicated that the ruling party owned a national construction company which employed forced labour to build roads, housing and other earth-

works throughout the country. This had been confirmed by examining the activities of the company conducted in association with large foreign multinationals from Australia, Canada, China and the United Kingdom which were exploiting some of Eritrea’s substantial mineral deposits. She referred in particular to a Canadian-owned company which had operated the Bisha mining project since 2010. Data showed that this company was one of the largest foreign investors in Eritrea and that Eritrea was Canada’s largest source of gold from sub-Saharan Africa. Eritrea virtually compelled foreign multinationals to subcontract their construction activities to this Eritrean company, thereby contracting them out to forced labour. This had come to light following a lawsuit launched in Canada against the related Canadian multinational by a number of Eritreans who had worked for the subcontracted company. The complainants asserted that it had conspired with the Eritrean Government to force them and other conscripted workers to work at the Bisha mine, with low pay, poor housing, insufficient medical services and inadequate food. A 2013 Human Rights Watch report confirmed these allegations. She wondered why the issue had not been identified by the Canadian Government’s corporate social responsibility programme or rectified once it came to light. Diplomatic relations with Eritrea should make clear that countries would not allow investment flows to industrial projects using forced labour. While Eritrea was responsible for the use of forced labour, foreign companies and investors should not benefit from it, and governments should make sure that these abuses did not occur.

The Worker member of Ghana, also speaking on behalf of the Worker members of Nigeria and Sierra Leone, said that hundreds of young men, women and children in search of a place to pursue their life’s aspirations engaged in life-threatening and dangerous escapes to Europe, often resulting in their death. Many of these young people were Eritreans who were pushed out of the country in large part by the situation of emergency, perpetual militarization and the situation relating to compulsory national service, as described by the Committee of Experts. This situation continued to constrain individual and collective economic activities. Although the border situation with Ethiopia in the war of 1998–2000 had triggered this practice, the WYDC adopted in 2002 allowed the conscription of all citizens between the ages of 18 and 40 for an indefinite period to national service. The perpetuation of militarization was no longer justifiable. The Government’s statement that the obligation to perform compulsory national service formed part of the exceptions provided for in the Convention was clearly erroneous. Ample evidence existed that people had worked for up to 15 years, in some cases with suppressed incomes, within the context of so-called normal “civic obligations” and under a camouflage of perpetual military duties. The Government of Eritrea was therefore using the national service arrangements to shore up national economic development efforts, which was contrary to the spirit and letter of the Convention. Recalling that, although international human rights law gave the people of Eritrea the right to work for the advancement of their individual goals and ambitions, and the importance of Eritrean citizens contributing to ensure national economic prosperity, he nonetheless emphasized that forced labour could not be the way to pursue such goals. The Government should therefore be urged to accept ILO technical assistance.

The Government representative emphasized that the Government was opposed to forced labour, that it was currently working towards its abolition, and that it would continue to work towards this objective. He indicated that the root cause of this issue was related to the situation of the country as referred to in his earlier statement. The current conditions were not being used as an excuse to

promote forced labour, but they were such that the Government was forced into this situation. He once again emphasized that it was important to address the root cause of forced labour, namely the “no peace, no war” situation, rather than to look at the outcome. This situation was not only the root cause of forced labour, but also of other problems. He called on the Conference and the ILO to work together to address the border conflict issue and the situation of “no peace, no war” to achieve peace and stability in the country. Without a solution in this regard, there would be drawbacks, even if laws and regulations were improved. When seeking a solution, all issues should be addressed, including technical aspects relating to labour issues and forced labour. He said that the Government looked forward to working together to try to influence and implement the final and binding decision of the Boundary Commission.

The Employer members once again thanked the Government for the information provided. They wished to make clear that they were sensitive to the difficult context and the challenges relating to the border conflict and the specific circumstances referred to by the Government. However, they indicated that it was important for the Government to understand the very serious concerns they had concerning the reiterated explanations provided by the Government in relation to the application of the Convention. In this regard, they remained concerned that the Government did not fully appreciate the comments of the Committee of Experts concerning the issue of forced labour which continued to exist in the framework of national compulsory service. They nevertheless believed that the Government was willing to work together with the ILO to understand more fully its obligations under the Convention, which were applicable despite the current context. They therefore recommended that the Government should accept ILO technical assistance in order to achieve the objective of eradicating forced labour in the context of national service, as well as measures to amend or repeal the Proclamation on National Service and the WYDC of 2002.

The Worker members said that, while they understood the difficulties Eritrea faced, the fact remained that the population was directly affected as a result and was suffering. The response to these difficulties should not be to force the population to work and, moreover, to do so in terrible conditions. The excessive militarization of society had created a situation in which human rights violations stemmed from legislation and the policies and practices followed by the Government. A large proportion of the population was subjected to forced labour through indefinite national service, which included compulsory non-military work. The Government should therefore be called upon to: put an end to indefinite national service by abolishing the WYDC and repealing the Proclamation on National Service; terminate the use of conscripts to perform work that was not purely military in nature, particularly in the private sector; end the military conscription of children; investigate allegations of killings, torture, kidnappings and other violations committed in the context of the national service; close secret detention facilities, guarantee the physical integrity of prisoners, and ensure they had access to medical treatment, as well as adequate detention conditions, in accordance with international standards; and put a stop to reprisals, such as the extortion of money, against the families of deserters. Given the systematic exaction of forced labour that had been practised in Eritrea for many years, the Worker members had considered that the inclusion of this case in a special paragraph of the Committee’s report was justified. However, the Government had recognized that the difficulties faced by the country did not excuse the imposition of forced labour and had asked the ILO for technical assistance. The

Worker members therefore requested, in view of the serious and urgent nature of the situation, that direct contact should be established between the Office and the Government in order to support the country in meeting its obligation to end forced labour and to consider what technical assistance could be provided.

Conclusions

The Committee took note of the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that followed relating to the large-scale and systematic practice of imposing compulsory labour on the population for an indefinite period of time within the framework of the national service programme which encompassed all areas of civilian life and was therefore much broader than military service. These members of the national service also performed other duties, such as participating in the construction of roads and bridges, reforestation activities, soil and water conservation and activities aimed at food security. The obligation to perform compulsory national service was stipulated in the Proclamation on National Service of 1995 and the Warsai Yakaalo Development Campaign of 2002. The discussions had also highlighted that workers who refused to carry out work within the framework of the national service were faced with arbitrary arrest and detention and imprisonment in inhumane conditions.

The Committee noted the Government’s indication that its national laws were compatible with the requirements of Convention No. 29 since compulsory national service, normal civic obligations, communal services and services rendered in case of emergency could not be considered as forced labour. The Government highlighted that the ongoing border conflict and the absence of peace and stability had affected the labour administration of the country. In view of the “no peace, no war” status, it was not possible to implement the final and binding decision of the Eritrea–Ethiopia Boundary Commission. Moreover, there were unpredictable weather conditions which further contributed to a “threat of war and famine”. In view of these specific circumstances, the exceptions in Article 2(2) of Convention No. 29 relating to cases of emergency applied, which justified the prolongation of the duration beyond the stipulations in the Proclamation on National Service of 1995 and the adoption by the National Assembly in 2002 of the Warsai Yakaalo Development Campaign. The cases of compulsory services were strictly limited to the requirements of the current situation and community interests, and were not used for the benefit of private companies or individuals. The Government had no intention of using national service in all-round activities and to extend the service duration indefinitely. Despite the threat of war and famine, the Government was demobilizing conscripts due to health and other social issues. Finally, the Committee noted the Government’s statement that it wished to avail itself of ILO technical assistance.

Taking into account the discussion that took place, the Committee urged the Government to:

- accept ILO technical assistance in order to fully comply with its obligations under Convention No. 29;
- amend or revoke the Proclamation on National Service and the Warsai Yakaalo Development Campaign of 2002 to bring to an end forced labour associated with the national service programme, and ensure the cessation of the use of conscripts in practice in line with Convention No. 29; and
- immediately release all imprisoned “draft evaders” who refused to participate in conscription exacted in contravention of Convention No. 29.

The Government representative said that he could not accept the allegations and misinformation concerning alleged child soldiers and extortion. He urged the ILO and the international community to assist in implementing the

binding decision of the Eritrea–Ethiopia Boundary Commission.

MAURITANIA (ratification: 1961)

A **Government representative**, after commending the work of the Committee, indicated that the Government had been steadfastly committed for several decades to combating the vestiges of slavery, ill-treatment and exploitation, particularly through legal and institutional reforms and the implementation of social and economic development programmes to combat the vestiges of slavery. Serious and audacious legal and institutional reforms had been adopted in 2012. Pursuant to Constitutional Act No. 2012-015 of 20 March 2012, article 13 of the 1991 Constitution was amended to define slavery as an imprescriptible crime against humanity and was punished accordingly. This Act strengthened Act No. 2007/48 of 9 August 2007 which defined as an offence slavery and slavery-like practices. The 2007 Act thereby defined for the first time a slave and slavery, and provided for the possibility for any legally recognized human rights association to report crimes detected and to offer assistance to victims. This was a significant step forward, which exposed those who might go against the law to public condemnation. In addition to the measures that had been taken to support the law, Parliament was examining two bills. The first centred on the Act to combat torture which would repeal and replace Act No. 2013-011 of 23 January 2013 prohibiting the crimes of slavery and torture as crimes against humanity. The second bill presented to Parliament concerned Decree No. 2006.05 of 26 January 2006. It would allow persons with insufficient financial resources, which was the situation for victims of the vestiges of slavery, to defend their rights before the courts. In addition, he made mention of the establishment of a court responsible for prosecuting crimes inherent in slavery, and indicated that the judges for this court were being selected for training. The Government was formulating programmes dedicated to combating the vestiges of slavery with ILO support. On 6 March 2014, the Government had adopted a roadmap for combating the vestiges of slavery following consensus among a number of participating departments. This strategy was coupled with an action plan which was centred on legal and socio-economic priorities, and on awareness raising. An inter-ministerial committee chaired by the Prime Minister and encompassing all the relevant departments had been set up and met on a regular basis to follow up on the implementation of this strategy. The evaluation of the stages carried out in May 2015 showed that real progress had been made in the socio-economic sphere, particularly by the Tadamoun agency, established in March 2013 to combat the vestiges of slavery and to promote integration and poverty reduction. The efforts of this agency had given rise particularly to the building of schools, clinics, health posts, and social housing, and to the distribution of rehabilitated land and access to drinking water in areas inhabited mainly by persons who suffered the vestiges of slavery. The Government would communicate to the ILO all the statistics on the activities of the agency and their impact on the reduction of the vestiges of slavery. Furthermore, the Government had launched an information campaign on these issues. A Fatwa prohibiting slavery had been adopted by the Assembly of Ulemas and had been widely disseminated. The speaker indicated that the critics of this policy could no longer continue to deny the existence of slavery. The Government would continue its efforts to renew and modernize the rule of law, the first beneficiaries of which were the victims of the vestiges of slavery. The speaker emphasized, in that regard, that the Government was preparing, with ILO support, two important programmes which would reinforce that national

effort. The first, on the elimination of child labour, had led to the drafting of a national action plan for the elimination of child labour in Mauritania (PANET-RIM) which had been adopted by the Council of Ministers on 14 May 2015. The second also aimed to eradicate the vestiges of slavery and would be prepared before the end of the year, and would provide for support for legislative changes, institutional strengthening, capacity building for the implementation of the law, research, awareness raising and support for victims. He mentioned that, despite this significant progress, Mauritania was once again part of the individual cases relating to the application of this Convention, owing to outdated or incomplete information submitted to the Committee. He concluded by reaffirming the Government's determination to permanently eradicate the vestiges of slavery.

The Worker members expressed regret at the fact that the information provided by the Government had not been reproduced in a written document. The Convention had been ratified by Mauritania in 1961 and since then the case had been examined many times by the Committee. In the wake of the Committee's discussions in 2002 and 2003, a number of missions had taken place to the country (in 2004 and 2006) and a set of recommendations had been formulated. In 2010, while welcoming certain elements, the Committee had urged the Government to play a key role in awareness raising, and to make the public and the authorities understand that it was essential to eradicate slavery. They had also called for the adoption of a national plan for combating slavery, in close collaboration with the social partners and civil society organizations. The Government was due to take measures to provide victims with recourse to the judicial authorities and the police and report on the measures taken, including providing reliable quantitative and qualitative information on the characteristics of slavery and its vestiges. At the present time, Mauritania was one of the last countries in the world where traditional forms of slavery persisted. The Worker members pointed out that the Committee of Experts had noted with regret the absence of reports in 2013 and 2014. Moreover, according to the United Nations Special Rapporteur on contemporary forms of slavery, despite the abolition of slavery in 1981, its definition as a crime against humanity in 2012, and the announcement of the creation of a special court for prosecuting crimes of slavery, the relevant laws and policies were not fully applied and the lack of reliable information was a particular source of concern. The Worker members declared that slavery simply could not be tolerated and that Mauritania must embark on a path of change without delay. Even though, according to the Committee of Experts and the Special Rapporteur, Act No. 2007/48 criminalizing slavery and punishing slavery-like practices had been widely publicized, victims continued to face problems in asserting their rights vis-à-vis the competent authorities, which were failing to take action on complaints. It should also be recalled that it was just in the presence of a complaint that an investigation could be launched, and yet the law did not authorize human rights organizations to bring complaints on behalf of victims of slavery. Furthermore, the police either refused to conduct inquiries into allegations of slavery or, at best, such inquiries merely took the form of a face-to-face meeting between the parties in which the victims, who were in an extremely vulnerable position, had no choice but to amend their statements, after which the case was reclassified as a labour dispute or one involving exploitation of minors. The judicial authorities also refused to prosecute those suspected of engaging in slavery-like practices. Despite the prosecutor having the obligation to notify the complainant of the decision whether or not to prosecute within eight days, numerous complaints had remained pending without the prosecutor

providing the complainant with information. Complaints rarely led to a trial because the legal deadlines were systematically missed. SOS-Esclaves highlighted the reluctance of judges, most of whom originated from the Beidan community, to convict slave owners and award compensation to victims, out of fear of being ostracised by their own community. Even though the Committee had shown understanding with regard to the weight of traditions, culture and beliefs, the conclusions that it had formulated in 2010 had not been acted upon. Victims of slavery were still unaware that their situation was illegal or unjust and lived in acceptance of their inferior status. For that reason it was difficult for them to make use of the Act of 2007.

With regard to the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency), the creation of which was welcomed in 2013, the Committee of Experts questioned its institutional and financial capacity to implement the roadmap for combating the vestiges of slavery adopted in 2014. It would appear to have done nothing to tackle the issues of slavery and its mandate seemed to be limited to dealing with the vestiges of slavery and not with persistent slavery-like practices, which showed a lack of will on the part of the authorities in this respect. The roadmap represented a positive step forward but did not provide for specific victim protection measures, did not confer *locus standi* on third parties and continued to impose the burden of proof on the victim. However, it did make provision for the setting up of an emergency fund designed to bring socio-economic assistance to persons removed from slavery and for positive actions in favour of the descendants of slaves. The one-year implementation time frame was unrealistic in view of the situation. The Worker members also highlighted the situation of children kept in servitude, who worked for a master from early youth and had no access to education. Considered as the master's property, they could be hired out, loaned, given as a wedding present or left as a legacy to the master's descendants. The descendants of slaves who were no longer under the control of their master generally had limited access to education owing to their marginalization. They therefore failed to acquire the skills that would enable them to undertake work other than domestic work or activities in stockbreeding or agriculture. The trade unions had campaigned actively against slavery-like practices. However, in January 2015, the Mauritanian authorities had intervened to prevent the Free Confederation of Mauritanian Workers (CLTM) from conducting a campaign to raise public awareness of anti-slavery legislation, thereby showing that they were still clamping down on anyone who dared to denounce the widespread persistence of the scourge of slavery. The situation was extremely serious and the Government seemed reluctant to abolish slavery once and for all. Even if the political, cultural and economic obstacles were understood, the Government had to act without delay.

The Employer members indicated that this session of the Conference Committee dealt with the 18th observation of the Committee of Experts on this case, which was a tragic one of continuing slavery entailing the country's own population. They thanked the Government for the information on measures undertaken and for its efforts to fight slavery. The Employer members, however, expressed deep concern that the Government had not provided its report in 2013 and 2014, which they considered itself a matter of grave non-compliance with its obligations. Act No. 2007/48 criminalizing slavery and punishing slavery-like practices had been enacted and well publicized, but, as indicated in the Observation of the Committee of Experts, it continued to be difficult for victims to bring their cases before the competent judicial and administrative officers, as observed in the result that only one person had

so far been convicted under the Act. It was clear that the Government's will to apply and enforce the Act was missing, contrary to the provision of Article 25 of the Convention. The Employer members observed that the main difficulties in the effective application of the Convention were due to cultural obstacles and reluctance of the public administration to deal with the cases of slavery. Apart from the abovementioned case of conviction of one person, all other cases had not been pursued due to the absence of evidence or the pressure exerted on the victim to withdraw the claim, resulting in the absence of justice, equality and freedom since Mauritania's ratification of the Convention in 1961. While they were satisfied to hear at this Committee the explanations by the Government on steps taken since last year, they indicated that the Government was not only obliged, but had a deep human duty to act now, and called upon the Government to adopt a comprehensive strategy to combat slavery and slavery-like practices. Such strategy would include: (1) as a matter of priority, the reinforcement of the administration of justice in relation to slavery through a specialized court, inspectorate, and prosecutors as well as centres for victim care; (2) prevention through legislation; (3) safety nets for victims (e.g. rehabilitation centres, skills development programmes and financial assistance) and poverty eradication programmes; and (4) awareness-raising activities aimed at nurturing a common understanding that slavery was not acceptable in today's society, and at facilitating victims and civil society members in reporting cases anonymously and dealing with the victims' trauma. The Employer members indicated that the Government could not be allowed to choose not to report on the application of Conventions. They recalled that a sizeable number of people in Mauritania were suffering from slavery as this Committee was meeting, and that the exchange of diplomatic discourses was no longer sufficient.

A Worker member of Mauritania said that it pained him to see Mauritania repeatedly summoned to appear before the international bodies. The problem stemmed from the way in which policies and actions were implemented, managed and evaluated. Any approach that was not participatory would not produce the intended effects. It should be noted that the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency) was exclusively controlled by the Government, with no participation by the population or non-governmental organizations (NGOs), and that the trade unions had not been involved in the development of the roadmap. The trade unions had been invited to the opening ceremony of the workshops on the evaluation of the roadmap in May 2015, but they had not been allowed to participate in the evaluation workshops. Social dialogue should be pursued with the Government and all the organizations concerned and objectives needed to be set outside the international bodies. When the Government had explained that the Act of 2007 enabled NGOs to provide assistance to victims, it had failed to mention that the right to organize was subject to the system of prior agreement, and that many human rights organizations had been unable to register. The leader of one organization had even been imprisoned for supposedly running an illegal organization. Dialogue must be inclusive in order to develop a policy based on consensus, and to enable Mauritania to turn the page. In that regard, the ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, was a key element that would provide a coherent framework for that policy.

Another Worker member of Mauritania expressed his total disagreement with the Worker and Employer members, as the situation they described in no way reflected the reality in the country. Slavery was a crime that should be condemned but a conspiracy surrounding the issue

Forced Labour Convention, 1930 (No. 29)

Mauritania (ratification: 1961)

existed within international bodies. This issue was always raised to put pressure on countries. Even though the vestiges of slavery persisted, the shocking stories that had been told with regard to Mauritania could not be accepted. Slavery in Mauritania had affected all sectors of the population. The Government was making efforts and those who wished to help the country were invited to participate. Mauritania had come out of slavery and henceforth references should be made to the vestiges of slavery. The speaker concluded by objecting to the manner in which Mauritania had been treated within the present Committee.

The Employer member of Mauritania expressed support for all the measures aimed at strengthening the rule of law, because only democracy, equality and justice could ensure the attainment and perpetuation of social peace throughout the country. The Government was continuing its efforts to eradicate the vestiges of slavery. It could boast many achievements in both urban and rural areas and in several different fields, including education and health. In terms of legislation the Government had had slavery classified as an imprescriptible crime against humanity for which there was no statute of limitations and had adopted important institutional measures that were part of a more extensive and ambitious economic development programme. The speaker had been personally involved in the design of most of those policies and strategies, and he commended the Government for its obvious determination to do its utmost to eradicate the last traces of slavery. He called for even more government efforts to attain an objective that would not be easy and would require extensive human and financial resources. As part of its role in eliminating slavery, the Office should obtain more complete and objective data and should support the multiple efforts that Mauritania was making. For their part, Mauritanian employers would continue to work alongside the Government and its social partners to promote labour policies in favour of job creation, vocational training and the reduction of poverty.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, the Republic of Moldova, Montenegro, Norway, Serbia and the former Yugoslav Republic of Macedonia, recalled the commitment made by Mauritania under the Cotonou Agreement to respect democracy, the rule of law and human rights principles which included those provided for in the Convention. While legal measures had been taken, especially Act No. 2007/48 criminalizing slavery and punishing slavery-like practices, the Government should continue taking measures, as victims of forced labour continued to face problems in being heard and asserting their rights. She also encouraged the Government to fully implement the 29 recommendations contained in the roadmap through measures aiming at specific and rapid results. The speaker called on the Government to discharge its reporting obligations with respect to ILO Conventions, and expressed the readiness of the EU to cooperate with the Government to promote development and the full enjoyment of all human rights.

The Worker member of South Africa, speaking also on behalf of the Worker members of Angola, Ghana, Liberia, Nigeria, Sierra Leone and Swaziland, emphasized the key role of this Committee in contributing to combat slavery. The situation of victims of slavery was comparable to that of migrants. Slavery in Mauritania was rooted in its history and culture, and was condoned by those seeking power. Although Act No. 2007/48 had criminalized slavery, punished slave-like practices, and provided for roles of human rights defenders, slavery was still rife with persons continued to be enslaved and treated as property. The speaker indicated this continued existence of slavery was

owing to the lack of enforcement and zero-tolerance policies, as exemplified in the fact that since the adoption of Act No. 2007/48, only one case of slavery had led to a court conviction. Moreover, he lamented the Government's lenient and partial attitude towards those found practising slavery and the intimidation faced by victims trying to seek justice. In concluding, the speaker stressed the need to establish victim support programmes aimed at reducing dependency through secure and viable employment, with the participation of social institutions, public authorities as well as the social partners.

The Government member of Egypt noted the efforts made by the Government with a view to bringing an end to forced labour and creating conditions under which Mauritanian workers would work in a dignified and decent manner. The speaker stated that legislation, in particular Act No. 2007/48, had also been enacted. The Act criminalized slavery and practices similar to slavery, and provided for sanctions for perpetrators. She also noted the roadmap to combat the vestiges of slavery. The speaker recalled that the goal was to end forced labour so that the country would be in line with its commitment to international labour standards. She expressed the support for the Government's effort that appeared promising, and hoped that this Committee would take due note of what had been achieved in this respect.

The Worker member of the United Kingdom, speaking also on behalf of the Worker member of Mali, said that the legislation and programmes adopted to criminalize slavery, which affected at least 18 per cent of the Mauritanian population, had had minimal impact. Victims continued to suffer from slavery, entrenched in the society and culture, as noted by bodies such as the UN Special Rapporteur on contemporary forms of slavery or Anti-Slavery International. The speaker indicated that Act No. 2007/48 did not provide justice or redress to victims. The Act provided only for criminal cases against the alleged master without providing the victims with means to escape from servitude. The Act allowed only the victim to bring a case with the burden of proof on him/her. These were difficult legal processes for the victims to handle, as they lacked necessary financial means and education. Investigations of the complaints often ended in a non-conclusive manner. Masters were arrested and quickly released on bail, as was the case with respect to the only case of conviction under Act No. 2007/48. Interviews with both the victims and the masters present would put the victims under extreme pressure. The other programmes had not produced much progress. The Tadamoun agency had done little work on slavery. The 2014 roadmap process had not included unions or employers in the implementation and had failed to achieve real development. A bill to replace Act No. 2007/48, currently before the National Assembly, included some improvements, including the possibility for NGOs to bring civil complaints on behalf of the victims. She emphasized that the legislative provisions were not sufficient. There needed to be real will to deal with the practice and concerted measures fully involving the social partners, in order to eradicate forced labour and slavery.

The Government member of Mali took note of the information provided by the Government on the steps that had been taken to ensure the application of the Convention, to eliminate forced labour in general and more specifically, to combat the vestiges of slavery. The Government's efforts and determination over the past few years to resolve the issue of slavery should be recognized and encouraged, with particular reference to the following measures: (1) the adoption of a constitutional act criminalizing slavery; (2) the bill against torture; (3) the bill on legal assistance; (4) the establishment of a special court to clamp down on crimes related to slavery and to provide training for judg-

es; (5) the adoption of a roadmap to combat the vestiges of slavery; and (6) the setting up of different programmes with the support of the ILO. The speaker encouraged the Government to be tireless in continuing its efforts and to request the Office to provide additional assistance and cooperation.

The Worker member of France stressed the need to be consistent. She recalled that, as part of the Economic Partnership Agreement (EPA) between the West African States, the Economic Community of West African States (ECOWAS) and the West African Economic and Monetary Union (WAEMU), on the one part, and the European Union (EU) and its Member States, on the other part, Mauritania would have to do away with 75 per cent of its import duties. It would thus lose a considerable slice of its budgetary income, which was vital for the local population. That kind of aggressive trade policy, which rendered local farms and small industries less competitive, placed additional pressure on the economy, and might well perpetuate the very forms of slavery that were denounced by trade unions and civil society organizations alike. The EU must not enter into trade agreements that were liable to institutionalize forced labour and, at the same time, expect the Government, as it did in a European Parliament resolution of December 2014, to continue its efforts to eliminate contemporary forms of slavery. The resolution also stated that human rights activists were being persecuted. Three activists belonging to the Mauritanian Initiative for the Resurgence of the Abolitionist Movement (IRA) (Mr Brahim Jaddou, Mr Yacoub Inalla and Mr Salar Ould Houssein) had in fact been sentenced to several months' imprisonment and Mr Biram Dah Abeïd, an emblematic anti-slavery advocate who was recognized as such in the country, had in January 2015 been sentenced to two years' prison and now faced the death sentence for having organized anti-slavery meetings. In its resolution the European Parliament called on the Government to free Mr Biram Dah Abeïd and "to permit anti-slavery activists to pursue their non-violent work without fear of harassment and intimidation". It was essential that the important laws that had been passed in 1981 and 2007 be implemented in practice, and that meant freeing all the human rights activists who were engaged in combating slavery.

The Government member of Morocco pointed out that the Committee of Experts' comments related to the effective application of legislation on forced labour and the strategic and institutional framework for combating slavery. The Government had provided information in reply to those comments; the legal and institutional reforms to the existing framework were intended to criminalize slavery and any other form of human servitude. Two bills were planned to cover the fight against torture and the right of those suffering the effects of slavery to take legal action. In addition, programmes and projects had been introduced with the help of the United Nations. These measures demonstrated the Government's will to harmonize its national legislation and practice with the provisions and principles of the Convention. Its efforts should therefore be supported and it should be given more time to reply to the outstanding requests.

The Government member of Tunisia noted the efforts undertaken by the Government to combat the vestiges of slavery, promote the rights of workers and apply the Convention. The legal and institutional reforms, development programmes and the establishment of a court to punish crimes related to slavery, as well as the roadmap adopted in 2014, were irrefutable evidence of the commitment and determination of the Government to effectively combat slavery and its vestiges. Expressing her conviction that the ILO International Programme on the Elimination of Child Labour (IPEC) and the programme to support the roadmap would contribute to achieving the objectives set

by the Government, she called on the Office to continue providing technical assistance to the Government, and encouraged the Government to continue its efforts to eradicate the vestiges of slavery once and for all and to comply with the provisions of the Convention.

The Government member of Algeria welcomed the measures taken by the Government to combat the vestiges of slavery. According to the information provided by the Government, legal and economic measures were taken through the adoption of several texts to prohibit slavery and compensate the victims. Several ministries implemented development programmes for vulnerable groups of persons in certain areas. Attention should be drawn to the establishment of the Tadamoun agency, which was responsible for combating the vestiges of slavery and ensuring the integration of the victims. These measures enabled the application of the relevant international standards. He also wished to highlight the Government's efforts and encouraged it to continue in that direction. In its conclusions, the Committee should take into account the information provided by the Government, which demonstrated its full willingness to implement the necessary measures to guarantee the effective application of the Convention.

The Government member of Qatar took note of the Government's statement on measures taken, and encouraged the Government to continue its effort in order to fully implement the Convention.

The Government representative recalled that he had informed the Committee of his Government's efforts to work with the ILO and other organizations. He was surprised by the statement from the Employer members, whose lack of respect towards Mauritania was tantamount to provocation and did nothing to help matters. As for the indictment from the Worker members, they were simply false statements that failed to take into account all that had been achieved. The truth was that a great deal had been achieved, both in juridical terms and through the implementation of effective programmes and public awareness campaigns, to combat the phenomenon. The discussions had also mentioned the important role of the religious authorities. He congratulated the Mauritanian employers and workers on their recognition of the positive measures that had been adopted. He assured them that the Government would do everything to ensure that they were able to engage in the ongoing dialogue, in which he invited them to participate. Freedom of the press was guaranteed in Mauritania, where a series of debates had been organized. It was incredible to hear people claim that Mauritania was full of slaves whose only prospect was to emigrate to Europe. Many Mauritians did emigrate to Europe, but they amounted to fewer than one in a thousand. As to enforcing the law, 26 cases had been brought to trial. Those were genuine efforts that ought to be highlighted. The roadmap was a concerted exercise in which the social partners had been involved. In fact, the United Nations Special Rapporteur on contemporary forms of slavery had returned to Mauritania as a consultant under ILO technical assistance, proof enough that she believed it was useful to continue supporting the Government's efforts. The Government's attitude showed that it was genuinely determined to put an end to the practices that had been denounced. In conclusion, he thanked all those – including the ILO – who had supported Mauritania in its implementation of the programmes referred to.

The Employer members stated that they had heard the responses from the Government and the situation was of great concern, especially for the vulnerability to which victims of slavery were exposed. The Government was requested to continue to employ all means it had at its disposal to eliminate slavery in the country. The Government was urged to: (1) effectively implement the 2007

Forced Labour Convention, 1930 (No. 29)

Mauritania (ratification: 1961)

Act that criminalized slavery, the National Plan to Combat the Vestiges of Slavery (PESE) and the roadmap, by providing comprehensive victim support and processes through the reinforcement of the capacity of authorities in prosecuting and administering the justice system in relation to slavery, prevention programmes, specific programmes enabling victims to escape, and awareness-raising programmes, including those targeted at the general public; the central authorities, judges and religious authorities; (2) provide the resources necessary for PESE and promote the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency) to work properly; (3) avail itself of ILO technical assistance, and (4) report in detail on the improvement of enforcement measures at the Committee of Experts' November 2015 meeting.

The Worker members thanked the Government for the information provided but stressed the importance of submitting the report that was due to the Committee of Experts. In the absence of that report, analysis of the situation could only be based on information that existed elsewhere, such as in the report of the United Nations Special Rapporteur on contemporary forms of slavery. Discussions had unfortunately revealed an extremely serious situation where slavery-like practices were protected or even encouraged by the Government. The important thing for the Committee on the Application of Standards was that the Haratines represented not an isolated group but a majority of the population. The problem was a threat to national unity and cohesion. Those workers were both exploited and discriminated against in all areas of working and civilian life, in terms of: deprivation of social, cultural and economic advancement; denial of the right to property; lack of basic infrastructure to the detriment of workers (including schools, health centres, roads and wells). The Government had to take the necessary steps to ensure the social and economic integration of former slaves into society. The Government may have taken some measures, but the problems that existed needed to be highlighted. The Government was obstructing the action of workers' organizations in Mauritania in general and of the CLTM in particular, whereas the latter was seeking to denounce the facts and conduct awareness campaigns. The Committee had asked the Government to conduct such campaigns in 2010, but the Government had not sufficiently done so. It was time that the perpetrators as well as their victims and the administrative and judicial authorities were made aware of the inhuman nature of slavery-like practices. The Government had to understand that its inertia, which had long been, was no longer excusable, particularly after the follow up to the initiatives of this Committee and the ILO. The Committee's goal was to find constructive solutions to eradicate the scourge of slavery. The Worker members asked the Government to collect detailed data on the nature and impact of slavery in Mauritania and to supply it to the Committee of Experts before its next session. It must ensure the rapid and effective handling of complaints relating to slavery, in connection with the Act of 2007 and the 2012 reform of the Constitution. Independent magistrates needed to be appointed to the special tribunal responsible for dealing with slavery-related complaints, and the tribunal needed procedures to ensure free and easy access for the complainants and all the representative organizations assisting them. Exploited persons would be protected from pressure if third parties were authorized to represent the victims of slavery. Furthermore, the National Agency to Combat the Vestiges of Slavery and to Promote Integration and Poverty Reduction (Tadamoun agency) should be allocated the necessary financial and human resources to enable it to effectively discharge its mandate, which should be re-oriented towards action against the damage resulting from

slavery. The roadmap of 2014, which provided a reference point, should contain a specific section on the protection of victims and the issue of the burden of proof, which should not fall on the complainant victims. The Worker members asked the Government to introduce amendments to the Act of 2007 to make it possible: (a) to give third parties, such as trade unions and human rights organizations the right to act and bring accusations on behalf of the victims; (b) to ensure that the burden of proof did not fall on any person presumed to be a slave; and (c) to impose stiffer prison sentences for the crime of slavery, to bring them into line with international standards and the jurisprudence on crimes against humanity. The Government should see the point of cooperating more systematically with the trade unions – which had demonstrated their capacity for taking action and conducting well-structured awareness campaigns – instead of interfering in their activities. The Worker members asked for a direct contacts mission to take place, since that was the measure most likely to generate solutions and activities for raising awareness of the fight against slavery and to compensate for the damage that it caused. The Worker members called for the release of Mr Biram Ould Dah Abeïd, who had been sentenced to two years' imprisonment and was at risk of the death penalty. In view of the persistence of the case and the blatant lack of progress for many years, they also requested that the present case be inserted in a special paragraph of the Committee's report.

Conclusions

The Committee took note of the oral information by the Government representative and the discussion that followed. The Committee recalled that it had discussed the present case on six previous occasions and that a fact-finding mission had visited Mauritania in 2006, at the request of the Conference Committee.

The Committee noted that the outstanding issues raised by the Committee of Experts related to the ineffective implementation of Act No. 2007/48 of 9 August 2007 criminalizing slavery and punishing slavery-like practices, including: the difficulty for victims of slavery to be able to assert their rights before the competent law enforcement and judicial authorities as reflected in the low number of judicial proceedings; the need to carry out awareness-raising measures about the illegality and illegitimacy of slavery amongst the population and the authorities responsible for enforcing the 2007 Act; and the need to effectively implement the various recommendations contained in the roadmap for combating the vestiges of slavery which was adopted in March 2014.

The Committee noted the Government's statement outlining laws and policies put in place to combat all vestiges of slavery. This included constitutional amendments as well as the adoption and implementation of 2007 Act which defined slavery for the first time and empowered human rights' associations to report violations of the 2007 Act and to assist victims. The Committee further noted the Government's indication that a Bill was under review which would, amongst other things, provide for the setting up of a special court to deal specifically with offences related to slavery and slave-like practices. The Committee also noted the information on the various awareness-raising activities undertaken and programmatic measures targeted at reducing economic and social inequalities by improving means of existence and the conditions for the emancipation of the vulnerable social groups affected by slavery and its vestiges. Finally, the Committee noted the Government's statement that it would continue to avail itself of ILO technical assistance in order to achieve tangible progress in the application of the Convention.

Taking into account the discussion that took place, the Committee urged the Government to:

- strictly enforce the 2007 Act to ensure that those responsible for the practice of slavery be effectively investigated and prosecuted and, receive and serve sentences that are commensurate with the crime;
- amend the 2007 Act to grant third parties, including trade unions a *locus standi* to bring charges and pursue cases on behalf of victims, consider shifting the burden of proof, and increase the prison sentence for the crime of slavery to a period in line with international standards for crimes against humanity;
- implement fully the National Plan to Combat the Vestiges of Slavery (PES) and the roadmap for combating the vestiges of slavery, including comprehensive victim support and processes. This should include the following:
 - Reinforcement of the capacity of the authorities to prosecute and administer the justice system in relation to slavery.
 - Anti-slavery prevention programmes.
 - Specific programmes enabling victims of slavery to escape.
 - Awareness-raising programmes.
- provide necessary resources to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”, and ensure that its programmes include those aimed at addressing and combating slavery;
- develop and implement public awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities;
- facilitate the social and economic integration of those formally subjected to slavery into society, in the short-, medium- and long-term, and ensure that Haratine and other marginalized groups affected by slavery and slavery-like practices have access to services and resources;
- collect detailed data on the nature and incidence of slavery in Mauritania and establish procedures for monitoring and evaluating implementation of efforts to end slavery;
- avail itself of ILO technical assistance to implement these recommendations; and
- report in detail on the measures taken to implement these recommendations, in particular on the enforcement of anti-slavery laws, to the next meeting of the Committee of Experts in November 2015.

The Committee decided to include its conclusions in a special paragraph of the report.

The Government representative took due note of the conclusions of the Committee and stated that the Government would do everything possible to include the conclusions in the national legislation. He hoped that these changes would reflect the efficient collaboration between the ILO and Mauritania.

QATAR (ratification: 1998)

A Government representative indicated that the Government had adopted sound policies in collaboration with regional and international organizations to promote the respect and protection of workers’ rights. It deployed every effort to protect the rights of migrant workers, as reflected in the country’s Constitution and national legislation. The Committee of Experts had expressed its trust that the new legislation on migrant workers would be enacted in the near future, and would be drafted in such a way as to provide them with the full enjoyment of their rights at work and protect them against any form of exploitation, tantamount to forced labour. The Committee of Experts had further expressed the hope that, to attain that objective, the legislation would make it possible to sup-

press the restrictions and obstacles that limit these workers’ freedom of movement and prevent them from terminating their employment relationship in case of abuse; authorize workers to leave their employment at certain intervals or after having been given reasonable notice; review the procedure of issuing exit visas; and guarantee access to rapid and efficient complaint mechanisms to enforce workers’ rights throughout the country. Corresponding recommendations had been made by the tripartite committee set up to examine the representation made by the International Trade Union Confederation (ITUC) and the Building and Wood Workers’ International (BWI). The Government had taken them into account by preparing a bill on the termination of the sponsorship (*kafala*) system, and its replacement with an employment contract system. The bill authorized the transfer of migrant workers to other employers after the end of their contract of a specific duration, or after five years of a contract of unlimited duration. Amendments would also be made to allow workers to leave their employer after obtaining authorization from the competent government authority, without prior authorization by the employer. A new and efficient mechanism in managing complaints of migrant workers had been established that was easily accessible. The Ministry of Labour and Social Affairs settled complaints by convening employers and workers, and providing them with explanations in relation to the legislation, which helped to reach an agreement with the consent on both sides. This mechanism had contributed to an increase in the settlement of complaints without the need to refer to the courts. Workers also had the right to lodge their complaints through the responsible bodies at the regional branches of the Labour Relations Department of the Ministry of Labour and Social Affairs. These complaints could be submitted in Arabic and English and seven other languages thanks to the presence of interpreters. The Ministry of Labour and Social Affairs had also set up a new hotline and a dedicated email address, as well as accounts on social media networks (on Facebook and Twitter) to receive workers’ complaints and address them promptly. The Ministry also held information symposia intended for employers and workers so as to raise awareness about their rights and obligations, in addition to distributing leaflets, including a manual on migrant workers, to the embassies of labour-supplying countries. A specialized team had also been set up, and had conducted more than 150 field visits to large companies to give guidance and advice on workers’ rights and employers’ obligations, as well as to receive complaints. A new mechanism to submit complaints to various authorities through a single window system had been established at the specialized labour departments of the Ministry. Furthermore, offices at the courts had been established in order to assist workers with legal proceedings, free of charge. These offices were equipped with the necessary technical means in addition to qualified staff, proficient in most of the common languages spoken by migrant workers. Regarding the measures taken to provide effective protection for domestic workers, the Government had carried out a study with a view to adopt regulations on the conditions of work of domestic workers, with a view to adapt the regulation to the special needs of that category of workers, taking into account the provisions of the Domestic Workers Convention, 2011 (No. 189). On the subject of labour inspection and the enforcement of laws, the number of labour inspectors had been increased from 150 to 294. Moreover, labour inspectors had been provided with modern handheld devices (tablets) to enable them to collect information electronically and save time in preparing reports, which previously had to be established upon their return to their offices. Labour inspectors had also been trained, both at the International Training Centre of the ILO and at the

Forced Labour Convention, 1930 (No. 29)

Qatar (ratification: 1998)

national level. He emphasized that the inclusion of this case in the list of individual cases discussed at the Committee was not justified, and that the progress made and the findings of the report of the high-level mission in February 2015 had not been taken into account in this decision. Sufficient time should be granted for the completion of the measures to strengthen the protection of migrant workers, and relevant information would be provided in the report to be submitted to the Governing Body in November 2015.

The Worker members stated that many migrant workers continued to be subjected to forced labour in Qatar, as borne out by numerous reports from different sources, including the United Nations. Workers were victims of practices including: the obligation to obtain an exit permit to be able to leave the country; the impossibility of changing employer under the *kafala* system; exorbitant recruitment costs imposed on migrants with a view to obtaining a visa in their country of origin; false promises with regard to wages and conditions of work; and the retention of passports; major obstacles encountered in having access to justice in the event of violations of their rights; and denial of the right to freedom of association. In 2013, a representation alleging non-observance by Qatar of the Convention had been made under article 24 of the ILO Constitution. The tripartite committee set up by the Governing Body to examine the representation had concluded that Qatar had indeed violated the Convention, considering that certain migrant workers in the country may find themselves in situations prohibited by the Convention. The committee had considered that the Government should take other measures to eliminate the use of all forms of forced labour. In the absence of measures by the Government, in June 2014 a number of worker delegates had presented a complaint under article 26 of the ILO Constitution to call for the setting up of a commission of inquiry. One year later, the promises made – which were already inadequate – had not been acted upon. Additional labour inspectors had been recruited and an electronic payment system had been established but there was still no evidence that the measures had had a real impact. On the contrary, recent reports and eyewitness accounts from workers provided damning evidence of the widespread persistence of forced labour practices. At the same time, foreign journalists investigating the situation had been detained, which amounted to intimidation by the Government. With regard to the *kafala* system which prevented workers from changing employer or leaving the country, the Government had long been announcing the possibility of abolishing it but there was little visible progress and no definite time frame had been established. Moreover, according to the information provided by the Government, the planned amendments would only allow workers to leave their employer after a period of five years. Another proposal provided for the possibility for a worker to obtain an exit visa within 72 hours for leaving the country, but the employer could still oppose it. It should be noted that despite the tragic circumstances experienced by Nepal as a result of the earthquake, numerous employers had refused to grant Nepalese workers permission to leave Qatar to attend family funerals and assist surviving family members.

With regard to access to justice, the number of inspectors had increased by 200 to a total of 294 but, contrary to the Government's indications, that number was still insufficient in view of the large number of workplaces that required effective inspection. The Government had to intensify its efforts to ensure training and adequate resources with a view to having an effective inspection system. In a recent report, the United Nations Special Rapporteur on the independence of judges and lawyers had issued a series of criticisms concerning access to justice

for migrant workers in Qatar and had expressed her concern at the virtually insurmountable obstacles faced by vulnerable sectors of the population, such as migrant workers in construction or domestic workers. Those obstacles included lack of information, the language barrier, fear of the police, of institutions and of reprisals from employers, and prohibitive legal fees. With regard to the imposition of penalties, the Government had not supplied detailed information on the progress of the draft reform aimed at increasing penalties for violations of the labour legislation. Furthermore, it had still not supplied information on the number of fines imposed on employers. That information was essential for evaluating whether the law was being applied effectively in view of the countless complaints received from workers. The Government recognized the seriousness of the problem of confiscation of passports. However, the information supplied in March 2015 referred to just one complaint lodged on that subject, despite the fact that the workers continued to complain about the existence of that practice. There was also no information to prove that the provisions of the legislation criminalizing forced labour practices were being applied. However, as had been emphasized by the Committee of Experts, the absence of penalties for persons who imposed forced labour created a climate of impunity that was likely to perpetuate such practices. It was also essential for the Government to ensure that the police and prosecution authorities acted of their own accord, regardless of any action undertaken by victims. With regard to recruitment costs, a report prepared by the Qatar Foundation in 2014 showed that Qatari employment agencies passed on the costs of recruitment to the workers. The problem did not therefore derive solely from the country of origin of the workers and the Government should also be called upon to take action in that respect. The Government had indicated giving its support for a high-level tripartite mission during discussions in the Governing Body in March 2015, but no action had been taken to follow up on the proposal. The Government had long been stating its intention to carry out a series of reforms but they were slow to materialize. The Committee should make it quite clear to the Government that there was no more time to lose.

The Employer members indicated that the situation in Qatar was very complex and that the country had been under increasing international scrutiny with regard to its labour and human rights practices. In addition to the examination of the case in the framework of the ILO supervisory mechanism, the UN Special Rapporteur on the human rights of migrants had also dealt with the case, along with other non-governmental organizations (NGOs), such as Amnesty International and Human Rights Watch. They recalled that the Committee had examined the application of the Labour Inspection Convention, 1947 (No. 81), in 2014, and deplored that no conclusions had been adopted. The submission of a complaint under article 26 of the ILO Constitution concerning Conventions Nos 29 and 81 had led to a high-level mission in February 2015. The report of that mission had been examined by the Governing Body in March 2015, which had decided to postpone any further action until the next session of the Governing Body in November 2015. While they understood that the Government believed that the Committee of Experts and this Committee did not take account of the information in the mission report of February 2015, the Employer members emphasized that they had thoroughly read the report and agreed with its conclusions and recommendations. Despite the fact that the case of Qatar was already being dealt with under the article 26 procedure, it was nevertheless appropriate that this Committee dealt with it, as these were two separate mechanisms. Not wanting to minimize the seriousness of the

case, they stated that media coverage was often one dimensional and did not take into account the complexity and context of the case. The reasons for the great attention received of the case were also linked to the exorbitant growth of the country since its independence in 1971 that was also fuelled by migrant workers, which made up the overwhelming majority of the population of the country. Since the ratification of the Convention, the population of the country had grown from about 100,000 people to 2 million, 1.7 million of which were migrant workers. Migrant workers were now represented in all parts of the economy and society, and could be found to be working as CEOs of companies and in domestic households, i.e. migrant workers were not only unskilled.

While the issues discussed in the framework of the article 26 complaint gave background to the discussion, the discussion in the Committee had in principle to be limited to the observations of the Committee of Experts. These observations related to the *kafala* system, access to the judiciary and adequate penalties for violations of the law. In this regard, both the legislation and its application in practice had to be considered. In this context, they also recalled that the Government had commissioned a private law firm to prepare a report that contained some interesting conclusions, including critical ones. With regard to the *kafala* system, they called on the Government to pace up the procedure for the amendment of the relevant legislation. It was not acceptable that the legislation provided that: each migrant worker had to have a sponsor (generally their employer) to arrange for their resident permit, which required the sponsor to hold the worker's passport, even though it had to be returned as soon as possible; it was prohibited to change employer unless there was a pending lawsuit; and workers were not allowed to leave the country unless they had an exit permit issued by the employer. Concerning practical problems, they referred to the withholding of the worker's passport and the additional requirement for an exit permit. In this regard, they recalled the suggestions made by the law firm in relation to the *kafala* system, which had suggested that the existing visa system be reformed, and the legislation be amended to grant migrant workers the right to apply to the relevant ministry to exit the country. They hoped that these suggestions would soon be implemented. Concerning access to justice, further measures had to be taken in practice. Language barriers remained an issue, even though the Government was to be commended on the measures taken, such as the possibility to submit complaints through single window offices in seven languages, and the possibility to make direct deposit payments in bank accounts. Concerning the imposition of penalties, while the law provided for adequate penalties, not much information was available on their application in practice. The Employer members agreed with the Worker members that the Government had to take the necessary actions in relation to the abovementioned issues. They concluded by stating that the Government had come a long way and they appreciated the measures taken, but that the Government still had a long way to go, and that it did not have time to lose in this regard.

The Employer member of Qatar observed that the modernity and speed of Qatar's economic growth had attracted a large number of migrant workers seeking to take advantage of the fact that workers were well received in the country and that Qatar had good working conditions to offer. Their presence had induced the authorities to revise its immigration laws and regulations so as to ensure that their labour rights were respected and that they were protected against abusive treatment. Qatari employers were aware of all that the Government had done to that end. However, certain problems had already arisen in the migrant workers' country of origin, specifically regarding

the substantial fees charged by placement agencies, which was both unacceptable and illegal. For employers and the national authorities, it was however not easy to take appropriate action. Since the Governing Body had examined the case in March 2015 on the basis of the report of the mission that visited the country in February 2015, it would be preferable not to discuss the matter at the present session of the Conference. That said, the Qatari employers would continue to do everything they could to cooperate with the authorities in protecting the rights of migrant workers.

The Worker member of South Africa explained that migrant workers represented over 90 per cent of the workforce of Qatar, that is, roughly 1.5 million workers and that the number continued to rise. These workers were drawn into a highly exploitative system that facilitated the exaction of forced labour by employers. Law No. 4 of 2009 regulating the *kafala* system was among the most restrictive in the Gulf and made it almost impossible for migrant workers to leave abusive employers as they enjoyed almost total control over workers' movements. Workers were often afraid of reporting abuses, being paid far lower wages than promised or not even being paid at all; moreover, they were often found living in abysmal conditions. In particular, migrant workers could not freely seek better employment conditions elsewhere without the consent of their employer, which was rarely granted. Those who nevertheless quit their job without permission had to be reported to the authorities as having absconded. Under the law regulating the *kafala* system the fact that an employer had committed abuse or failed to pay wages was not an excuse for workers fleeing from their employers. Furthermore, migrant workers were forbidden to leave the country without the consent of the employer, even if they had the means to do it. Recalling that no action had been taken on the issue, he stated that both the Committee of Experts and the tripartite committee had raised several concerns on this system and had urged the Government to amend it immediately. Despite the fact that the Government proposed to annul the *kafala* system and replace it with a contract system, it appeared that workers would still be tied to the employer for up to five years. Furthermore, while the Government promised to enact a release permit, it did not explain under what circumstances the permits could be obtained. The possibility for workers to obtain an exit visa and leave the country within 72 hours was also mentioned, but the modalities of implementation were not explained. Depending on the details of the new legislation, it might well be that workers would not be better off than under the *kafala* system. Finally, as trade unions were not allowed, no tripartite negotiations with representatives of workers were possible on these issues.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Armenia, Bosnia and Herzegovina, Montenegro, Serbia and Republic of Moldova, stated that the EU supported the universal ratification and implementation of the eight fundamental Conventions as part of the EU Strategy on Human Rights. The EU attached great importance to human rights, including the abolition of forced labour, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. Compliance with the fundamental Conventions was essential for social and economic stability in any country and an environment conducive to dialogue and trust between employers, workers and governments contributed to creating a basis for solid and sustainable growth and inclusive societies. The EU was ready to work with the Government in its implementation efforts regarding ILO Conventions. She recalled that the Committee of Experts had urged the Government to take

Forced Labour Convention, 1930 (No. 29)

Qatar (ratification: 1998)

measures to strengthen the capacity of migrant workers to approach the competent authorities and seek redress in the event of a violation of their rights or abuse, without fear of reprisal; and to strengthen mechanisms monitoring the working conditions of migrant workers. The EU shared the Committee of Experts' view that the application of effective and dissuasive penalties to perpetrators of forced labour were necessary to prevent a climate of impunity. Welcoming the Government's commitment to replace the *kafala* system by work contracts in 2015, the EU expected the Government to enact the relevant bill and draft it in such a way as to provide effective protection for migrant workers. More information would be welcomed in this regard on the measures taken, both in legislation and in its implementation. Noting that the number of inspection visits had increased in recent years, the Government was encouraged to continue strengthening the labour inspectorate. The Government's announcement of electronic payment measures to be implemented by August 2015 was also welcomed. The EU expected the Government to continue its efforts in securing the fundamental rights of migrant workers and in fully applying the Convention. The EU encouraged the Government to cooperate with the Office in this regard.

The Employer member of the United Arab Emirates commended the Government on its commitment to pursuing constructive dialogue and cooperation with the ILO and the other parties concerned. That positive attitude indicated that it should be possible to reach a solution. The Government was working hard to strengthen the promotion and protection of the rights of migrant workers, and the report of the mission that had visited Qatar in February 2015 to examine the complaint made against the country under article 26 of the ILO Constitution confirmed their positive approach. That being so, the Governing Body had decided to postpone examination of the issue until November 2015, in order to give the Government time to introduce the necessary legislative amendments. It was therefore too early to evaluate the impact of the measures taken. The Committee had to take into account the progress made by the Government and the discussion that had taken place in the Governing Body in March 2015. The employers of the United Arab Emirates were committed to supporting any efforts to guarantee adequate working conditions for migrant workers, but the placement agencies should also act fairly and transparently so as to ensure decent conditions for their migration.

The Government member of Swaziland noted that the Government had introduced a number of significant measures to improve the rights of workers in the country. These measures included allowing workers to transfer from one employer to another; establishing a hotline at the Ministry of Labour to deal with complaints; holding information seminars to advise workers of their rights; distributing manuals to migrant workers; setting up a guidance and counselling team and making field visits and increasing the number of labour inspectors from 150 to 294. The Committee had to take note of these measures and provide more time to the Government to fully meet the requirements of the Convention.

The Worker member of the United Kingdom indicated that despite the existence of a number of complaint mechanisms, the reality for workers in Qatar fell well short of ensuring that all complaints were properly examined by the appropriate authorities. Barriers to justice were numerous, including, for example, the requirement of a compulsory expert's report, which typically involved the victim paying a fee of around 600 Qatari riyals. Resolutions were often taking a year or more and during that time workers might be subjected to retaliation from their employer, while wages remained unpaid, or workers were evicted from accommodation, without being able to work

elsewhere due to the *kafala* restrictions. Independent reports showed examples of workers being forced to borrow money, receive support from sending countries' embassies or work illegally in order to – literally – survive the legal process. Given that many labour complaints were in response to systematic non-payment of wages, this placed an intolerable burden on those seeking redress. The various departments and organizations involved in handling remedy for victims of forced labour, as well as the Labour Court itself, were clearly under-resourced in the face of the scale of labour disputes. This not only placed workers making complaints at risk of continued exploitation, but also discouraged other victims from seeking redress. Even if the Government had demonstrated some commitment to improving access to justice by providing the appropriate resources to this process, a number of issues remained unresolved, as set out in the law firm's report commissioned by the Government and released in 2014. Most notably, these included widespread accusations from sponsors as retaliation, particularly of workers "absconding" from employment – punishable by detention and eventually deportation – with insufficient cross-referencing by the authorities to establish the connection with the submission of labour complaints. That, along with sponsors' ability to deploy "no objection certificates" and exit visas as effective bargaining chips to pressure workers into dropping claims, contributed to a crippling imbalance of power that the court system was failing fundamentally to redress. It also appeared that the Government had done very little to rectify the negative assessment in this law firm's report concerning information available to workers about their existing rights. Since the Government's refusal to allow migrant workers to join trade unions denied them the obvious route to educating a workforce about its rights, more was needed to bring the regulations to the knowledge of those requiring the protection of the law.

The Government member of Mauritania noted that this discussion had provided an opportunity to objectively examine the legislative changes that Qatar needed to make and to recognize the Government's efforts to improve the situation of migrant workers and the law on the *kafala* system. Significant progress had been made and the authorities should be commended on the measures taken to strengthen the rights of migrant workers, improve their living and working conditions and provide them with access to complaint mechanisms. The Committee should take into account the commitment and willingness of the Government.

The Worker member of New Zealand recalled that, even though Article 25 of the Convention provided for an obligation on ratifying States to ensure that penalties for forced labour were adequate and strictly enforced, migrant workers in Qatar continued to face high hurdles in their access to justice. While welcoming the steps taken by the Government to strengthen the labour inspectorate, he emphasized that much more had to be done, including the further recruitment and training of labour inspectors and the provision of interpretation services. As the Committee of Experts pointed out in its last comments under Convention No. 81, the failure to enforce adequate penalties created a climate of impunity, which perpetuated forced labour. It was therefore deeply concerning that Qatar had not supplied any information on prosecutions for the exaction of forced labour under the 2009 Act prohibiting trafficking in persons. He therefore concurred with the Committee of Experts in calling on the Government to take all the necessary measures to ensure that effective and dissuasive penalties were actually applied and that the police and prosecution authorities acted of their own accord, irrespective of any action taken by the victims. Taking into account the 2014 comments of the

UN Special Rapporteur on the independence of judges and lawyers, he further pointed out that a key weak link in the enforcement system might be the Qatari justice system, which was influenced by high-level persons and powerful businesses and completely arbitrary as to whether cases had to be pursued. Significant allegations also related to lack of impartiality, bias and improper behaviour by judges, including allegations of discrimination against migrants in favour of Qataris. He therefore called on the Government to reform the judicial system as recommended by the Special Rapporteur. Finally, publically naming employers convicted of forced labour might assist in dispelling a climate of impunity, as it was observed by the UN Special Rapporteur on the human rights of migrants regarding the Government's initiative to blacklist employers who committed multiple workers' rights violations.

The Government member of Thailand appreciated the efforts of the Government to promote and protect the rights of expatriate labour and recognized its willingness to engage and cooperate in a constructive manner with the ILO and relevant stakeholders in this regard. The progress made and the measures taken to review laws and adopt new ones had to be welcomed. The Government should be encouraged to continue working closely with the social partners to further promote and ensure the rights of migrant workers. Since the Governing Body would consider this case in November 2015, the Government should be given appropriate time to continue its efforts and report back at that moment.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, as well as Estonia and Poland, regretted that a great number of migrant workers were exploited in the country, many of whom were victims of forced labour pursuant to the Convention. In some cases, migrant workers were offered different contractual conditions upon arrival to the country than those promised in the country of origin and the Government had not taken any measures in this regard. Furthermore, while acknowledging that the national legislation prohibited recruitment agencies registered and based in the country from charging fees to workers for their recruitment, she deplored that foreign firms affiliated to these agencies were not accountable for this practice. In this regard, she quoted the findings of a 2014 report of the Qatar Foundation, and regretted that the Government considered this problem as concerning the countries of origin only. Moreover, she deplored that the Government did not increase the fine for the confiscation of migrant workers' passports, which was a serious and widespread problem in the country, and was concerned about the restriction on freedom of movement of migrant workers, due to the refusal of some employers to provide residence visas. She noted that the Norwegian Confederation of Trade Unions (LO-Norway) and the Norwegian Football Association urged the Federation of International Football Associations (FIFA) to cooperate with the international trade union movement in order to improve the working conditions in the construction sites for the 2022 World Cup. In this regard, she mentioned the agreement between LO-Norway and the Norwegian sports associations concerning the 2022 Olympic Games in Oslo. Finally, she urged the Government to cooperate with the ILO, the ITUC and the global unions to ensure appropriate and effective labour inspections.

The Government member of Sri Lanka commended the considerable efforts made by the Government to protect the rights of the workers. Therefore, he stated that the case should not have been discussed again by the Committee. He concluded by encouraging the Government to enhance the rights of migrant workers in the country.

The Worker member of Libya denounced the conditions suffered by domestic workers in Qatar. As they were excluded from the scope of labour legislation, there were no regulations protecting them in terms of working time or minimum wages. Deprived of their passports and freedom of movement and often victims of physical and verbal assault, many were subjected to forced labour and slavery. In that regard, the Committee on the Elimination of Discrimination against Women had expressed serious concern over the cases of physical and sexual violence affecting female domestic workers. Some five to ten female domestic workers came forward every day seeking refuge in the Indonesian Embassy in Qatar. Despite the promises that the Government had made in previous years, no bill on the issue had yet been passed. In these circumstances, the Government should reform its legislation to introduce a legal framework covering all aspects of the employment relationship of female domestic workers and allow them access to effective means of recourse, all of which was also set out in Convention No. 189. It was due to this legal vacuum, in which chauffeurs, gardeners, cooks and other categories of workers found themselves, that work was often rendered vulnerable. It was high time for the Government to move from promises to genuine reform.

The Government member of the Bolivarian Republic of Venezuela expressed appreciation for the commitment the Government had shown to upholding international labour standards, including the Convention. The Government had indicated that it was amending its legislation and improving its labour inspection system. The Committee of Experts had formulated comments on some legislative initiatives under way. The Government had mentioned the drafting of a bill to abolish the *kafala* system and replace it with contracts of employment. Bearing in mind the Government's goodwill and its efforts to safeguard workers' rights and interests, she considered that the Committee should keep in mind the positive aspects apparent from the explanations that the Government had given. She trusted that the Committee's conclusions resulting from its discussion would be objective and balanced, which would doubtless enable the Government to consider and evaluate them as it applied the Convention.

The Worker member of France, speaking also on behalf of the trade unions of the Netherlands and the International Transport Workers' Federation, stated that while it was of course incumbent on States to respect ratified Conventions, companies, too, possessed the duty of respecting standards agreed upon at the international level. This duty was one of the three pillars of the United Nations Guiding Principles on Business and Human Rights – the so-called “Ruggie Principles” – and of the OECD guidelines on multinationals. Moreover, it was not just parent companies, but all parties implicated in the global supply chain that bore this responsibility, including subsidiaries, subcontractors, business partners and financial institutions. Aside from the Government of Qatar, then, companies involved in infrastructure projects for the 2022 World Cup in Qatar may also have perpetrated forced labour practices against migrant workers on building sites. For instance, a French NGO had brought a complaint before the French courts against a French construction company and its Qatari subsidiary, alleging forced labour offences committed against migrant workers employed on their building sites. The complaint also referred to indecent working conditions, accommodation and pay. This was just one example of corporate malfeasance among many, and it was important for parent companies to realise that they were accountable, under several international and national legal instruments, not only for their own actions but those of their subsidiaries abroad as well. She observed in this regard that States were increasingly requiring companies to report on non-financial matters, and

Forced Labour Convention, 1930 (No. 29)

Qatar (ratification: 1998)

France had passed a law on the extraterritorial responsibility of multinational corporations. Furthermore, the 21 November 2013 resolution of the European Parliament on Qatar and the situation of migrant workers was “calling for the responsibility of European construction companies involved in the building of stadiums and other infrastructure in Qatar in order that they offer work conditions which respect international standards on human rights”. Trade unions and civil society groups had taken note of these developments, and the Qatari construction industry, in which thousands of migrant workers were employed by, among others, large state-owned companies of international repute, presented ample opportunity for utilizing these means in order to hold companies accountable. She concluded by recalling that the ILO supervisory bodies’ comments had also highlighted violations of freedom of association principles and other Conventions in Qatar.

The Government member of Namibia recalled that at its 323rd Session, in March 2015, the ILO Governing Body had requested the Government to provide information on the actions taken to address all the issues regarding non-observance of the Convention for consideration at its 325th Session, in November 2015. Noting that the information provided by the Government demonstrated that progress had indeed been achieved, including in the area of legislative reform, she urged that engagement between the ILO and the Government on these issues continue.

The Worker member of Switzerland said that the case of Qatar was more tragic than complex. The working conditions on sites where stadiums were being built were simply appalling. Construction workers and employees in other sectors were deprived of the most elementary labour rights, and deaths on construction sites were a frequent occurrence. The situation had deteriorated after FIFA had decided to confer the hosting of the World Cup to Qatar. It showed that the way the hosting of international sporting events was assigned needed to be changed. The Government asserted that it was changing the *kafala* system, but that was insufficient. It was the situation of workers’ rights in the country that needed to be reformed, and migrant workers should be given complete autonomy. It was unacceptable that they should be obliged to work for five years for the same employer. He requested the Government to provide a timetable of the reforms it was carrying out. The lesson to be learned from this historic case was that the criteria for selecting the countries to which the organization of world events was attributed should include respect for the human and labour rights embodied in the ILO’s standards.

The Government member of Norway, speaking on behalf of the Nordic countries, recalled that human rights were universal and encouraged the universal ratification and implementation of the eight ILO fundamental Conventions. She expressed deep concern for the numerous and well-documented cases of unacceptable working and living conditions of migrant workers in the country, especially with regard to exploitation and forced labour associated with the *kafala* system. She deplored the practices of contract substitution, limitation of the possibility of resignation, non-payment of wages, threat of retaliations and she emphasized the difficult situation of women domestic workers. She recalled that, during the discussion on the complaint against the Government at the Governing Body’s 323rd Session in March 2015, her Government supported the appointment of a commission of inquiry because of the seriousness and urgency of the matter. She noted that the present discussion of the case regrettably confirmed the persistence of the problem. She called on the Government to guarantee the respect of fundamental principles and rights at work of the workers recruited for the preparation of the 2022 World Cup. While acknowledging the existence of a draft legislation

to abolish the *kafala* system, she urged the Government to enact the new law in the near future so as to protect workers from any form of exploitation and to provide them with the full enjoyment of their rights at work, in particular access to justice, freedom of association and collective bargaining. She also called on the Government to cooperate with the recruitment agencies and the countries of origin to secure a rights-based migration process. Finally, she strongly encouraged the Government to cooperate with the ILO.

The Employer member of Egypt, speaking on behalf of the group of Arab Employers, said that consideration had to be given to the special situation of foreign workers in the Gulf States, most of which followed the *kafala* system. Employers, who generally resorted to private placement agencies, naturally incurred certain recruitment fees, and that could pose problems when workers who had cost the employers money wanted to change jobs. Consequently, a balanced solution had to be found that respected the rights of both workers and employers. Unlike Egypt, which employed far fewer migrant workers, 70 to 80 per cent of foreign workers in the Gulf States were not allowed to join trade unions. Although between 350,000 and 500,000 Egyptians were employed in Qatar, he had never heard of any complaints, which suggested that there were no particular problems. Moreover, Qatar had granted most of the major building projects for the 2022 World Cup to foreign enterprises. A lot of Egyptian construction companies were present in Qatar, and they had never run up against any particular problem. Finally, since the Governing Body had decided to allow the Government enough time to take the necessary measures, it would be appropriate to await the next Governing Body session and see what steps had been taken then.

The Government member of the United States observed that almost 94 per cent of Qatar’s workforce consist of migrant workers, mainly from Asia and the Pacific. Many of them were engaged in forced labour, a situation that was facilitated by the legal framework governing migrant work in the country. According to the Committee of Experts, the abusive practices migrant workers were subjected to included contract substitution, high recruitment fees and restrictions on the freedom to terminate the employment relationship. While the Government had pledged to address those issues, no significant progress had been made. She urged the Government to intensify the pace of its reform efforts in this regard. Although withholding workers’ passports was prohibited by the 2009 Sponsorship Law, it was not really enforced. According to recent studies by Qatar University’s Social and Economic Survey Research Institute, 86 to 90 per cent of workers’ passports were in the employers’ possession. As regards the *kafala* system under which labour migration was at present organized, she recalled the Government’s indication that it was working to replace the system with a contract-based governance framework and expressed the hope that this system would soon be established and would, inter alia, grant migrant workers full freedom of movement and work mobility, particularly when subjected to workplace abuse or threats of retaliation. She urged the Government to immediately undertake the measures to combat forced labour enumerated in the comments of the Committee of Experts and other supervisory bodies, including the enactment of new legislation, the imposition of dissuasive penalties for forced labour practices, the conducting of public awareness-raising campaigns on forced labour, and the initiation of partnerships with governments of migrant-sending countries to prevent exploitative practices in the labour recruitment process. Until adequate changes were made to both law and practice in Qatar, this case ought to continue to receive urgent atten-

tion from the Committee and the other supervisory bodies of the ILO.

The Worker member of Sudan, speaking on behalf of the Worker members of Sudan, Bahrain and Kuwait, said that during the discussion the positive measures adopted by the Government had been examined, such as the introduction of modern employment contracts, the establishment of a modern salary protection system which included the payment of workers' salaries via bank transfer, the establishment of mechanisms to facilitate the submission of complaints by workers to the Ministry of Labour without additional costs, and the strengthening of the labour inspection system, including sanctions for perpetrators of crimes against workers. The Government had fulfilled the recommendations of the high-level mission, and this case should therefore be removed from the list of cases to be examined, and the Government should be afforded time to put into practice the new measures adopted.

The Government member of Pakistan stated that his Government agrees with the Government member of Kuwait. He was fully satisfied, judging from the information submitted by the Government, that the latter was making significant progress towards fulfilling the requests of the Committee of Experts, and expressed the hope that these efforts would receive due credit from the Governing Body at its 325th Session in November 2015.

The Employer member of Algeria said that this case, which had already been examined by the Governing Body at its March 2015 session, had seen a great deal of progress. The Government had replied to several inquiries and was consolidating and improving its labour laws. In that regard, it would be best to await the decision of the Governing Body, which had deferred further consideration of the case to November 2015.

The Government member of the Islamic Republic of Iran welcomed the information provided by the Government on its positive achievements, which demonstrated its commitment to improving working conditions in the country. In March 2015 the Governing Body had decided to defer to November 2015 the analysis of the complaint against the Government concerning the Convention, in order to allow for the implementation of the measures and legislative amendments it had initiated. In this regard, he emphasized that sufficient time should be granted to the Government, which he encouraged the Government to continue with its efforts. He called on the Office to provide technical assistance.

The Government member of Switzerland encouraged the Government to continue to increase the number of labour inspectors, to train them to identify abusive practices that exposed migrant workers to forced labour, and to bring cases of abuse before the courts. The Government of Switzerland supported a major ILO programme aimed at protecting vulnerable migrant workers, which included exchanges of information on good practices to adopt between countries of origin and countries of destination. Migrant workers, including domestic workers, should be entitled to the same protection as all other workers; their working conditions should be improved and their freedom of movement guaranteed. He noted the intention of the Government to take measures in that regard, and encouraged it to continue implementing the measures that had already been adopted. It was also important, as highlighted by the Committee of Experts, to raise public awareness of the issue. While welcoming the decision to gradually abolish the *kafala* system, he requested the Government to demonstrate its determination to achieve that objective, and said that the implementation of the new legislation to that end would be closely examined.

The Government member of Cuba said that his Government rejected forced labour in all its forms and encouraged its eradication. The tripartite committee that had

examined the complaint against the Government concluded that it should adopt additional measures. The Government had reported that it had drafted a bill to repeal Act No. 4 of 2009, which provided solutions that should address the issues raised by the tripartite committee. He trusted that the Government would continue to make efforts to adopt the necessary measures.

The Government member of Sudan said that Qatar received a substantial flow of migrant workers who benefited from the attractive employment opportunities offered by the country's ever-expanding economy. This in turn represented a challenge for the Government in terms of providing decent working conditions. In that regard, the Government was receiving technical assistance from the ILO to build capacity to implement fundamental principles and rights at work. It was surprising that the Committee had begun to discuss the case, given that the Governing Body had requested Qatar to submit information on the measures taken in response to the complaint concerning the application of the Convention at its session in November 2015. There was a strong political will to strengthen mechanisms for workers to submit complaints, to raise awareness among workers and employers of their rights and duties, and to encourage more efficient labour inspection. All this contributed significantly to the promotion of international labour standards in pursuit of decent working conditions for all residents of the country without discrimination.

The Government member of Kuwait, speaking also on behalf of the Governments of Bangladesh, Bahrain, China, India, Iraq, Islamic Republic of Iran, Japan, Jordan, Republic of Korea, Lao People's Democratic Republic, Lebanon, Maldives, Oman, Pakistan, Saudi Arabia, Singapore and United Arab Emirates, welcomed the positive steps and measures taken by the Government to address the forced labour situation, as well as the high degree of cooperation the latter had demonstrated in engaging with the ILO and other concerned parties. Recalling that the Governing Body had deferred consideration of the complaint brought against Qatar to its 325th Session, in order to grant the Government adequate time to implement the measures recommended by the Committee of Experts, he considered this to be too brief a period of time in which to achieve meaningful progress. He hoped that the Government's efforts so far would be taken into consideration by the Committee and the other ILO supervisory bodies, and he invited the Government to continue its engagement with the ILO to address the issue of forced labour in Qatar.

The Government member of Morocco welcomed the action taken by the Committee to draw attention to the issue of migrant workers' rights. He expressed satisfaction with the improvements made to labour legislation and with the various reforms that the Government had undertaken in the area of labour relations, which would soon enable workers wishing to leave the country to do so without any difficulty. The Government had increased its efforts to ensure that migrant workers were able to keep their passports, and sanctions were planned to punish employers who broke the rule. He considered that technical cooperation would enable reforms to be undertaken that satisfied all actors in the world of work.

The Government member of the Russian Federation regretted that, although the Government provided information on the intention to protect worker rights, he remained concerned with regard to the modalities and time frame for the implementation of the improvements still needed in several areas, such as insufficient labour inspections, access to justice and the possibility for workers to change jobs and employers. He hoped that the Government would comply with international labour stand-

Forced Labour Convention, 1930 (No. 29)

Qatar (ratification: 1998)

ards, as well as continue to provide information on the implementation of the Convention.

The Government member of Canada expressed concern over the situation of labour rights in Qatar, particularly those of low-income migrant workers. While noting that the Government was considering changes to the labour law to address violations of migrant workers' rights, he observed that these changes had yet to be implemented. Moreover, while other protective legislation existed, such as Act No. 14 of 2004 providing for maximum working hours, paid annual leave, and safety and health standards, further measures were clearly necessary as reports of abuses continued to mount. Reform of the *kafala* system was especially necessary, as this system tied migrant workers' legal residency status to their employer. The *kafala* system was at the centre of many abuses suffered by migrant workers, including the late payment or non-payment of wages, restrictions on mobility, usurious levels of debt, and inhumane working and living conditions. He urged the Government to implement the reforms envisaged so as to establish a legal framework offering strong protection for migrant workers and hold accountable those individuals and companies responsible for violating the law.

The Government member of Bangladesh noted that the Government had made substantial progress in drafting amendments to the legislation governing migrant workers. He encouraged the Government to continue its efforts to address the forced labour situation, and invited the ILO to extend technical assistance in this regard.

The Government member of Algeria welcomed the forthcoming permanent replacement of the *kafala* system with a contractual mechanism. The Government was making efforts to improve the remedies available to migrant workers in cases of disputes and to ensure that conflicts were settled in a transparent and open manner. Furthermore, initiatives had been taken to provide migrant workers with easier access to information concerning their rights. These various elements demonstrated the Government's goodwill regarding the application of the Convention. This progress should be noted by the Committee which should afford the Government the time needed for the reforms to bear fruit.

The Government representative was convinced that the observations voiced during the discussion would help to improve relations between the social partners and would make it easier for the Government to protect the rights of anyone working in the country. When it decided to join the ILO, the Government's objective had been to develop its labour market and, contrary to what had been said, to maintain a balance between the social partners. Some labour practices were indeed irregular and needed to be corrected, but there was no point harping on the fact. On the contrary, emphasis should be placed on the Government's achievements, which had been confirmed by the high-level mission that had visited the country earlier in the year. As to the observations that had been heard in connection with the complaint that had been made against the Government, they had been treated quite seriously, and steps had accordingly been taken to introduce a wage protection system, to suspend the *kafala* system and replace it by modern employment contracts. The speaker called on all the members of the Committee to recognize the progress that had been made in a short time rather than focus on isolated incidents and claim that they were the rule. The allegations contained in the complaint did not take into account the conclusions of the high-level mission's report, which in essence were no different from those of the Committee of Experts. He concluded by reasserting the Government's promise to submit a detailed report on the subject to the Governing Body in November 2015.

The Employer members appreciated the robust discussion. While acknowledging the annoyance of the Government to deal with two procedures concerning substantially the same case, they noted that the ILO Constitution allowed for this to happen. They commended the Government for the concrete steps taken to address a number of issues. However, enacting legislation was not enough and they expressed concern with regard to the law's implementation. In that regard, several elements of the report of the ILO mission of February 2015 referred to the amendment of the labour code, the labour complaints mechanisms and the effective enforcement of labour laws. While commending the Government for the initiatives taken so far, notably the reform of the legislation, they called on the Government to do more and without further delay. They expected that the improvements in the legislation and practice would lead to social progress and economic development in the country.

The Worker members noted that the forced labour situation in Qatar was widely acknowledged to be a serious problem, not only by the ILO supervisory bodies but by the UN Special Rapporteur on the Human Rights of Migrants and various human rights organizations as well. Forced labour in Qatar, moreover, resulted from a system which deprived migrant workers of their fundamental rights and access to justice. The Government could not claim a lack of resources or of access to technical assistance in addressing this issue. Steps to address the forced labour situation could have been taken a long time ago; indeed Qatar had the potential, and still did, to be a model of humane labour migration management. Instead, it remained a model for all that was wrong and deplorable about labour migration today. They welcomed the commitments the Government had made to address the various factors contributing to forced labour, but stressed that these commitments had to be urgently realised. The Government had done far too little, far too slowly, particularly in view of the sheer magnitude of the forced labour problem that continued to exist. The *kafala* system had yet to be eliminated, for instance, although the Government had promised to do so in 2014.

As concerned the proposed contract-based system that was to replace the *kafala* system, they remained concerned that the former would do little to address the exaction of forced labour in practice. Employers would still have the power to restrict workers from moving to another job for up to five years, and the proposed exit visa system raised questions as to whether workers would, in practice, actually be able to leave, given that employers could still raise objections to their leaving on grounds that were not sufficiently clear or precise. Additionally, migrant workers remained outside the scope of the labour law, in spite of promises to soon enact legislation providing for their inclusion. Burdensome recruitment fees remained a serious and widespread problem, as did the confiscation of passports and the substitution of contracts. Also, there was little evidence of augmented enforcement measures, whether in the form of increased arrests and prosecutions or of heavier fines levied. Significant obstacles continued to deny migrant workers access to legal aid and the justice system, including lengthy processes, fees and the language barrier. In this regard, they added that although an electronic complaints system was said to have been introduced, they had not been informed of any workers familiar with this system. They noted that, although the decision had been taken to establish an electronic payments system intended to protect wages, the system had yet to be implemented, and they urged that this be done as soon as possible. Also, once put in place it was necessary to monitor the results secured by the system in addressing the problem of non-payment of wages. Many of the problems noted could have been addressed

by migrant workers themselves, were it not for the fact that they were prohibited from forming trade unions under the present legislation. Stressing once again that forced labour remained a serious problem in Qatar and that the Government had yet to act on most of the commitments it had made, they urged the Government to immediately enact all the measures previously recommended by the supervisory bodies, including: the abolition of the *kafala* system and its replacement with an open, regulated labour market; the abolition of the exit permit system; the enforcement of the laws on passport confiscation; putting an end to contract substitution and the charging of illegal recruitment fees; facilitating access for migrant workers to the justice system; reinforcing criminal investigations and prosecutions against those suspected of engaging in exploitative labour practices; reviewing the applicable penalties for serious exploitation of workers, including the crime of forced labour as specified in the Penal Code, to ensure their adequacy; and adopting the necessary amendments to extend to domestic workers the labour rights guaranteed by law.

They concluded by calling on the Government to accept a high-level tripartite mission to review the present forced labour situation and initiate discussions on how best to give effect to the Committee's recommendations.

Conclusions

The Committee took note of the oral information provided by the Government representative and the discussion that ensued relating to the vulnerable situation of migrant workers to conditions of forced labour.

The Committee noted that the outstanding issues raised by the Committee of Experts related to the need to review without delay Law No. 4 of 2009 regulating the sponsorship system which currently restricted the possibility for migrant workers to leave the country or change employer, and placed the workers concerned in a situation of increased vulnerability, particularly where they were subjected to practices such as retention of their passports, restrictions on their freedom of movement, contract substitution and the non-payment, underpayment or late payment of wages. The issues raised by the Committee of Experts also related to the need to guarantee to migrant workers access to rapid and efficient complaints mechanisms as well as access to protection and assistance mechanisms when their rights were infringed; and the need to impose adequate penalties for violations of the Labour Code and the Law regulating the sponsorship system as well as for violations of the Penal Code relating to forced labour.

The Committee noted the information provided by the Government representative outlining the recent measures taken to protect migrant workers. This included the drafting of a Bill to repeal the sponsorship system and to replace it by work contracts. Under this Bill, workers would be allowed to change employer after the end of their contract of a specific duration or after five years in the case of permanent contracts. Legislative amendments were also under way to allow workers to request a release permit from the competent government authority without referring back to the employer.

In addition, the Government stated that it had established a new and efficient complaints mechanism for migrant workers whereby complaints were settled directly between employers and workers through the Ministry of Labour and Social Affairs. Moreover, workers could submit their complaints in both Arabic and English as well as in seven other languages, and a hotline had been launched at the Ministry to receive complaints by telephone and electronic mail in order to respond to queries without delay. Furthermore, the Ministry of Labour had held information symposia intended for employers and workers so as to raise their awareness of their rights and obligations. In addition, an office representing the Ministry was also set up in the judiciary so as to col-

laborate with workers who initiated legal proceedings against employers, and to provide them with legal aid in addition to providing interpreters who spoke the languages of the majority of workers, free of charge.

With regard to measures taken to protect domestic workers, the Committee noted the Government's indication that a Bill on domestic workers was currently being examined.

Finally, the Committee noted the information provided by the Government on the measures taken to strengthen the labour inspection services, particularly by expanding its geographical coverage, increasing the number of labour inspectors and providing them with modern computer equipment.

Taking into account the discussion that took place, the Committee urged the Government to:

- abolish the *kafala* system and replace it with a work permit that allows the worker to change employer. This includes abolishing the "no objection" certificate;
- work towards abolishing the exit permit system in the shortest possible time; in the interim, make exit permits available as a matter of right;
- vigorously enforce the legal provisions on passport confiscation;
- work with labour sending countries to ensure that recruitment fees are not charged to workers;
- ensure that contracts signed in the sending countries are not altered in Qatar, and prosecute those responsible who have engaged in deception as to wages and working conditions;
- facilitate access to the justice system for migrant workers. This includes, but is not limited to, assistance with language and translation, the elimination of fees and charges related to bringing a claim, and disseminating information about the Ministry of Labour and Social Affairs; ensure that workers are able to access these systems without fear of reprisals, that these cases are processed expeditiously and that orders are enforced;
- continue to hire additional labour inspectors and increase material resources to them necessary to carry out labour inspections, in particular in workplaces where migrant workers are employed;
- ensure investigation and prosecution of those suspected of exploitation and prevent those found guilty from recruiting workers in the future;
- ensure that the penalties applicable under law for serious exploitation of workers, including the crime of forced labour as specified in the Penal Code, and penalties for violations of the Labour Law are adequate, and that these laws are effectively enforced; and
- ensure that domestic workers have equal labour rights.

Labour Inspection Convention, 1947 (No. 81)

HONDURAS (ratification: 1983)

A Government representative described the progress made by the Government in relation to the observations of the Committee of Experts. Regarding the function of inspectors in labour disputes, he said that they no longer carried out conciliation or mediation duties, which were now undertaken by a specialized service. On the adequacy of human, financial and material resources, the Government was implementing an action plan to strengthen inspection, which included a strategy, instruments and logistics to reinforce the inspection plan in line with the requirements of the Convention. A further 94 inspectors would be added by 2016 to the current number of 141. Concerning vehicles, although they were not for the exclusive use of the inspectorate, they were utilized on a priority basis to carry out these actions, and the action plan provided for the strengthening of this logistical as-

Labour Inspection Convention, 1947 (No. 81)

Honduras (ratification: 1983)

pect. With regard to the need to ensure appropriate conditions of service, employment stability and independence of inspectors, the job security of inspectors had been guaranteed, with over 50 per cent having worked for the inspectorate for between ten and 25 years. Moreover, a system was in place which divided inspectors into three categories, new inspectors, senior inspectors and inspection supervisors, and the provisional draft of the new legislation provided for selection criteria including competitive examinations, educational qualifications and seniority. Regarding independence from improper influences, several instruments were applicable, such as inspection protocols and the Civil Service Act. With respect to adequate and effectively enforced penalties, the planned legislative reform provided for the strengthening of enforcement capacities to prevent violations of labour laws. The obstruction of labour inspection was considered very serious, and the offending enterprise was penalized on the basis of the minimum wage and of the number of workers affected. Violations of labour legislation recorded by inspectors had totalled 3,082 in 2014, and exceeded 5,357 in the first quarter of 2015 alone. As labour inspection was an essential component of the Government's efforts to ensure compliance with labour law, it had requested ILO technical assistance in 2014 to conduct an audit of the performance of the labour inspectorate, and the first meeting had been held with the consultant appointed by the Office in May 2015, which had led to the start of a general planning phase. The audit, which was scheduled to begin in the last week of June 2015 and for which a technical support committee had been established, would be based on the rigorous work of a group of ILO experts. He reiterated the Government's commitment to reinforce the labour inspectorate through an action plan introduced within the framework of the tripartite monitoring and follow-up commission, within a time frame of 2015–16 and budget already approved by the Office of the President. The action plan, which took into account the observations of the Committee of Experts and the need to strengthen the inspectorate, comprised seven main areas and over 15 activities to be carried out in 12 months. The outcomes and progress achieved would be included in the 2016 report on the application of the Convention.

The Worker members considered that Honduras had failed at all levels to guarantee compliance with the Convention owing to a series of problems in law and practice, which had left workers with no protection and without any effective remedy for the violation of their rights. This had been confirmed in February 2015 by a report of the United States Department of Labor in response to a complaint submitted by 26 Honduran trade unions and civil society organizations. The report revealed that for some years the Government had been failing to enforce labour legislation through labour inspection and the justice system. The Worker members therefore concluded that the Government had little political will to ensure the effective implementation of labour laws. There were several key areas of non-compliance with the Convention. The number of inspectors (119 full-time employees) was insufficient and was concentrated in the capital and the country's main business centre. Inspectors were frequently prevented from entering factories, they rarely sought the assistance of the police, and the Ministry of Labour did not resort to the tribunals to oblige employers to authorize their entry. Penalties were not adequate (employers who prevented inspectors from carrying out their tasks were subject to a fine of only between US\$2.40 and \$240), fines were rarely imposed and the penalties had not been reviewed since 1980 (for example, the fine for not paying the minimum wage was between \$4.80 and \$48, and the figure was not multiplied by the number of workers concerned), and where fines were imposed and paid, the file

was closed without investigating whether the cause had been rectified (for example, an agricultural undertaking, due to not paying the minimum wage, owed a total of \$129,818, a fine of \$240 had been assessed and following payment the file had been closed regardless of the fact that salaries were still being paid below the minimum wage). When inspections were conducted, the follow-up through second inspections was very weak, and there was no review of the violations identified in the initial inspection. Moreover, inspectors did not have the necessary material resources, such as vehicles and petrol, and the performance of inspections even depended on whether workers paid the transport and costs, which constituted a major obstacle to the performance of inspections in a country where 60 per cent of the population lived below the poverty threshold, with the situation in rural areas being even worse. In conclusion, the labour inspection system did not guarantee the fulfilment of the legal provisions relating to working conditions and the protection of workers when carrying out their work. This was not because of a lack of resources, as the Government had benefited from various international cooperation projects, particularly two regional projects financed by the United States, for which several million US dollars had been spent. It appeared that the Government had taken a clear decision not to establish an adequate labour inspection system to protect workers with the aim of creating a favourable climate for trade and investment based on the exploitation of a cheap workforce. The case was particularly serious. Effective measures needed to be taken to ensure that Honduras achieved compliance with the Convention as soon as possible.

The Employer members expressed their deep concern at the inadequate application of the Convention in Honduras and emphasized the importance of maintaining an effective system of inspection. They took note of the observations of the Committee of Experts and the Government's replies concerning in particular: measures taken to ensure that inspectors did not find themselves acting as both judge and interested party; inadequate human and financial resources that limited the capacity for routine inspections or might give rise to improper influence; difficulties regarding the imposition of adequate penalties; and problems relating to transport and the conduct of inspections in commercial and industrial workplaces. The labour inspectorate had been established in 1959, and no changes had been made to it since then. There were deficiencies in the selection and training of inspectors. Inspectors were exposed to acts of corruption and did not act with due independence. Routine inspections were very rare. Since transport for inspectors had to be paid for by the parties concerned, workers who lacked such means had no access to the inspection services. Inspectors' salaries were the lowest in the public administration, and their categories had not been reviewed for years. The number of inspectors was insufficient for the needs of the country, most of them were located in major cities and there was no thematic specialization. In addition, with regard to occupational safety and health, the function of labour inspection was confused with the work of the officials of the Honduran Social Security Institute. The country's private sector agreed with the need to reform the Labour Code and modernize labour inspection to make it efficient and adapt it to current needs. Following the example of a recent tripartite meeting in Honduras, the Employer members emphasized the need to make progress in improving labour inspection in consultation with the social partners, including the representative business sectors, with a view to ensuring the relevance of the reform and due compliance with the aims of the Convention. Finally, the Employer members recalled the importance of conducting labour inspection in both the formal and informal sectors,

with a view to creating the appropriate conditions for formalizing the latter.

The Worker member of Honduras said that labour inspection was a fundamental means of guaranteeing the free exercise of the rights enshrined in international Conventions and domestic labour law, and that the Government should take the appropriate steps to ensure compliance with the law by employers. With regard to the authority of inspection services to impose penalties, the Ministry of Labour and Social Security was failing to exercise the power to impose administrative penalties for violations of labour legislation provided for in section 625 of the Labour Code. When levied, fines were not commensurate with the offence committed. The maximum fine was 5,000 lempiras, equivalent to US\$228. He emphasized that penalties should serve as an example. The total number of inspectors was too low, as there was only one inspector for approximately 24,000 workers. Furthermore, inspection activities focused mainly on complaints, and much less on routine inspection. In general, inspection activities were confined to carrying out poor investigations without imposing penalties on employers. No priority was given to full inspections at workplaces that would give the State a real overview and allow it to address labour violations that workers were usually afraid to report for fear of losing their jobs. For example, in *maquila* enterprises, export processing zones did not allow labour inspection by threatening to close down and lay off thousands of workers. Notwithstanding section 624 of the Labour Code, which provided that an inspector could not abandon an investigation without higher level authorization, workers were frequently left with their labour disputes unresolved. Moreover, inspectors would request workers to pay inspection costs, including transport, as a condition for dealing with their complaints. Workers were also charged for receiving any official record of the action taken by inspectors in relation to their complaints, in violation of the principle that labour inspection should be free. There were allegations that inspectors encouraged workers to drop their complaints and that they received incentives from employers to be lax in carrying out effective investigations, although such conduct was prohibited by law. Nevertheless, the competent authorities did not bring disciplinary proceedings against inspectors. Employers frequently denied access to workplaces, as had been done in the case of a large sugar enterprise. Inspectors almost never made use of their authority to request the police to provide them with access to the workplace, and in many cases even the police declined to use their powers of enforcement. The Ministry of Labour rarely fined employers who refused inspections, and when attempts were made to bring criminal charges, the Office of the Public Prosecutor did not accept them, as it did not know how to proceed. The Government must comply with the Convention and with domestic law.

The Employer member of Honduras said that national labour legislation dated back to 1959 and there had been no substantial reform of the provisions respecting labour inspection since then, even though the country had ratified the Convention in 1983. However, it was a governance Convention that was being examined by the three social partners in Honduras, which had asked for ILO collaboration for an audit of its labour inspection system. The findings of the audit would be communicated to the social partners through the Economic and Social Council. The employers of Honduras were committed to a complete overhaul of the Labour Code and were in favour of the revision and adoption of a new Labour Inspection Act, that should guarantee the professionalism of labour inspectors, their multi-tasking and their specialization according to the economic areas or activities, as well as the creation of a career in labour inspection. The reform

would have to clarify inspection procedures and ensure that the penalties imposed on those who violated the labour legislation were commensurate with the type of infraction committed and were established objectively and with due regard for the right to legal defence and protection for all the parties concerned. Even taking into account Honduras' economic problems, the number of labour inspectors, of approximately 112 for a population of 8 million, was still low. A graduated budget should therefore be introduced as from 2015 that guaranteed not just the payment of salaries, but also the necessary logistical support for inspectors to travel in official vehicles, instead of private vehicles belonging to those who requested their services. Honduran employers were determined to work with their tripartite partners to bring about a legal instrument that could guarantee their objectives in compliance with the roadmap that had been approved. The new instrument would be adopted in Honduras' Economic and Social Council, before being submitted to the National Congress.

The Government member of Mexico, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), noted the technical assistance that Honduras was receiving from the ILO for an audit of the national labour inspectorate, as well as the action plan for the consolidation of the inspectorate, the legislative reforms and the effective cooperation and efforts of all the sectors concerned. The action plan was a joint undertaking by the Government and the social partners, with ILO assistance, with the objective of achieving the targets that had been set for 2016. The action plan had the financial support of the Office of the President for the 2016 budget. GRULAC emphasized its commitment to the consolidation of the labour inspectorate and trusted that the Government would continue creating, improving and implementing policies to improve the effectiveness of labour inspection.

The Worker member of Guatemala said that the proper functioning of labour inspection was key to the enforcement of labour standards. The inspection service was part of the state system of law enforcement and the mode of operation of the inspectorate reflected how much attention was given to labour rights by the State. There were serious problems in the operation of labour inspection in Honduras, as emphasized by the Committee of Experts. Even though it was necessary to strengthen the inspectorate with material resources and an increased number of inspectors, it was not sufficient to improve the service. Other aspects had to be taken into consideration, some of which were covered by the report of the Committee of Experts. For example, it was prejudicial for the functions of mediation and conciliation to be combined with those of supervision and inspection, since that could result in the negotiation of minimum conditions of work for the workers. It was also necessary for the labour inspection system to have adequate powers to impose penalties for non-compliance with labour standards and for such penalties to be applied effectively. Accordingly, it was unacceptable that inspectors asked the workers to pay their expenses for tasks that inspectors were required to perform by law. Moreover, employers frequently denied inspectors entry into workplaces and, even though such conduct was illegal, it was not penalized. Consequently, it was essential for the labour inspection service to be reformed and for effective and dissuasive penalties to be established. For that reason, it was important that the Government take full account of the observations of the Committee of Experts.

The Government member of Nicaragua endorsed the statement by GRULAC and called on Nicaragua to give high priority to the international standards that it had ratified. For those standards to be properly implemented, account nevertheless needed to be taken, not only of the

Labour Inspection Convention, 1947 (No. 81)

Honduras (ratification: 1983)

resources required, but also of specific national circumstances. Honduras' commitment to respect workers' rights and the positive steps taken relating to labour inspection, such as the action plan for its consolidation, were encouraging. She also emphasized the technical assistance provided by the ILO for an audit of the functioning of the labour inspectorate, which she hoped would have a positive effect. Although the State was primarily responsible for protecting workers' rights, the spirit of the Organization was tripartite participation. Honduras should be encouraged to continue its efforts on behalf of the people, and the Conference Committee should take a favourable view of the steps that were being taken to give effect to the Convention.

The Worker member of the United States said that it was not possible to comply with the commitments under a trade agreement to protect workers' rights without a functioning labour inspectorate. Yet, this was what Honduras and the United States had done since the Central American Free Trade Agreement (CAFTA) had entered into force in 2006. He recalled that unions in Honduras and the United States had filed a complaint in 2012 concerning the failure of Honduras to enforce its labour laws and ILO commitments under CAFTA. The United States had not formally responded to the complaint for three years, despite ongoing documentation of violations and failures relating to inspection. The Government of the United States had finally responded to the complaint, found "serious concerns" and announced a series of technical cooperation programmes to increase the labour inspectorate's capacity, but no unions had been consulted in designing the programmes. After years of inaction, the Government of Honduras had made a series of announcements concerning its intentions to comply, with descriptions of programmes and legislative proposals that were being launched. Those announcements were welcome, but had been made before. As in the Guatemalan case, it seemed that three years of complete inaction was acceptable. Meanwhile, mechanisms to defend the interests of investors and multinational corporations adopted decisions that included remedies in dozens of cases each year. The Conference Committee should note with concern the Government's ineffectiveness in defending workers' rights through the use of ILO Conventions in trade agreements. He recalled that the Committee had heard the case of Honduras two years ago, and his organization's remarks at that time had focused on the same employer violations that continued today. The Government had failed to take note of the documented intransigence and had failed to enforce laws or ensure the compliance of the trade agreement with the ILO Conventions that it had ratified. And yet Honduras, and the company in question, continued to enjoy trade benefits. There were also employers in the country which complied with obligations regarding labour inspection and, in the same way as those in violation, such companies should be recognized. Many workplaces in Honduras, especially in the agricultural sector, were privately inspected and certified. That presented a conflict of interest, as the auditor profited by providing services to suppliers, and wanted more business opportunities. In a country such as Honduras, these private compliance initiatives further perpetuated the governance gap.

The Government member of El Salvador endorsed the statement of GRULAC and recognized the Government's efforts and its momentum in strengthening the labour inspection, including through the action plan. She emphasized that the inspection was one of the fundamental pillars of the State and trusted that the Government of Honduras would continue its efforts to improve the efficiency and effectiveness of the inspection system.

The Worker member of Spain said that in Honduras melon production represented 11 per cent of agricultural

exports, and this work was carried out mainly by women, representing two-thirds of the workforce in the country. They were mainly young women without family support, with four or five children, and employed in temporary jobs. Women workers were paid 70 per cent less than the national minimum wage, were not paid overtime and had long working hours. Although accidents at work and health problems caused by the intensive use of agrochemicals were common, most workers lacked access to social security protection, including health services, and there was no response to the numerous requests to inspect these violations. The critical situation in the field of labour inspection in Honduras directly affected the human rights of workers and their families. The Government was not responding to the needs of inspecting compliance with labour legislation, particularly in the agricultural sector.

The Government member of the United States said that the Government of the United States had been working closely with the Government of Honduras under the labour chapter of CAFTA to strengthen the protection of internationally recognized workers' rights in the country. In February 2015, they had jointly pledged to work together to address issues of labour law enforcement, including the establishment and implementation of a monitoring and action plan. Her Government was encouraged by the political will of the Government of Honduras, and encouraged it to fully implement the planned reforms, including through the allocation of sufficient resources to the inspectorate to conduct regular and thorough inspections of workplaces and apply effectively dissuasive penalties for non-compliance with the labour legislation, in accordance with the Convention. Her Government was committed to continued collaboration with the Government of Honduras, particularly for the implementation of the planned reforms on labour law enforcement.

The Worker member of Brazil said that the situation in Honduras was urgent. Although the Convention was technical, its importance was immeasurable and it was closely related to other Conventions. If a country violated the present Convention, there was a danger that it would fail to observe all of the others. The report of the Committee of Experts described the seriousness of the situation: the number of inspectors was insufficient; inspectors lacked the material resources to perform their duties; and penalties were inadequate and inefficiently applied. In addition to a very limited number of inspectors, other obstacles hampered the performance of their functions, as was evident in the report of the Committee of Experts. Workers had to pay for inspectors' transport in order for them to perform their assigned duties. That illustrated the level of negligence, indifference and fragility of the labour inspection system in Honduras. There were many more complaint-based inspections than routine inspections. That implied that labour inspection was adopting a reactive rather than a preventive approach. Lastly, employers who denied entry to labour inspectors were not effectively penalized.

The Government member of Guatemala endorsed the statement made by GRULAC and recognized that Honduras attached significance to the aim of strengthening labour inspection as a fundamental pillar of the State, to be realized through activities with ILO support, of which the technical assistance was essential. She praised the action plan to strengthen inspection, which had been adopted on a tripartite basis and with ILO assistance and had already received budgetary support for its implementation. She encouraged the Government to continue working on strengthening its labour institutions and, under tripartite leadership, to continue building an effective labour inspection.

An observer representing the World Federation of Trade Unions (WFTU) noted with deep concern the violation of

the Convention by Honduras, its inability to cope with the situation and the lack of budgetary resources. He called on the ILO to supervise rigorously the implementation of the Convention and expressed solidarity with Honduran workers.

The Government representative indicated that the Ministry of Labour and Social Security had prepared an action plan for inspection which aimed to substantially improve labour inspection. This plan had established priorities, including increased assistance for workers and employers regarding the consultations and requests submitted; powers of the inspectors to enter workplaces; prompt processing of inspection requests, in accordance with procedural protocols by sector relating both to the working conditions and to occupational safety and health; monitoring and conclusion of the inspection administrative procedure with enforcement measures and the imposition of penalties for offences; and monitoring of the safety and confidentiality networks relating to inspectors' activities. The action plan had the technical and political support of the highest Governmental bodies and a draft budget was being prepared for 2016. The social partners actively participated in the plan by means of a tripartite committee for follow-up and monitoring. Furthermore, the Ministry of Labour and Social Security was finalizing the bill on the General Inspection Act, which proposed substantial changes to inspection procedures and provided, *inter alia*, for the strengthening of inspectors' powers, a new penalty system for socio-labour offences and a review of the profile and working conditions for labour inspectors in the civil service. In this context, ILO technical services would conduct an audit of labour inspection to determine and analyse the current situation of inspection in all areas and in different regional offices with a view to identifying priorities and formulating recommendations within an action plan which the Ministry of Labour and Social Security was resolutely determined to implement in the short, medium and long term. The audit would encompass the legislative, procedural and administrative aspects of labour inspection, as well as technological development, administrative organization, organic structure and links with public and private institutions. The focus of the audit was based on the notion of an inspection system in conformity with the Convention which should integrate in a coordinated manner all of its elements, including human resources, and material, legislative, administrative and logistic resources, with the participation of workers and employers in order to provide an effective inspection service. The audit was due to commence at the end of the month, and its detailed results would be provided in a special report and would be included in the detailed report on the Convention for 2016. He thanked the ILO for the technical assistance provided and recognized the efforts of the Worker and Employer members, and their commitment to the action plan to achieve these ambitious objectives, which corresponded with the observations of the Committee of Experts. Lastly, he reiterated his Government's commitment to continue complying with the Convention by developing, improving and implementing policies to ensure the full effectiveness of labour inspection.

The Worker members welcomed the fact that, in the light of the recent report of the United States Department of Labor, the Government of Honduras had developed an action plan and accepted technical assistance of the United States, which would be overseen by a tripartite committee. They also welcomed the fact that the Government was planning to draft a new general labour inspection act. They hoped that those initiatives would succeed in overhauling the labour inspection services, which had failed to implement labour legislation effectively due to corruption and indifference. While endorsing the need for technical assistance, the Worker members emphasized that it must

be supported by political will and that the Government must give the labour inspection services a sense of a mission to be undertaken with professionalism and respect for the rule of law. In order to ensure that workplaces were inspected as regularly and thoroughly as necessary to ensure the effective application of legislation, the Worker members urged the Government to substantially increase the number of labour inspectors, particularly in areas that were currently grossly neglected, and to ensure that they had the material resources needed to carry out their work, including vehicles; to formulate a proactive labour inspection plan targeting sectors where there were serious and systematic labour legislation violations, including the *maquila*, agricultural and other sectors; to ensure that labour inspectors received the relevant training and take all necessary steps to guarantee their independence; to increase fines for violations of the law immediately and review the method used to calculate them to ensure that they were sufficiently dissuasive; and to introduce procedures for labour inspectors to carry out repeat inspections in order to verify that orders were complied with and enforce their implementation. The ILO should offer, and the Government of Honduras should accept a direct contacts mission to assess the current situation, verify technical capacity needs and help in coordinating the various initiatives.

The Employer members noted that the Government of Honduras was not complying with the Convention principally due to its lack of political will. They recognized that labour inspection was important to ensure compliance with labour legislation and to protect workers' rights. An adequate inspection system that complied with the Convention would have the additional positive effect of combating informality in Honduras. The reform of the Labour Code was therefore essential, as was the adoption of a new Act on inspection. Any legislative reform on inspection should unfold in consultation with the most representative workers' and employers' organizations, in line with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Further to consultation with those organizations, the draft text should be analysed by the Committee or by the International Labour Standards Department in order to guarantee its conformity with the Convention. The legislative reform should ensure the progressive professionalization, specialization and multi-tasking of the labour inspectorate. The number of inspectors and the frequency of routine inspections should also be increased. These reforms would require budgetary and logistical solutions. Furthermore, penalties should be more dissuasive, progressive and objective in order to ensure the right of defence. The Employer members requested the Government to present detailed information to the Committee of Experts and to accept the technical assistance of the Office.

Conclusions

The Committee noted the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the strengthening of the labour inspection system, including through: the legal reform; the availability of sufficient financial, human and material resources, including transport facilities; the conduct of a sufficient number of routine inspection visits throughout the country; the establishment of targeted inspection plans; the capacity building and training of labour inspectors; the need to grant labour inspectors adequate conditions of service, including sufficient remuneration to ensure their impartiality and independence from any improper external influences; the need to give effect in practice to the principle of free access of labour inspectors to workplaces; and the need to increase the penalties for labour law violations, including the obstruc-

Labour Inspection Convention, 1947 (No. 81)

India (ratification: 1949)

tion of labour inspectors, and ensure their application through effective enforcement mechanisms.

The Committee noted the information provided by the Government relating to a plan of action to strengthen the labour inspection system. The plan had been approved in a tripartite forum and included several initiatives, such as increasing the number of labour inspectors to 200 by 2016, and improving the financial and material resources of the regional labour inspection services. The Committee further noted the proposed reform of the Labour Code and the proposed adoption of a new general labour inspection law governing the career structure and recruitment of labour inspectors, and providing for increased fines for labour law violations, including the obstruction of labour inspectors in their duties. The Committee also noted the information on the initiation of ILO technical assistance in late June 2015 in the form of an audit of the functioning of the labour inspection system further to a request by the Government.

The Committee noted the Government's intention, in consultation with the most representative workers' and employers' organizations, to reform the Labour Code, to enact a general labour inspection law, and to undertake an audit of the labour inspection system which would be carried out by the ILO. Taking into account the discussion, the Committee requested the Government to:

- consider including the following among its planned reforms: professionalizing labour inspection staff; making inspection tasks more specialized; pursuing a multidisciplinary approach; increasing the wage budget and improving logistics; and ensuring that penalties for breaking the law are increased so as to be dissuasive and are determined through pre-established, objective procedures that guarantee all parties the right to a fair hearing;
- substantially increase the number of inspectors, particularly in areas which are underserved at present, and ensure that they are provided with the material resources needed to carry out their work;
- develop a proactive inspection plan to focus on sectors where there are regular violations of labour legislation, including the informal sector, agriculture and *maquilas*;
- continue receiving technical assistance from the ILO in order to overcome the remaining legal and practical obstacles to applying the Convention; and
- submit a detailed report on the application of the Convention to the next session of the Committee of Experts.

INDIA (ratification: 1949)

The Government provided the following written information.

The Government indicates that India has an elaborate system of labour legislation. The enforcement of the various labour laws has been prescribed under the relevant legislation and is secured through a system of labour inspectorates, both at the state and central levels. The system of inspections and follow-up action that exists in India includes prosecution in the criminal court of law. The mandate of the Ministry of Labour and Employment is to safeguard the interest of the working class while promoting a working environment conducive to inclusive growth and industrial harmony. India is a fast-growing nation with the largest proportion of youth population and thus the creation of decent jobs for all is the top priority for the Government. In this context, government policy is to create an enabling environment for growth and development which will create ample opportunities for decent work for all. The Government is committed to the principles of inclusive and equitable growth. Therefore, a correct balance in the policy environment needs to be achieved so that, while ensuring decent work for all, undue transaction

costs and inefficiencies in the implementation of labour laws are eliminated to make the business environment competitive. In this endeavour, the Government is guided by the ethos of tripartite consultations involving government, employers' and workers' organizations. In its observation, the Committee of Experts refers to allegations made by the Centre for Indian Trade Unions (CITU), alleging that the Government proposes to exclude a great number of workers from basic labour laws. The Government reiterates that no such amendments to the scope of application of any labour laws have been enacted by the Government to exclude workers from the purview of labour laws. On the contrary, the Government is taking affirmative action, and proposes to expand the coverage of various labour laws. All the proposed amendments to labour laws are being discussed in appropriate tripartite forums, and only after consultations with all stakeholders are amendments carried forward. This is in accordance with the recommendations of the Second National Labour Commission. The objective of consolidation of labour laws is to ease the transaction costs of compliance, and not to relax compliance requirements. The Committee of Experts also refers to the proposed Small Factories (Regulation of Employment and Conditions of Service) Bill, 2014. The objective of the Small Factories Bill, 2014, is to have a comprehensive law consolidating all the essential provisions of existing labour acts into one piece of legislation so as to achieve effective compliance and enforcement for small factories employing fewer than 40 workers. By making compliance less burdensome and cost effective, it in fact encourages small units to register under the proposed Small Factories Bill. The draft bill, after due tripartite consultation, is presently under examination by the legislative department of the Ministry of Law and Justice. The Government appreciates the technical assistance provided by the ILO in the formulation of labour laws, particularly in the recent drafting of labour legislation (wages, industrial relations, safety and working conditions, and social security and welfare). The Government would be glad to avail itself of ILO technical assistance in the future whenever needed.

Regarding limitations in the inspection system prevalent in the country, it is submitted that the phrase "End of Inspector Raj" in this context does not mean an end of the inspection system, but is intended to mean an end of malpractices in the current inspection system. The Government wishes to make the inspection system efficient and transparent so that its effectiveness and consequently the compliance of labour laws can be improved. The Government is giving full effect to the provision of the Convention. The Government reiterates its commitment to the obligations contained in the Convention that workplaces shall be inspected as often and as thoroughly as necessary. There is no intent either to dilute this principle in theory or practice, or to relax the enforcement of the rule of law. Factories in all states are governed by the Factories Act and there is a similar set-up in all states under a chief inspector of factories. The statistics show that there has not been any drastic decline in the past few years, nor have there been serious imbalances in the number of inspections in the states. For instance, in 2014–15 under the provisions of the Contract Labour (Regulation and Abolition Act) 1970, a total of 2,729 inspections were carried out in the central sphere up to December 2014, and these inspections resulted in 1,634 prosecutions and 1,510 convictions. Similarly, 4,852 inspections were carried out under the Minimum Wages Act, 1948, which led to the detection of 179,958 irregularities in the payment of minimum wages and, consequently, 1,790 prosecutions were launched which resulted in 1,041 convictions.

In relation to labour inspection in special economic zones (SEZs), the Government indicates that the Special

Economic Zones Act, 2005, does not preclude the applicability of labour laws in SEZs. Rather, section 49(1) of the SEZs Act, which deals with the power to modify different acts specifically states that such modifications should not apply to the matters relating to trade unions, industrial and labour disputes, welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old-age pensions and maternity benefits applicable in any SEZs. The Special Economic Zones Rules, 2006, lay down the procedure for the establishment of SEZs. These, among others, include the delegation of powers to the Development Commissioner under the Industrial Disputes Act, 1947, and other related acts in relation to the unit and the workmen employed in the SEZs, and also declare SEZs to be public utility services under the Industrial Disputes Act, 1947. The Government has not diluted the provisions of any labour laws and their enforcement for SEZs. Only in certain cases has the Development Commissioner of the SEZ (who is a senior government employee) been delegated the powers of a labour enforcement officer for ease of implementing and expediting enforcement activities. This does not in any way dispense with requisite labour inspection, as provided for under different acts. With regard to information technology (IT) and IT-enabled services (ITES) sectors, the central acts, such as the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Payment of Wages Act, 1936, the Payment of Bonus Act, 1965, the Equal Remuneration Act, 1976, and the Payment of Gratuity Act, 1972, are applicable to these sectors. These establishments are inspected by the regular state government labour enforcement machinery like any other establishment. The working conditions in IT and ITES sectors are regulated by the provisions of the Shop and Commercial Establishment Act of respective state governments and ensured through inspection and through returns submitted by employers. The Committee of Experts has sought information on any amendments proposed to the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988. This Act provides for the exemption of employers in relation to establishments employing a small number of persons from furnishing returns and maintaining registers under certain labour laws. The Government indicates, in this regard, that a series of tripartite consultations were undertaken on 23 January 2006, 22 June 2006, 1 March 2007, 15 March 2007 and 7 June 2007 prior to the introduction of the bill to amend this legislation, in 2011, which was subsequently passed by the Parliament on 28 November 2014. The amendment was notified on 10 December 2014.

With regard to the observation by the Committee of Experts concerning the self-certification system introduced in 2008 in the State of Haryana, the Government indicates that self-certification is fundamentally a support system to help employers ensure compliance with labour laws on their own and then to support the labour inspector at the time of inspection. This scheme does not entail any relaxation of statutory inspections by labour inspectors. The Government emphasizes that this self-certification is an additional requirement to the system of statutory labour inspections and is in no way a substitute to the main work of labour inspection. The Committee of Experts has sought information on the pay scales and code of conduct of labour inspectors. In India, the appointments of inspectors are notified in the *Gazette* and inspectors are deemed to be public servants, governed by relevant service conditions and conduct rules, and they take an oath of allegiance to the Constitution of India. All inspectors under the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, in major ports are appointed by a notification in the *Official Gazette* and as

such their pay scales are the same as those applicable to other public officers such as tax inspectors. The pay scale of the inspector staff in all these organizations is 9,300 Indian rupees (INR) to INR34,800 + INR4,600 (GP) plus dearness allowance and other allowances as may be applicable. With regard to the observations of the Committee of Experts regarding free access of labour inspectors to a workplace and the recommendation of the Committee of Experts to amend the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, so that the rights of inspectors to enter workplaces freely is guarantee in law, the Government indicates that section 9 of the Factories Act, 1948, and section 4 of the Dock Workers (Safety, Health and Welfare) Act, 1986, already guarantee powers to inspectors to enter freely in workplaces and dockyards, etc. Thus amendment to the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, do not seem necessary. The Committee of Experts has further suggested removing all restrictions in practice, where they exist, with regard to the principle of the free initiative of labour inspectors to enter any workplace liable for inspection. The existing labour laws guarantee this power to inspectors already. In practice, too, the right and power of the labour inspection authority has not been curtailed by the Government. As regards the inspection system in state governments, the Central Government does, from time to time, advise state governments to enforce labour laws effectively and to have effective enforcement mechanisms. The Government has recently launched a major good governance initiative to improve labour enforcement mechanism in terms of transparency, accountability and ease of compliance with the ultimate aim of promoting industrial peace and harmony. The Government reiterates that the rights of the inspection authority have not been curtailed. The observation of the Committee of Experts also concerns the inadequacy of penalties under the Factories Act, 1948, and the Dock Workers (Safety, Health and Welfare) Act, 1986, and the delay in making the necessary amendments to these Acts to enhance penalties. The Government indicates that under the current provisions of these Acts, penalties consist of a fine or imprisonment, or both, depending on the nature of the violation. The Government is in the process of making certain amendments to the Factories Act, 1948, which, among others, include amendments with respect to provisions concerning penalties. Based on the inputs received from the stakeholders, the proposed amendments are under re-examination in the Ministry. The bill could not yet be passed due to a lack of consensus among various stakeholders on the proposed amendments. The Government is committed to the cause of labour in the developmental process and ensuring efficiency and transparency in the world of work. It reiterates its commitments towards international labour standards, as prescribed by the ILO, and particularly the Convention. It remains open to any technical assistance from the ILO as needed.

In addition, before the Committee, a **Government representative** said that the enforcement of the various labour laws was secured through a system of labour inspectorates, at both the state level and the central level, and included prosecution in the criminal courts. As a founding member of the ILO, India deeply respected the fundamental rights of all its citizens, as set out in the Constitution. The mandate of the Ministry of Labour and Employment was to safeguard the interests of the working class, while promoting a conducive working environment for inclusive growth and industrial harmony. The review and updating of labour laws was a continuous process and the Government was guided by tripartite consultations. In its report to the Committee of Experts, his Government would provide detailed statistics on the enforcement of labour laws

from 2011 to 2014, as requested. He nevertheless emphasized that a decline in the number of inspections did not indicate a lack of enforcement of labour laws. During the periods 2012 to 2013 and 2013 to 2014, the number of convictions under the Contract Labour (Regulation and Abolition) Act had increased from 2,913 to 3,259, and the number of convictions under the Minimum Wages Act had increased from 4,954 to 5,074. Those statistics demonstrated that the Government was placing emphasis on quality and effectiveness of inspections. Concerning labour inspection in SEZs, the Government would provide detailed statistics regarding inspection activities, as requested by the Committee of Experts. The Government had recently launched a major good governance initiative to improve labour enforcement mechanisms in terms of transparency and accountability and, under a computerized inspection system, the selection of establishments for inspection would be based on transparent and intelligent criteria to avoid malpractices. That system was being designed to improve compliance with labour laws, and the rights of the inspection authority had not been curtailed. In conclusion, he expressed the commitment of his Government to the cause of labour in the developmental process and its deep respect for ILO labour standards, and he expressed appreciation for the ILO's technical support.

The Worker members welcomed the opportunity to discuss this case as workers' rights were poorly enforced in India in practice, in both the formal and the vast informal economy. Even in the formal economy, inspection in some areas was essentially non-existent. The Worker members were of the view that labour inspectors were often unable or unwilling to monitor compliance with national labour laws. In many cases, labour inspection bodies continued to be extremely understaffed. Labour inspectors were also prevented from entering factories, and collusion with employers was frequent. Labour inspection was thus largely incapable of ensuring respect for workers' rights. The new laws proposed by the Government did not resolve those issues and instead threatened to worsen the situation by weakening labour inspection. As of 2014, the Government had introduced legislative bills which had implications not only for the content of substantive rights, but also far-reaching consequences for labour inspection. The draft Wages Bill was just one example. The Worker members believed that section 47 of the Wages Bill would profoundly change the system of labour inspection in a manner that was fundamentally inconsistent with the Convention. The primary concern with the proposal was that it depended entirely on self-inspection. The system would allocate work places for inspection randomly and the employer would be notified in advance of the inspection. Inspection systems based entirely on self-assessment and complaints were ineffective, as enterprises could provide false information and workers were unlikely to complain because of fear of reprisals. Instead, risk-based inspections, as part of a coordinated strategy, were essential to ensure that cases of non-compliance were detected where self-certification and complaints-based inspections were inadequate. Targeted inspections should therefore be given priority over complaints-based inspections. Furthermore, unannounced visits were an essential element of labour inspection, as companies that were notified of inspections could make efforts to appear to comply only on the day of the inspection. After the inspection ended, such firms would return to their poor or illegal practices. While supporting efforts to address corruption, this could be done by making inspectors subject to a supervisory body. Such a body could direct the work of inspectors so that inspections were targeted, rather than arbitrary, and thereby reduce the potential for improper conduct. In addition, section 47(4)(ii) of the Bill determined the powers of inspectors, with signifi-

cant new limitations on inspection powers compared with existing Indian labour law. Finally, section 49(3) of the Bill envisaged that penalties would only be imposed after an inspector had issued a written order and given the employer additional time to comply. While that might be appropriate in some circumstances, penalties were required in all cases. If the new law was adopted, all incentives would be removed for employers to comply with the law. Employers would simply be able to violate the law and wait until a written order was issued, and then comply. Inspectors should have the power to issue a fine immediately, particularly in cases where violations were intentional or repeated, or where violations were serious or affected a large number of workers. The decision to rename inspectors as facilitators also led to the belief that enforcement was not part of the objectives of labour inspection.

In 2008, the SEZs Act had established a flexible legal framework as a means of attracting foreign direct investment. In India, SEZs were known for anti-union discrimination, with unions being strongly discouraged and thus rare. Moreover, workers were frequently not paid minimum wages, worked very long hours in order to meet stringent and unrealistic production targets, and were subjected to dismissal without justification or compensation. Health and safety in SEZs was frequently poor, which was in part due to the outsourcing of labour inspection. The SEZs Act provided that its provisions could not be invoked to amend labour legislation. However, although labour law could not be modified, state governments had in fact made substantial modifications through notifications and other administrative measures. For example, the Government of Punjab had delegated the powers of the Labour Commissioner, who was responsible for the enforcement of labour laws outside SEZs, to the Development Commissioner. It had also decided that a self-certification system would be applied in respect of labour laws. In addition, all units set up in SEZs were declared "Public Utility Services" under the Industrial Dispute Act, which made the exercise of the right to strike nearly impossible. Normally, Indian labour legislation vested the Labour Commissioner with the authority to enforce labour laws. In SEZs, this authority was vested with the Development Commissioner, whose central function, unlike that of the Labour Commissioner, was to ensure that SEZs were able to attract investment and generate earnings. In addition, for inspections relating to health and safety, units in SEZs could obtain inspection reports from accredited agencies, which meant that this important function was outsourced to private actors. The Worker members feared this would increase the likelihood of industrial disasters. The Worker members were of the view that the current legal reforms posed significant concerns in relation to compliance with the Convention and risked undermining compliance with national labour laws. Furthermore, over a decade of experience of SEZs provided ample evidence that the fact that the legal framework allowed the zone authorities rather than the Labour Commissioner, to enforce the law meant that violations of labour legislation in SEZs had predictably become rife, with little possibility of remedying such violations. Further reliance on self-certification schemes would only further weaken the enforcement powers of the Government and leave workers without effective recourse. The Worker members urged the Government, in consultation with the ILO and the social partners, to review the impact of these various schemes and to make the necessary reforms in law and practice to ensure that workplaces were inspected effectively in accordance with the Convention.

The Employer members indicated that this case was fundamentally one of a Government not providing the Committee of Experts with the necessary statistics and infor-

mation, as required under the Convention. Referring to the 2009 general observation of the Committee of Experts concerning the Convention, which stated that “However advanced it may be, a country’s labour legislation is liable to remain a dead letter if there is no system of labour inspection to enforce it, not only in law, but also in practice”, the Employer members encouraged all governments, in the same way as the Committee of Experts, to maintain and keep up to date a central database of statistics showing the number of workplaces liable to inspection and the number of workers employed in them. The Employer members noted with some disappointment that some of the information requested by the Committee of Experts had been first requested in 2004 and 2009. They appreciated the challenges faced by the Government in respect of labour inspection in view of its federal system and elaborate system of labour legislation. It had a range of labour inspectorates at both the central and state levels. According to a presentation by the Assistant Labour Commissioner for India in 2011, India had one of the highest numbers of labour laws in the world. At the central level, the Chief Labour Commissioner was responsible for enforcing labour legislation regarding working conditions to the extent that central government was the appropriate government. Based on the most recent information provided by the Government in 2014, and referred to by the Committee of Experts, the division of responsibility between central government and state government for labour inspection under various enactments in India was far from clear. The Employer members agreed with the Committee of Experts that in view of the limited information provided, there had been a reduction at the central level in the number of inspections under the legislation in question, the number of irregularities identified and the number of convictions. However, they did not agree that it could automatically be inferred from such limited information that there was a breach of Articles 10 and 16 of the Convention. Detailed information and analysis of that information was required before such an observation could be made. With regard to the information concerning the state level, where much inspection took place, the Employer members agreed with the Committee of Experts that it was not possible to properly assess the functioning of labour inspection at all, as the information provided was extremely limited.

The Employer members welcomed the detailed information provided by the Government, which provided a basis for moving forward with the introduction of a system of inspection that was in compliance with the Convention, in particular with Article 10 (number of inspectors) and Article 16 (frequency of inspection). They urged the Government to use the outcome of the discussion to demonstrate its commitment to work in close cooperation with the ILO in compliance with its Article 22 reporting obligations. They supported and commended the Government of India in its stated aim of removing malpractice from its system of labour administration and inspection. This was the malpractice of burdensome and unnecessary bureaucracy. Removal of such bureaucracy was necessary to create an enabling environment for both sustainable business and internal and external investment. It was well known how far and how quickly the Indian economy had developed, which was now the eighth largest economy in the world. India not only attracted high levels of investment from overseas, but was also a major investor in the global economy. At the same time, the challenges facing the Indian economy and society were huge. It had the second largest population in the world and over 50 per cent of its population were under the age of 25. To continue to develop its economy to meet such demands, the Government was seeking to improve the ease of doing business in India, including the ease of investment. De-

spite the breathtaking advances of the Indian economy, India traditionally ranked low on recognized standards on the ease of doing business. The Employer members noted the Government’s observation that “ending Inspector Raj”, meant removing malpractice to create such an environment. Labour inspectors had been identified by business as being sometimes overbearing and obsessed with form filling and bureaucracy. This was a reputation that undermined the ability of inspectors to do their job. The Employer members however cautioned against any reform of labour administration and inspection which might undermine the ability of the Government to comply with its obligations under ILO Conventions, including Convention No. 81. They urged the Government to combine reform of labour administration with investment in its regulatory structures and, in that regard, to draw upon the country’s wealth of expertise in its renowned IT sector. They also expressed a further note of caution. One of the responsibilities of state labour inspectors was the enforcement of the Child Protection (Prohibition and Regulation) Act 1986, which prohibited employment under the age of 14 in hazardous occupations. This Act formed one of the cornerstones of the present legal regime on child labour in India. The Employer members were therefore very concerned that no information had been made available to the Committee of Experts on the number of inspections and prosecutions under this extremely important Act at the state level. To be clear, the Employer members were not saying that state labour inspectors were not seeking to enforce the Act, as they were not aware of any complaint from the Worker members in this regard. They urged the Government to give priority to the compilation of statistics on child labour inspections. Finally, they urged the Government to have particular regard to child labour issues in building the capacity of the labour inspection system and to fulfilling its reporting obligations under the Convention.

The Worker member of India said that the Government had enacted the SEZs Act in 2005 and had then introduced the policy on National Manufacturing Investment Zones under which areas were specified where labour laws would not be implemented or enforced. In those areas, one development commissioner would be specially empowered to deal with labour problems at his discretion, while there would not be inspectorates, conciliation proceedings, tribunals or labour courts. This in turn had raised the fear that the role of trade unions would cease, and in fact, only a few unions had been registered in these areas and the exploitation of workers had increased. However, more and more anti-union practices by both the Government and employers had been stopped by trade unions. Such situations had led to the forming of the Joint Front of Central Trade Union Organizations comprising all the central trade unions, a historical development in the history of the Indian labour movement. The Government had intended to amend unilaterally almost all the important labour laws relating to working conditions, wages, industrial relations and social security, without tripartite consultation. The withdrawal of labour inspection was proposed, in violation of Articles 10 and 16 of the Convention and self-certification had been proposed, in violation of Articles 6, 12(1) and 18 of the Convention. These proposals had given rise to strong protests by the Joint Front of Central Trade Union Organizations throughout the country. The Government claimed that it had taken initiatives to amend the labour legislation in order to allow for rapid industrialization, employment generation and the attraction of foreign direct investment. All such acts were contrary to the 2002 recommendations made by the 2nd National Commission on Labour, which was a tripartite body. Following strong protests by trade unions, the Government had started discussions in tripar-

Labour Inspection Convention, 1947 (No. 81)

India (ratification: 1949)

tite forums and had given assurances that it would not be taking any unilateral action. He called on the Government to refrain from amending any laws that would result in the violation of Convention No. 81 or other Conventions, to strongly punish employers for any violation of labour laws and any exploitation of workers, and to ensure that job security, wage security and social security were guaranteed.

The Employer member of India indicated that Indian enterprises were subject to multiple labour laws, cumbersome and time-consuming compliance procedures and high-handedness by the inspectorate. There were ongoing efforts to reduce avoidable administrative burdens such as the amendment of the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, was one such example. Similarly, in order to check high-handedness by inspectors, some of the state governments only allowed visits with the prior permission of senior officials. He considered that the requirements of Convention No. 81 had not been compromised or diluted in any way. The Government had started to take several measures to boost the industrial sector in order to improve the country's competitiveness and employment growth. That followed a number of measures, such as amending the Apprentices Act, 1988, the Factories Act, 1948, and the Labour Laws (Exemption from Furnishing Returns and Maintaining Registers by Certain Establishments) Act, 1988, the drafting of the Small Factories (Regulation of Employment and Conditions of Services) Bill, 2014, and the launching of the Shram Suvidha Portal, which enabled inspectors to track compliance by units in their area. He indicated that the hallmark of these measures was to facilitate industrial activity and to protect workers. He was of the view that, while the excessive power enjoyed by inspectors might have increased the chances of corruption, as mentioned in the All India Manufacturers' Organisation (AIMO) communication, their independence and integrity, as envisaged under Article 6 of the Convention, could not be guaranteed by higher pay scales. It was true that the adequacy of remuneration and the equivalence of pay scales with those in compatible categories of other public services was important. Referring to Article 12(1)(a) of the Convention, which conferred unfettered powers to enter the workplace, he recalled that absolute power corrupted absolutely. Moreover, the requirements of compliance could be fully met if visits were regulated by senior officials in the ministry. The advancement of technology had brought a new dimension to the system of reporting compliance and of governance issues; physical record-keeping and inspections had given way to the e-filing of returns and e-governance. Online compliance reports provided sufficient material as a basis for the Government's opinion about inspections, which would need to be carried out on a selective basis. As had been explained by the Government representative, he reiterated that there were no efforts to exclude workers from the coverage of any statute, but only to do away with excessive bureaucratic exercise by having recourse to technology. In light of these submissions, he hoped that the Committee would take a lenient view of the case.

The Government member of Japan believed that everyone could agree that labour inspection was essential for labour law compliance at the workplace and for worker protection. He noted the information provided by the Government that the scope of application of labour legislation had not changed and that the right and power of inspectors to enter workplaces freely was guaranteed in both law and practice. He encouraged the Government to make efforts, based on tripartite consultations and with ILO technical assistance, to improve labour law compli-

ance at the workplace and to protect workers, while promoting economic growth and the creation of decent jobs.

The Worker member of Indonesia indicated that respect for and the implementation of labour rights were fundamental in creating decent working conditions. Due to the multiplicity of labour laws, the existence of a poorly integrated inspection system, the absence of adequate transport and communications facilities, and the geographical spread of establishments, inspection coverage was hugely difficult. Based on Indian Labour Bureau data on the 2012 Annual Review of the implementation of the Minimum Wage Act, 1948, inspectors had been expected in 2012 to cover an estimated 2,428 establishments each. He observed that labour inspection was thus largely incapable of ensuring workers' rights. With regard to regulation, he indicated that a self-certification system had been introduced in a few states (such as Punjab, Gujarat and Maharashtra), making inspection mandatory every five years under a clutch of labour laws, provided that the employer had self-declared compliance with those labour laws. Self-certification had been implemented in certain sectors, such as the SEZs, IT and ITES, and National Manufacturing and Investment Zones (NMIZs). Moreover, in the case of SEZs, government responsibility had been shifted from the Labour Department (specialized) to the Development Commissioner (non-specialized). In some states, inspections were only carried in selectively covered sectors. In Uttar Pradesh, inspections could not be carried out without prior permission from a labour commissioner or a district magistrate. In some states, third-party accredited inspections were carried out. He denounced the Government's intent to unilaterally amend almost all of the important labour laws relating to service conditions, wages, safety, industrial relations and social security. The withdrawal of labour inspection had been proposed and the introduction of self-certification, both of which were in violation of the Convention. No one would deny the importance of labour inspection in protecting workers' fundamental rights and enabling the enforcement of labour legislation. India therefore needed to comply with the Convention.

The Government member of Fiji noted the allegations of the CITU that the Government was in violation of its obligations under the Convention when it announced in September 2014 the introduction of a computerized system for the identification of companies that would be inspected. However, he emphasized that such a decision had been taken with the aim of improving transparency and accountability in the labour inspection system. Despite the complexity of the Indian labour law system, it appeared that the Government was committed to the enforcement of such laws, including through criminal prosecution. He emphasized that the Government had also expressed its willingness to receive ILO technical assistance in order to ensure the compliance of its legislation with ILO Conventions. He called upon the Committee to give time and space to the Government to undertake reforms of its labour inspection system and encouraged the Government to avail itself of ILO technical assistance.

The Worker member of France indicated that, according to a 2014 report on global investments, published by the United Nations Conference on Trade and Development, India was the third most attractive country for foreign direct investment. However, it was far from being a paradise for workers' rights. Governed by the Special Economic Zones Act, 2005, SEZs were really rights-free zones, where labour inspection held no sway. The law defined production units within SEZs as "Public Utility Services", meaning strikes were illegal. The management of SEZs had been transferred from the Ministry of Labour to the Development Commission, which was responsible for ensuring that attracted sufficient investment and gen-

erated profits. She said that labour inspection was non-existent in SEZs, and that no legal action could be taken against an employer in the event of occupational injury or illness. Safety and health laws did not apply to SEZs. The system of self-certification, which over-simplified administrative procedures, prevented any supervision by the labour authorities. The situation was not without consequences for working conditions and unionization in SEZs. According to a report published jointly by the Centre for Research on Multinational Corporations and the India Committee of the Netherlands entitled *Flawed Fabrics*, occupational illnesses were increasing, wages were very low and the working week was 50 to 70 hours. The problem included psychological and sexual harassment, as well as dismissals without justification or compensation. Maternity protection was non-existent in SEZs, workplaces were unhealthy and workers were sometimes beaten. These conditions amounted in practice to modern slavery. Workers who were ill were fired without compunction and replaced by healthy workers. Workers had no written contract and subcontracting practices were widespread. In order to remain competitive on the global market, labour costs were being cut and the pressure to obtain orders from multinational enterprises in global supply chains was being transferred to workers, who were assigned daily production targets that were ever more demanding. Despite the proclamation in the ILO Constitution that labour was not a commodity, the fact that it was impossible to supervise working conditions in Indian SEZs seemed to suggest that that was exactly the premise on which global trade operated via supply chains.

The Government member of China expressed appreciation for the information provided by the Government and its goodwill and endeavour to create a favourable economic environment to generate decent employment. He observed that the amendments to the labour laws had been ongoing and, in this framework, encouraged the ILO to provide technical assistance to the Government. He believed that the introduction of the computerized system would help secure the independence and integrity of labour inspectors.

The Worker member of the Netherlands said that more labour inspection was needed, as the majority of workers in India were not covered by adequate labour inspection. The Government was facing many challenges, such as child labour, bonded labour, the lack of a minimum wage, as well as serious occupational safety and health risks in many sectors. However, the measures proposed by the Government undermined the capacity of labour inspectors to secure the enforcement of legal provisions relating to all of these challenges. The self-certification system differentiated between SMEs with fewer than 40 employees and larger companies. A system of self-certification without effective verification of the data as proposed for small enterprises, was not likely to provide reliable information. The majority of SMEs in India operated in the informal economy. For every registered small company, 17 were unregistered and would not therefore complete the self-certification form. Companies with fewer than 40 employees were not therefore covered by labour inspection. She emphasized that fraudulent practices had occurred when visits were announced. For example, she referred to testimonies of working children having to stay in the backroom when inspections had been announced and of workers being provided with safety gear during the inspection day only. Unannounced visits were necessary, also because in a complaints-based system of announced visits, the inspectorate could not guarantee the privacy of the complainant. Moreover, the Government proposed to replace inspectors by facilitators or advisers, which might undermine their authentic inspection function and the independent competence of inspectors to impose fines. In

conclusion, she drew the Committee's attention to the situation of workers in rural areas and in the informal economy who lacked the protection of the labour inspectorate. She called for labour inspection to be extended to those workers, including home-based workers and domestic workers.

The Government member of the Russian Federation indicated that he had carefully considered the report of the Committee of Experts and expressed appreciation for the information provided by the Government representative of India. He added that the labour inspection system in India, as it was now, could comply with the requirements of the Convention. The amendments to the labour legislation, which had been considered by the Committee of Experts, had gone through tripartite discussions with a view to improving and ensuring compliance with national legislation and increasing the efficiency and transparency of the labour inspection system. He welcomed the information provided by the Government that laws also applied to SEZs. He expressed his satisfaction with regard to the cooperation of the Government with the ILO and trusted that this cooperation would continue.

The Government member of the Bolivarian Republic of Venezuela welcomed the Government's stated commitment to comply with Convention. He noted with satisfaction the information presented concerning strengthening the labour inspection system at the state and central levels. He observed that the legislative reforms proposed sought to create an environment that was conducive to economic progress and which promoted opportunities for decent work. Bearing in mind the Government's positive stance and the efforts it had made, he considered that the Committee should take account of the positive aspects to be understood from the explanations and arguments the Government had presented. He trusted that the Committee would be objective and balanced in its conclusions, which would enable the Government to consider and evaluate them in relation to its compliance with the Convention.

The Government member of Bangladesh thanked the Government representative for the information provided on the application of the Convention and noted the progress made in developing its labour inspection system and the related legal framework for its implementation. He invited the Government to continue its efforts to promote labour rights through an effective labour inspection system and called on the ILO to provide the necessary technical assistance in this regard.

The Government member of Myanmar noted with satisfaction the detailed information and statistics provided by the Government representative on the labour inspection system, at both the central and provincial levels. She also welcomed the governance initiatives aimed at bringing transparency and accountability to the labour inspection system, without undermining the authority and responsibilities of the labour inspectorate. It was every government's duty to safeguard the interests of workers while promoting a conducive working environment for inclusive and equitable growth. Noting the social security schemes adopted, she indicated that the legislative reforms proposed by the Government sought to create an enabling environment for economic progress and aimed to promote opportunities for decent jobs for its expanding labour force. The Government should be encouraged to continue its technical collaboration with the ILO. In conclusion, she invited the Committee to consider the information provided by the Government with regard to the observations of the Committee of Experts.

The Government member of the Islamic Republic of Iran indicated that the detailed information and statistics provided by the Government showed that considerable achievements had been made with regard to the labour inspection system. The Government had proposed a series

Labour Inspection Convention, 1947 (No. 81)

India (ratification: 1949)

of legislative reforms with the aim of creating an enabling environment for economic growth and job creation. He welcomed the fact that the Government had been working closely with the ILO to ensure that the legislative reforms were consistent with ILO Conventions. He endorsed the measures taken by the Government to improve its legislation, and encouraged the Government to continue on that path. In conclusion, he hoped that the information and clarifications provided by the Government would be taken into account by the Committee.

The Government member of Singapore welcomed the steps that India had proposed to demonstrate its commitment to the Convention. He noted that the proposed consolidation of labour laws did not exclude any workers from the purview of the laws and that the proposed amendments had been discussed with the tripartite stakeholders. The good governance initiative launched by the Government would improve labour enforcement in terms of transparency, accountability and ease of compliance. Moreover, the Government was committed to strengthening its labour framework through the recent drafting of its Labour Code in the areas of wages, industrial relations, safety and working conditions, social security and welfare with the technical assistance of the ILO. He encouraged the Government to continue to its efforts to ensure adequate enforcement, including inspection, and called upon the Government to continue to seek further ILO assistance in fulfilling its obligations under the Convention.

The Government member of Ghana, while referring to the Government's statement that it had not enacted any law to exclude certain workers from the purview of labour inspection, considered it to be a clear indication of the Government's commitment to provide comprehensive social protection to all workers. He urged the Government to continue working in collaboration with the ILO and to adopt amendments to its labour legislation in order to meet the current development challenges. The Government should continue to engage in discussions with stakeholders to find solutions to the grey areas of the Acts of 1948 and 1986, as identified by the Committee of Experts.

The Government member of Kuwait, also speaking on behalf of the member States of the Gulf Cooperation Council, valued the efforts made by the Government and the social partners to implement the Convention and welcomed the measures already adopted. The Convention constituted the framework within which countries adopted new labour inspection systems that were essential for the correct implementation of international labour standards. He invited the Government to avail itself of ILO technical assistance and to continue its efforts to implement the Convention.

The Government representative reiterated the Government's commitment to complying with the Convention. Its intention to engage in ILO technical assistance was essentially to ensure that the legislative process remained consistent with the Convention. India was also participating in an ILO study on enhancing labour administration performance specifically focussing on the capacity of labour administration to promote compliance with labour laws. Many of the observations made during the discussion were more apprehensions than actual facts. Turning to the proposed bills, which were still under consultation, he emphasized that inputs and advice from various stakeholders had been considered at the time of analysing the bills. He gave assurances that the obligations arising out of the Convention would be fully taken into consideration when finalizing the bills. In relation to labour inspection in SEZs, he said that SEZs were not void of labour inspection. For example, during the labour inspection conducted in the SEZs of Noida, which consisted of 27 units, the labour inspectors had detected 15 violations of labour

issues and penalties had been imposed on ten units in SEZs. Referring to the allegation of the conflict of interest concerning the duties of the Development Commissioner in SEZs and his inspectorates, he clarified that they were government officials whose duty was not only to ensure investment in SEZs, but also to maintain industrial relations and to ensure compliance with labour laws.

Another Government representative emphasized that India was a country characterized by a high population, multi-plurality, multi-lingualism and multi-ethnicity. These characteristics, along with its federal government structure, made governance difficult and complex. However, several initiatives in the area of labour had taken place since the new Government took office. Labour inspections were now carried out in a free, fair and transparent manner. All information regarding the administration of labour legislation was made available to the public, which would enable any citizen to question the decisions of the Government, as well as issues related to the inspections conducted. He emphasized that inspection reports were placed on the Government's public website. However, labour inspectorates were understaffed. The Government was therefore making use of technology, and more work was therefore carried out through technology than the mere presence of inspectors. Turning to corruption issues, he indicated that inspectors were accountable for their acts and that the conduct of labour inspection according to principles of transparency was not tantamount to a violation of the independence of inspectors. He added that the Cabinet had recently approved a ban on child labour. No child under the age of 14 could be employed, which constituted a big step forward for the country. Finally, with regard to challenges in the informal sector, he indicated that the Government was in the process of issuing a smart card for each worker in the informal economy, which would give them access to basic life, health and pension insurance. In conclusion, he hoped that with ILO technical assistance the Government would be able to achieve progress and provide safe and secure working conditions for each worker in the country.

The Worker members indicated that this was an important case, as many workers were affected by the decisions of the Government on the functioning of the labour inspection system. It was clear that self-certification schemes were not effective and constituted a flagrant violation of the Convention. The elimination of the so-called "Inspector Raj" had resulted in the suppression of many labour inspectors. Turning to SEZs, they observed that labour inspection functions in SEZs were delegated to zone authorities which did not have an interest in enforcing labour laws. SEZs had therefore become union free zones where fundamental rights and labour standards were violated and impunity reigned. They added that in some SEZs health and safety inspections had been privatized, which gave rise to concern about the adequacy of inspections and the risk of industrial catastrophes. While recognizing the Government's efforts to attract foreign direct investment, it could not be tolerated that the method adopted was based on a promise not to enforce labour laws effectively, which had already been the strategy of previous governments. The message was therefore sent out to workers that their fundamental rights were not worth protecting. This was something of an invitation to other governments to take inspiration from this approach. In conclusion, the Government should be urged to ensure that the amendments made to the labour laws were in full compliance with the Convention and were developed in consultation with the social partners. To this effect, it should avail itself of ILO technical assistance. The Government should provide a comprehensive report to the 2015 session of the Committee of Experts.

The Employer members observed that this discussion demonstrated the fundamental need for social dialogue covering the concerns addressed by the Committee of Experts with regard to the impact of the self-certification scheme; the guarantee that workplaces could be inspected as often and as thoroughly as necessary to ensure effective application of the legislation, including the protection and promotion of the principle of the free initiative of labour inspectors to enter any workplace liable to inspection; labour inspections in SEZs and the impact of dispensations conceded by the development commissioner on labour inspection; and the needs of the informal sector. To this effect, the Government should avail itself of ILO technical assistance for the development of a system of labour inspection as set forth in the Convention, taking into consideration the federal government structure of the country. In this regard, special attention should be paid to the implementation of Articles 10 and 16 of the Convention concerning the adequacy of the number of inspectors and the frequency of inspections. The Government should be requested to provide to the 2015 session of the Committee of Experts information on relevant statistics, including SEZs, in order to show whether the number of inspectors at the disposal of the central and state government inspectorates was sufficient to ensure compliance with the Convention. It should also provide information on the current proposals for amendments to labour legislation and its regulations, as well as information on all laws and regulations, including those relating to health and safety, that required inspection of workplaces covered by the Convention.

Conclusions

The Committee noted the oral and written information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued. They related to: the need for a sufficient number of labour inspectors and adequate labour inspections at the central and state levels including in the formal and informal economy; the review and consolidation of a number of labour laws; the introduction of a “self-inspection scheme”; the need to ensure unrestricted access of labour inspectors to workplaces without prior authorization; the free initiative of labour inspectors to conduct labour inspections without previous notice considering the generation of computerized lists identifying the companies to be inspected; the effective application of labour laws in SEZs and the IT and ITES sectors; the effective enforcement of sufficiently dissuasive penalties; and the availability of statistics as required under the Convention to enable an assessment of the functioning of the labour inspection system.

The Committee noted the information and explanations provided by the Government representative that there were no proposed legislative amendments to exclude a large number of workers from the protection of basic labour laws; that the inspection system did not provide for limitations in terms of the number and thoroughness of inspections and the enforcement of the legal provisions, but that this system was designed to increase accountability and reduce arbitrariness. Self-certification by employers was an additional means to ensure compliance, but was not a substitute for labour inspections. The Government also indicated that the Special Economic Zones Act, 2005, did not preclude the application of labour laws in SEZs and that the Development Commissioner responsible for their enforcement had the necessary independence despite his additional role of attracting foreign investment. Moreover, the IT and ITES sectors were subject to labour inspections in the same way as other sectors. The Committee also noted the Government’s indications that the ILO technical assistance had been highly appreciated in the framework of the current legislative reforms and that it was willing to continue to avail itself of ILO technical assistance.

Taking into account the discussion, the Committee requested that the Government:

- Provide, in relation to the Convention, the following information before the next meeting of the Committee of Experts in 2015:
 1. Detailed statistical information covering at the central and state levels all the matters set out in Article 21 (including the number of staff of the respective labour inspectorates) with a view to demonstrating compliance with Articles 10 and 16 of the Convention and specifying:
 - (a) as far as possible the proportion of routine to unannounced visits; and
 - (b) information in relation to the proportion of routine and unannounced visits in all SEZs.
 2. An explanation as to the arrangements for verification of information supplied by employers making use of self-certification schemes.
 3. Information explaining the division of the responsibility of labour inspection between the state and central spheres for each law and regulation in question.
 4. Information explaining, by reference to the relevant statistics, the extent to which the number of labour inspectors at the disposal of central and state government inspectorates are sufficient to ensure compliance with Articles 10 and 16 of the Convention.
 5. Detailed information on compliance with Article 12 of the Convention with regard to access to workplaces, to records, to witnesses and other evidence, as well as the means available to compel access to such. Provide statistics on the denial of such access, steps taken to compel such access, and the results of such efforts. This includes SEZs, the information for which should be separated from general information.
 6. Detailed information on health and safety inspections, undertaken by certified private agencies, including the number of inspections, the number of violations reported by such agencies, and compliance and enforcement measures taken.
- Review, with social partners, the extent to which delegation of inspection authority from the labour commissioner to the development commissioner in SEZs has affected the quantity and quality of labour inspections.
- In consultation with the social partners, ensure that the amendments to the labour laws undertaken at the central or state level comply with the provisions of the Convention, making full use of ILO technical assistance. Additionally, provide detailed information explaining all current proposals to labour laws and regulations that impact upon the system of labour inspection at the central and state level.

The Government representative said that the Government had taken note of the Committee’s conclusions. The Government would provide all the requested information and statistics for the Committee of Experts’ next session. He reiterated the Government’s commitment to all ILO Conventions, particularly Convention No. 81, to continue to strive to achieve decent work conditions for all workers.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

ALGERIA (ratification: 1962)

A Government representative recalled that, by ratifying 59 ILO Conventions, Algeria had clearly demonstrated its will to use international labour standards for its economic and social development. Algerian labour laws and regulations were based on the principles set forth in those Con-

ventions and the national Constitution. Trade union rights were guaranteed, and the social partners were represented in all sectors of activity at the national level. The registration of trade unions took place in accordance with the law, through simple formalities without constraints. As a result, 95 workers' and employers' organizations, in both the public and private sectors, had been registered, including nine over the previous two years. The national legislation had also created an environment that was conducive to collective bargaining and enabled the economic and social partners to standardize social and labour relations. The Algerian experience of social dialogue, as presented to the ILO Governing Body, had received favourable feedback and encouragement. A draft Labour Code had been forwarded to the social partners for their opinion, and to the ILO. The policy adopted was therefore clear and all the procedures had been followed in a context of total transparency. The drafting or amendment of a Labour Code was a process that might appear long, but it had to respect the various stages of consultation and exchange to achieve consensus between the parties. The ILO was aware of the stages embarked on for the reform of the Labour Code, which had been the subject of a tripartite meeting in July 2014, and it had recently made recommendations on the draft text. A programme of work had been drawn up together with all the parties, which was being followed methodically and without any pressure. He pointed out that the report of the Committee of Experts contained some inaccurate information. The Algerian Government had no problem with the National Autonomous Union of Public Administration Personnel (SNAPAP), nor with the Autonomous National Union of Secondary and Technical Teachers (SNAPEST), the leadership of which had been confirmed by court decisions that had to be respected by everyone. Algeria was a State of law and open to social dialogue. An economic and social pact concluded in 2006 between the Government and the economic and social partners had been renewed in 2010. Another economic and social growth pact had been concluded in February 2014. The allegations were therefore unacceptable since they were merely a repetition of part of what had been asserted in June 2014, whereas explanations had been provided demonstrating compliance with the Convention. The Committee should ensure that the allegations made were well founded, as Algeria was setting an example in terms of consultation and negotiation, as recognized by various ILO departments after on-site visits to Algeria. In conclusion, every effort would be made with the aim of developing dialogue between the partners, in compliance with the decisions taken by the competent jurisdictions and in conformity with the laws and regulations in order to preserve the rights of the parties without any interference.

The Worker members recalled that the Committee on the Application of Standards had discussed the case in 2014, specifically with regard to the points concerning Articles 2 and 5 of the Convention, which dealt with the right to establish trade unions and the right of workers to establish and join organizations of their own choosing. Since the same criticisms had been made for over ten years, it had been hoped that the Government would amend national law and practice and would report back on the steps it had taken with respect to freedom of association. The report of the Committee of Experts' in 2015 proved that the Government had not responded to the constructive comments made by the Conference Committee in 2014. While the Government had stated that it was ready to improve its labour legislation, it was evident that there had been no change. The Committee of Experts had again requested the amendment of section 6 of Act No. 90-14 of 2 June 1990 without delay to grant all workers, without distinction as to nationality, the right to establish

a trade union. It had also requested, as part of the ongoing legislative reform, the Government to take steps to amend section 4 of Act No. 90-14 without any further delay, to remove any obstacles preventing workers' organizations, irrespective of the sector to which they belonged, from establishing federations and confederations of their own choosing. In its 374th Report (March 2015), the Committee on Freedom of Association had once again taken up the matter of the registration of certain trade unions in the public sector and had expressed concern at the particularly long delays in registration despite the fact that the organizations concerned had met all of the administrative conditions. It had further recalled that failure to register a trade union prevented it from carrying out its business and that an extremely long registration procedure constituted a serious obstacle to the establishment of organizations, which amounted to a denial of the right of workers to establish organizations without previous authorization.

Freedom of association was a human right. As such, the European Parliament had, on 30 April 2015, adopted a resolution calling on the Algerian authorities to "take appropriate steps to ensure the safety and security of civil society activists and human rights defenders and their freedom to pursue their legitimate and peaceful activities". The European parliamentarians were thus asking the Algerian authorities to ensure and guarantee the right to freedom of expression and of association. The European Parliament's resolution, which was the first it had adopted on the country for over a decade, showed how attached the European Union was to democracy and to the trade union rights of workers and employers in Algeria. Since the previous session of the Committee on the Application of Standards, the Government had promised to examine the question of the registration of the Autonomous General Confederation of Algerian Workers (CGATA). And yet in March 2015, without any explanation, the Ministry of Labour had refused to register the Confederation, as well as other trade unions in various sectors. The only initiative that the public authorities had taken had been to continue the harassment of workers. Even now, the Algerian Government persisted in refusing to respond to the accusations of intimidation and threats, including death threats, lodged by the International Trade Union Confederation (ITUC) and by several Algerian trade unions, mostly representing public service employees and teachers. Nor had it responded to the questions raised by the Committee of Experts regarding the conformity of Algerian legislation with ILO standards. The Worker members concluded that the failure of the Algerian Government to take action was unacceptable. Freedom of association enabled workers to group together to negotiate their working conditions effectively. The standards contained in Convention No. 87 applied to all workers "without distinction whatsoever", and thus covered public employees, which was a fundamental principle.

The Employer members expressed appreciation at the constructive submission by the Government representative, its receptivity to the observations of the Committee of Experts' and the feedback concerning improvements in implementing the Convention in law and practice, and for its comments on the role of social dialogue with the social partners to improve national labour legislation. They recalled that this was a follow-up to the case examined by the Conference Committee in 2014 and understood that since then the Government had worked on completing a draft Labour Code. The Employer members encouraged the Government to continue the exercise of drafting the new Labour Code in consultation with the social partners. Unfortunately, the Conference Committee did not have a copy of the draft Labour Code and was thus limited in the views it expressed. Nevertheless, the Employer members encouraged the Government to provide detailed infor-

mation on the new Labour Code to the Committee of Experts so that it could be analysed and considered in respect of the observation. The Employer members were cautiously optimistic about the developments and considered that they contributed progress. They hoped that the new Labour Code would address the issues relating to the trade union organization and establishment under sections 2, 4 and 6 of Act No. 90-14. The Government had indicated the previous year that the new Labour Code would outline the criteria concerning the right of trade unions to establish federations and to join federations of their own choosing, irrespective of the sector and that the question of the nationality of persons requesting the establishment of federations would be examined. In light of the Government's comments in the present session, as well as the previous year, the Employer members were hopeful that those assurances would prove correct when they reviewed the draft Labour Code.

A Worker member of Algeria recalled that the promulgation of the new Labour Code in Algeria had been one of the demands of the General Union of Algerian Workers (UGTA) since 1995. The Government had submitted to the UGTA in 2014 a copy of the draft Labour Code for comment and consultation. In order to improve it and bring it into line with ILO standards, the UGTA had requested ILO technical assistance, which had resulted in a 30-page document, submitted in April 2015, in which the ILO expressed its appreciation and commented that it represented significant progress in the area of industrial relations. It should be noted that the UGTA had introduced a provision into its statutes granting foreign workers the right to become members and to stand for election. Furthermore, in its belief in the importance of complying with the fundamental Conventions, the UGTA had always acted through social dialogue for the right of workers.

Another Worker member of Algeria said that experiences of freedom of association in Algeria were different than in other countries. The 1999 Constitution had enshrined the principle of the multi-party system. There were 60 parties and 95 trade unions in the country. Requests had been submitted to improve the Labour Code, and a draft Code had been submitted to the ILO. The trade union was working in total freedom and full democracy, without any pressure, as it had since 1999.

The Government member of Egypt expressed appreciation of the efforts made by the Government of Algeria to respect freedom of association. The Government's statements demonstrated its respect for the rules of social dialogue and that it had given the social partners the opportunity to provide their views. In addition, the ILO had given a positive review of the amendments to the Labour Code. Those measures should be acknowledged.

The Government member of Libya recalled that Algeria had ratified 59 Conventions and had prepared 28 reports, which showed that it was complying with its obligations and with international labour standards. The Committee had discussed the case of Algeria at its previous session and had recommended that the Government amend section 6 of Act No. 90-14 to permit workers to have the right to establish trade unions without discrimination as to nationality. It had requested the Government to provide information concerning any new developments in that respect, which the Government had done. Not only had the Government amended that section, it had adopted a new Code with the participation of the social partners, and had now submitted the Code for their views. That should be acknowledged and the Government encouraged to promulgate as soon as possible the draft Labour Code, which should take into account human rights and international labour standards.

Another Worker member of Algeria, speaking on behalf of the ITUC and the CGATA, reviewed the situation of

trade unions in Algeria over the past 20 years. The Government had adopted repressive laws aimed at stifling freedom of expression and suppressing trade union and social movements. A letter sent by the CGATA to the Government of Algeria, prior to the 104th Session of the International Labour Conference, for the purpose of resolving disputes, had not been answered. The Government denied the documented facts and maintained that the new Labour Code would correct existing shortcomings in Algerian law. Nevertheless, not only did the new Labour Code fail to resolve the problems related to the registration of trade unions, but it also added conditions. She provided examples of obstacles to the free exercise of trade union rights, such as the majority of trade unionists being registered by the border control authorities on the instructions of the national security services, issued without any judicial authority. A number of reports by international non-governmental organizations shed light on violations of trade union rights and of fundamental workers' rights in Algeria.

The Government member of Niger indicated that Niger had followed with interest and appreciated the efforts of the Algerian Government to give effect to the provisions of the Convention. Algeria was engaged in a process of reviewing its labour legislation, particularly the provisions relating to the procedures for the establishment of trade unions, federations and confederations, and the rights of foreign workers to form unions. The Government had also undertaken to take into consideration the comments of the ILO in order to comply with the relevant Conventions. All these factors, which demonstrated the good faith and political will of the Algerian Government, should be encouraged.

The Worker member of Gabon said that, since the establishment in 2006 of the National Federation of Education Workers, which was affiliated to SNAPAP, it had been fighting for the tenure for all contractual teaching staff, and the application of laws and Conventions that protected workers and guaranteed freedom of association. It had also been fighting for the reorganization of the education system at both the human level and in terms of curricula and material conditions. He referred to cases of arrest, harassment and the termination of contracts of precarious teachers, upon the instructions of the President at the beginning of the Arab Spring in 2011, and gave an example of the continuous harassment of women trade union delegates even today. Other socio-professional categories of workers, such as workers recruited as guards, night guardians and cleaners, were also vulnerable. Finally, the Higher Education Teachers' Union (SESS) had been refused registration.

The Government member of Ghana emphasized that freedom of association was a basic human right and was an essential concern of the ILO, as it was the pillar that formed good industrial relations practice in any country. It should be recalled that the issues relating to Algeria had been raised by the Committee of Experts under section 6 of Act No 90-14. It was encouraging that the draft Labour Code had been developed with inputs from the social partners, and he acknowledged the Government's initiative in seeking ILO assistance. He appreciated the Government's development of the new Labour Code with emphasis on addressing the gaps in the previous Act.

The Worker member of the United States, also speaking on behalf of the Worker members of Canada and Brazil, recalled that Algerian trade unionists had been subjected to various forms of intimidation and that many of the incidents that had been previously discussed in the Committee had not been remedied. She highlighted examples of trade unionists in Algeria who had been: arrested during a peaceful protest while exercising the right to freedom of association and who had received an unjustified sentence

of one year in prison, including a six-month suspended prison sentence; terminated from their jobs without cause; prohibited from registering the National Autonomous Union of Postal Workers (SNAP) based on the refusal by the Algerian Ministry of Labour and Employment and Social Security; had been victims of attempted assassination; had been arbitrarily suspended from work and thereafter subjected to severe harassment; and refused travel across the Algerian border. She emphasized that the Government often interfered with and prohibited meetings and demonstrations, and provided further examples of trade unionists who had been prevented from receiving guests at their meetings, as they had been detained at the border by the police. For years, the House of Labour, SNAPAP's headquarters, had been subjected to repeated attacks and harassment. The Government and employers also deterred workers from joining independent trade unions, including the CGATA, SNAPAP and SNAP, and dues for Government-supported unions were deducted from workers' pay without consulting the workers. Workers were pressured to support those unions and were restricted in their ability to organize in certain sectors and to elect their representatives at the national level. She called on the Algerian Government to undertake serious reform in order to meet its obligation to ensure freedom of association, as required by the Convention.

The Government member of the Bolivarian Republic of Venezuela recalled that, according to the report of the Committee of Experts, the Government of Algeria had been requested to amend Act No. 90-14 in certain respects to bring it into line with the Convention. He took note of the Government's statement that the Act was being reviewed in the context of the draft Labour Code submitted by the social partners to the ILO, which had examined it and made comments. Bearing in mind the willingness and efforts of the Government of Algeria, the Committee should not ignore the positive aspects evident from the explanations and arguments that the Government had provided. He trusted that the Committee's conclusions would be objective and balanced, which would certainly result in their being considered and valued by the Government of Algeria.

The Government member of Mali commended the Algerian Government for the information provided and the efforts made to ensure a more effective application of the Convention. He also welcomed the legislative reform that was under way, particularly the revision of Act No. 90-14 on procedures for the exercise of trade union rights, and the social dialogue that accompanied this process. The Committee should take into account the willingness of the Algerian Government to apply the Convention, encourage it in that regard and afford it the necessary technical assistance.

An observer representing the International Trade Union Confederation (ITUC) said that the Government of Algeria chose the representatives of trade unions that supported the authorities. Recalling the contentious political climate, he emphasized that the Government had created a union that was not legitimate and was seizing trade union property and dismissing trade union leaders from work. In solidarity with the SNAP, and on behalf of the International Confederation of Arab Trade Unions and the Democratic Union of Egypt, he called on the Government to stop its harassment of trade unionists.

The Government member of Mozambique welcomed the exhaustive reply given by the Government of Algeria and observed that the Algerian authorities were committed to ensuring that its legislation in conformity with ILO Conventions. He also emphasized that Algeria was one of the five African countries that had ratified the largest number of ILO Conventions; given how long it had been a Member of the ILO, there was no doubting its political will or

its efforts to bring its legislation into conformity with the Convention, in consultation with the social partners. The Committee should give Algeria sufficient time to revise its legislation so as to ensure that the final product reflected consensus and contributed to the country's economic growth.

The Government member of Cuba drew attention to the Government of Algeria's statement that the observations made in the report of the Committee of Experts were being examined in the context of finalizing the draft Labour Code, and in that regard the information provided by the Government should be taken into account. In the process of consulting the social partners on the draft legislation, the issues raised by the Committee of Experts would surely be dealt with. The fact that the Government of Algeria had expressed its political will to respect the principles of freedom of association should be welcomed.

The Government member of Zimbabwe welcomed the measures taken by the Government of Algeria to fully implement the Convention, in particular with its ongoing labour law reform process, which was tripartite and had culminated in the draft Labour Code. He highlighted the role of the ILO in the drafting process, and was confident that the outcome of the reform process would be positive. He expressed appreciation for the Algerian Government's statement, which demonstrated respect for ILO standards, including the principles contained in the Convention, commended the progress made since the discussion of the case the previous year and urged the Office to continue supporting the encouraging reforms.

The Worker member of Argentina, speaking on behalf of the Confederation of Workers of Universities of the Americas (CONTUA), Public Services International (PSI) and the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF), referred to the Government of Algeria's persistent refusal to engage in dialogue with legitimate representatives of workers, as well as the persecution and threats made against trade unionists. In particular, he mentioned examples of trade unionists who were forced to leave the country, or who had been imprisoned and lived in exile as a result of their union activities. He recalled that Algeria was a country rich in natural resources that restricted trade union activity of the National Autonomous Union of Workers of the National Society for Electricity and Gas (SNATEG) in the context of the National Society for Electricity and Gas (SONELGAZ), the only gas and electricity supplier in the country. The Government had created parallel unions, such as the clone SNAPAP, to confuse workers, and had even used legal bodies to make them official. Consequently, the Algerian Government was in violation of the Convention, which had also been recognized recently by the European Parliament in passing an emergency resolution denouncing the serious violations of fundamental rights and freedoms, labour rights and human rights. He hoped that measures would be taken to address the situation.

The Government member of Angola recalled that it was the second time that the case of Algeria had been examined with regard to the Convention. It had been requested to amend certain provisions of Act No. 90-14 concerning the procedures for establishing trade unions, federations and confederations and the right of foreign workers to form trade unions. Act No. 90-14 was known to be under review in the context of the draft Labour Code, which had already been submitted to the social partners for consideration and discussion. The UGTA had sent a copy of the draft legislation to the Office, which had examined it and sent its comments, which had been forwarded to the social partners. He believed that the Algerian Government would make every effort to take the Office's comments into account and would adhere to the letter and spirit of

the Conventions. The Committee should take into account the Government's efforts to improve its labour laws.

The Government member of Mauritania indicated that the Government of Algeria had made major efforts to complete the implementation of the reforms and measures that it had undertaken to contribute effectively the improvement of freedom of association and its protection. He noted with satisfaction that the revision of the legal framework had also been completed. The revision had been designed to modernize the legal system to cover members of trade union federations and confederations, as well as the rights of foreign workers, who would henceforth be able to create their own trade unions to defend and promote their rights more effectively. These significant new developments had been brought to the attention of the Office, which had examined them and submitted comments. In conclusion, he expressed confidence that the Algerian Government would give effect to its commitments and trusted that the reforms would produce results.

The Government member of Qatar also speaking on behalf of the Government member of Bahrain, expressed appreciation of the work of reform undertaken by the Government of Algeria to meet the demands of the Committee of Experts, particularly the reform of the Labour Code which was under discussion between the Government and the social partners. He hoped that the Committee would take into account the efforts made by the Government.

The Worker member of Italy expressed concern at the registration of certain trade unions. With regard to the SESS, which had requested registration in 2013, several of its founding members, including the national coordinator, had been investigated by the internal security police. Mr Tajeddine Abdellatif, founding member and member of the SESS's national bureau, had also been questioned by the police. Workers had also been harassed by the police during demonstrations on 22 February 2015, when there had been five cases of physical aggression against members of the national bureau to defend the rights of workers on pre-employment contracts (Mr Ziani Mohammed, Mr Latreche Walid, Mr Ben Ammar Tayeb, Mr Habib Ahmed, Mr Guerras Abdelghani and Ms Driouche Zoulikha). In conclusion, she regretted that the Government too often reverted to section 87bis of the Penal Code to prevent peaceful union demonstrations, whereas the provision of the Code concerned terrorism.

The Government member of China recalling the discussion of the case of the previous year, noted that the Government and the social partners had responded positively to the call made by the Committee and were working together to amend the Labour Code, with ILO technical assistance. His Government hoped that the Committee would recognize the commitment and appreciate the efforts of the Government of Algeria and its social partners to further advance the legislative reform process. He called on the ILO to continue to provide assistance to the social partners in Algeria. He was confident that the reform process would soon be finalized and would therefore place Algeria in a sound position to fully comply with the Convention.

The Government member of Kenya said that Algeria had made tremendous progress with regard to this case since the discussion the previous year. He noted the ongoing Labour Code review process with the social partners, with the technical assistance of the ILO, and was of the opinion that Algeria was firmly on the road towards respecting and implementing the Convention. In addition to the review of the draft Labour Code, further details of the measures taken had been provided by the Government representative. In conclusion, he indicated that, in view of the legislative and governance reforms taking place, sup-

port should be provided to Algeria to ensure full compliance with the Convention. He invited the ILO to consolidate its technical assistance in Algeria as a sustainable platform for a successful review.

The Government member of Kuwait welcomed the information provided by the Government representative, particularly with regard to the new draft Labour Code, and the Government's commitment to strengthening dialogue with the social partners involved in developing the Code. He pointed out that, as the Labour Code was at a draft stage, it was therefore easy to introduce the necessary changes. He appreciated the efforts of the Government to cooperate with the ILO and hoped that the Committee would consider these efforts positively.

The Government representative emphasized that the reform had been an ongoing process since June 2014. The reform was being undertaken in a tripartite framework with ILO assistance. He added that it was not possible to claim that Algeria did not respect freedom of association. There were in practice between eight and ten autonomous unions in the education sector, as well as in the health sector. Moreover, meetings had been organized with the assistance of the ILO, the ILO's Regional Office for Africa and the Organization of African Unity. The Labour Code complied with international labour standards and needed to be updated, which was being done in collaboration with the social partners. With regard to the registration procedure, regulations existed and the current legislation needed to be applied. The Government had requested ILO technical assistance and wished to pursue its legislative reform until its completion.

The Employer members thanked the Government representative for the information provided and appreciated the constructive tone adopted by the Government. They noted as a positive development that a draft Labour Code had been prepared in consultation with the social partners and looked forward to obtaining further information on the draft Code. The conclusions of the Committee should take this development into consideration. The Employer members invited the Government to provide detailed information, including a hard copy of the draft Labour Code, to the Committee of Experts so that its compliance with the provisions of the Convention could be reviewed. They also encouraged the Government to ensure that there were no obstacles to the registration of trade unions in law and practice, in accordance with the Convention.

The Worker members emphasized that for very many years the procedures and practices for the registration of new trade unions in Algeria had prevented the recognition of new organizations. For several years the Committee of Experts had emphasized in its comments that Algerian law was not in conformity with the provisions of the Convention, and in particular Articles 2 and 5. The international community was concerned at the situation, and the Government should be aware that that could have an impact on certain trade partnerships. They referred in that regard to the resolution of the European Parliament. Although the information communicated by the Government admittedly concerned developments in certain aspects of the legislation, they emphasized that no specific information had been provided concerning the number of registered trade unions. The Government should proceed with the registration of a number of trade unions, including the SESS, the SNAP, the Autonomous Transport Union and the Autonomous National Union of the Agricultural and Rural Development Bank (SNABADR). The November 2015 session of the Committee of Experts would offer an opportunity for the Government to provide the necessary information on the registration of these unions. In conclusion, the Worker members considered it necessary for the Government to accept ILO technical assistance in order to verify, in dialogue with the parties

concerned, the conformity of national law and practice with international standards.

Conclusions

The Committee took note of the information provided by the Government and the discussion that ensued on the matters pending before the Committee of Experts, including restrictions on the right to form trade union organizations, federations and confederations and ongoing allegations of delays and obstacles put in the way of trade union registration. The Committee further observed that there were outstanding allegations of violence and intimidation against trade union activists and noted the Government's statements on these issues.

The Committee noted the Government's statement that, drawing inspiration from international labour standards and recommendations, the outstanding legislative issues in this case were being addressed within the framework of the ongoing revision of the Labour Code, which included an in-depth consultation with the social partners with a view to achieving consensus. The Government advised that a draft new Labour Code has been prepared in consultation with the social partners.

As regards trade union registration, the Government indicated that the legislative formalities in this regard were simple and without constraint. Ninety-five trade union and employer's organizations are registered in the country; nine in the last two years. As regards specific allegations raised relative to the SNAPAP and SNAPEST, the Government indicates that both organizations are registered and carry out their activities freely. The conflict in the executive body of the SNAPAP was resolved by the judicial authority, a decision in which it could not interfere.

Taking into account the discussion of the case, the Committee requests the Government to:

- provide detailed information regarding the new draft labour code including providing a copy of the same for analysis and consideration in relation to the application of Convention No. 87;
- ensure that there are no obstacles to the registration of trade unions in law or in practice in conformity with Convention No. 87;
- act expeditiously to process pending applications for trade union registration and notify the Committee of Experts;
- reinstate employees of the Government, terminated based on anti-union discrimination; and
- report in detail to the Committee of Experts for its upcoming session.

BANGLADESH (ratification: 1972)

A Government representative indicated that trade unions were protected under the Bangladesh Labour Act, 2006 as amended in 2013, and that acts of discrimination against trade unions were subject to legal action. In accordance with the Labour Act, the Department of Labour received complaints and dealt with them in due time. Between January and April 2015, a total number of 182 complaints had been brought before the Department of Labour, all of which had been investigated, 177 settled and five had been filed as criminal cases. In addition, in March 2015 a telephone helpline had been launched, initially to enable the workers in the Ashulia area to present their claims. This telephone line would be expanded to be operational nationwide. With regard to export processing zones (EPZs), 60 counsellors and inspectors were engaged to deal with labour disputes. Furthermore, EPZ labour courts had been created in 2011, before which 160 cases had been brought, of which 70 had been settled. Referring to the allegations of harassment against trade unionists and trade union leaders, he indicated that in 2012 a case of

homicide against a trade unionist had been referred for investigation to the Criminal Investigation Department (CID). The Government had brought this case under the ambit of "sensitive cases" to ensure its regular monitoring and expeditious trial. Turning to the registration of trade unions, he indicated that 7,495 trade unions were registered with the Department of Labour. The amendment of the Labour Act in 2013 had given rise to a significant number of registrations of trade unions. Moreover, the Department of Labour had established an online registration system in order to simplify the process of registration. With regard to the process of the amendments to the Labour Act, which encompassed 83 provisions, he explained that the modifications introduced were the result of a tripartite consultative process, with the technical assistance provided by the ILO. The major amendments of the Labour Act were: the abolition of the provisions providing for the submission of the list of workers to the factory management before creating a trade union; the incorporation of a provision for the formation of workers' participatory committees through direct election by workers; the incorporation of a provision for obtaining support from external experts for collective bargaining; as well as the strengthening of a provision on workers' safety. Following the adoption of the amendments to the Labour Act, the Government had undertaken the formulation of implementing regulations and ordinances. To this effect, intensive consultations had been held between April and May 2015 with the social partners. The Draft Regulations had subsequently been submitted to the Tripartite Consultative Council (TCC) on 2 June 2015, which had discussed them and reached consensus on their content. The Draft Regulations were now being sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting and publication in the Gazette. In addition, he indicated that the Industrial Relations Rules, 1977, had been repealed and were therefore no longer applicable. With regard to the elaboration of a comprehensive EPZ Labour Act, he indicated that it had been drafted, and consultations on the draft EPZ Labour Act had been held with the workers' representatives of EPZs, investors and other relevant stakeholders. The opinions expressed during the consultations had been addressed as far as possible in the light of the relevant ILO Conventions. The draft EPZ Labour Act had been adopted by the Cabinet in July 2014 and subsequently sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting and submission to Parliament for adoption. In order to safeguard the right of freedom of association the Government, had also focused on strengthening institutional capacity building. To this effect, the Department of Inspection for Factories and Establishments had been provided with more staff and the number of staff had risen to 993. Recently, the Government had recruited 222 inspectors, bringing the number of inspectors to 279. In parallel, the budget for the Department of Inspection for Factories and Establishments had been increased by nearly four times and 23 new district offices had been established. In conclusion, he gave assurances of the Government to commitment to international labour standards and expressed his appreciation for the constructive engagement of the ILO to promote labour rights through technical cooperation. The Government expressed its commitment to continue its efforts to promote freedom of association through social dialogue and effective cooperation of both the national and international levels.

The Worker members recalled the recent second anniversary of the collapse of the Rana Plaza factory and noted that some progress had been made, particularly with regard to inspections relating to building and fire safety, but regretted that such progress was almost exclusively attributable to private initiatives. Very much work never-

theless remained to be done to protect freedom of association and to ensure respect of the law. It remained extremely difficult for workers to exercise their right to freedom of association in Bangladesh, which suggested that the improvements achieved in the area of building and fire safety and other working conditions might not be lasting. With regard to legislation, the amendments introduced in 2013 to the Labour Act fell far short of conforming with international standards relating to freedom of association and collective bargaining, in particular with respect to: the establishment of an excessively high threshold for membership for forming a union; the restriction on the right to elect representatives in full freedom; the numerous restrictions on the right to strike; and the broad administrative powers that allowed for, inter alia, cancellation of trade union registration. In 2015, the Committee of Experts had regretted that no further amendments had been adopted and had called on the Government to make significant progress in that regard. The European Union and the United States, both signatories to the Sustainability Compact, had also insisted on a new series of amendments to the Labour Act. The information provided by the Government on these points should be verified as, despite its reiterated promises, the Government had still not published the new implementing regulations relating to the 2013 Labour Act, thereby jeopardizing the transition to a sustainable ready-made garment (RMG) industry.

Over 400,000 workers were employed in the production of garments and shoes in EPZs, from which trade unions were prohibited and where only workers' associations, which did not have the same rights or guarantees, could be established. Although the authorities in EPZs maintained that collective bargaining was authorized, it did not exist in practice and many union leaders had been dismissed with impunity in retaliation for having asserted their few rights as workers. In 2014, the Cabinet had adopted a new draft law on EPZs, which had not yet been promulgated, and which continued to prohibit workers from establishing trade unions, while providing for workers' associations as the only means of engaging in employment relations, and prohibiting these associations from contacting non-governmental organizations. Furthermore, the RMG industry in Bangladesh was beset by a climate of anti-trade union violence, and impunity, with certain cases of beatings, some of which resulted in hospitalization, and the dismissal of entire trade union councils. The labour inspectorate and the police continued to fail to respond to these acts in due time and none of the workers were reinstated following these flagrant violations. Trade union leaders and activists from a major enterprise in the RMG sector had been the subject of extremely brutal anti-trade union attacks, as demonstrated by surveillance videos. These attacks had happened after the management had dismissed the trade union leaders and members, and had refused to engage in any dialogue on the pretext that the trade unions' sole intention was to destroy the industry. Investigations had concluded that the attacks had been carried out on the orders of the factory management. After having been harassed by the national intelligence services and the police, the trade union had been forced to accept a settlement, which had only been offered because it had been a headline story in *The New York Times* and owing to pressure from foreign clients of the enterprise. Moreover, little progress had been made in the investigation into the murder of Aminul Islam in 2012, and the Government should once again be called on to resume the investigation with a view to punishing the perpetrators.

With regard to trade union registration, it should be noted that approximately 300 new organizations had been listed since 2013, even though the long-standing official government policy was to automatically reject all trade union registration applications in the textile and garment

sector. However, these new organizations, represented only a very small proportion of the predominantly women workers in the sector, which was estimated at more than 4 million workers. Around 40 of these new trade unions had been targeted in anti-union attacks, and a similar number no longer existed following factory closures. Almost a third of the new trade unions registered since 2013 no longer existed. Furthermore, the number of registration applications that were rejected was in fact on the rise, of 26 per cent in 2014 compared with 18 per cent in 2013. Moreover, a significant number of applications were left in suspense well beyond the 60-day time limit and no database was in place to monitor the processing of these registration applications. Ultimately, approvals of applications for registration were at the total discretion of the Joint Director of Labour, who in some cases refused to accept the application even if all the requested information had been provided. This body had also reportedly received the order for a blanket rejection of all applications from the three independent trade union federations from the garment industry, on the pretext of their links with international organizations. In conclusion, the Worker members expressed their deep concern at the statements made by several high-level Government representatives with regard to workers. They cited the example of the Dhaka Apparel Summit in 2014, where the Prime Minister had warned that national or foreign critics of working conditions in Bangladesh were involved in a conspiracy against the textile and garment industry, and that of the Minister of Trade who had accused the trade unions of providing foreign governments with sensitive information on the situation of workers in Bangladesh, and calling for measures to be taken against them. The Government would gain in stature if it addressed challenges rather than threatening those who took action to defend the interests of workers.

The Employer members observed that the case comprised four main aspects, namely: the lack of investigation and results relating to violence and harassment of trade unionists; the slow progress in the registration of trade unions and the requirement to meet a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments for initial or continued union registration; the need for consultation with the social partners over proposed changes to the Labour Act, which contained many provisions relating to matters concerning freedom of association; and the complaints of restrictions and harassment of attempts to organize workers in EPZs. They noted that the Government was committed to complying with international labour standards. However, it was important to put the case into perspective and for it to be examined taking due note of its context. Recent changes emanated from the outcomes of the assessments made on the grounds of incidents such as the Rana Plaza disaster and many of the changes affected a relatively new and rapidly growing RMG sector. While significant changes were required, they observed that some of the issues of the case were related to frustration with the progress made, rather than the rejection of the need for change. They added that it was also important to ensure that matters were dealt with in the right jurisdiction. With regard to cases of violence and harassment, there had been numerous complaints alleging violence against, and harassment of, unionists since 2012, including the homicide of a trade unionist in 2012. The examination of such cases had to be carried out taking into consideration their context. It was common that RMG factories shared spaces in the same building or adjacent buildings, and in the event of industrial dispute in one factory, workers in other factories joined in the demonstrations, which frequently resulted in violence. Hence there was a demarcation line between labour dis-

putes and public protests. The latter had to be dealt with by criminal law. Turning to the right to organize, elect officers and carry out trade union activities freely, the Employer members acknowledged the widespread union concern over an alleged refusal to register unions in several sectors. They noted, however, that 7,222 trade unions were registered in the country and that in the last three years over 700 registrations had been recorded. They considered that these data did not indicate an opposition to the establishment of trade unions. The issue appeared to be more related to the efficiency of processing applications for registration. Turning to the legislative reforms, they needed to be placed in the context of the Rana Plaza disaster. Many changes had already been made, particularly in the area of occupational safety and health. The Government had indicated that the process leading to the amendments to the Labour Act had been based on extensive tripartite consultations. In addition, supplementary regulations to implement the Labour Act, as amended, were under preparation. As to the requirement to meet a minimum membership of 30 per cent of the total number of workers employed in the establishment or group of establishments for initial or continued union registration, they noted that such restrictions were not unusual, nor prohibited. In this regard, the Employer members expressed concern at the opinion of the Committee of Experts which considered that the establishment of threshold limits for the formation of unions interfered with the workers' right to form organizations of their choosing. In the view of the Employer members, taking into consideration the national context, a proliferation of trade unions could be counter-productive to the development of healthy industrial relations and economic growth. Moreover, in many countries the threshold limits for the formation of unions were even higher. As to the right to form federations, the Employer members acknowledged the comment made by the Committee of Experts requesting the Government to review the relevant provisions so as to ensure that the requirement of the minimum number of trade unions to form a federation did not infringe the workers' right to form federations. To this end, considerations on the practicability of making such provisions operational should be taken into account. Turning to the right to organize in EPZs, they noted that EPZs were common mechanisms to stimulate economic growth by attracting foreign investment. The rules governing EPZs should comply with the labour standards ratified by the host countries of the EPZ. For this purpose, Bangladesh had established an Export Processing Zone Authority (BEPZA) which reported on the manner in which EPZ Workers' Welfare Associations and Industrial Relations Act, 2010, was applied. The Government had indicated that the BEPZA would consider the comments made by the Committee of Experts and the need for any changes in the light of the experience accumulated. Moreover, based on the discussions held by the Conference Committee in 2013, the Government had expressed its intention to work with the ILO on how EPZ workers could be brought into the scope of application of the national labour law to ensure freedom of association, the right to collective bargaining and other matters concerning labour standards. In addition, a high-level committee had been created to examine and prepare a separate and comprehensive labour law as an international standard for EPZ workers. The work of this committee was ongoing. In conclusion, the Employer members considered that the process was complex and not easy. The Government should therefore avail itself of ILO technical assistance aimed at ensuring that workers in EPZs were fully guaranteed their rights under the Convention.

The Worker member of Bangladesh emphasized that about 88 per cent of the workforce in the country was

employed in the informal sector. She indicated that many of the industries in Bangladesh, such as the textile, steel and jute industries, had been closed. The closure of the factories had in effect reduced the activities of some of trade union federations and some trade unions had become inactive. The RMG sectors had evolved in the 1980s and now provided employment for about 4 million workers, of which 85 per cent were women from rural areas. These workers were not aware of any rights and were insufficiently paid, with a minimum wage of 3,000 Bangladesh Taka (BDT) since 2010, and an increased amount of BDT5,300 in 2013. While recalling the Rana Plaza collapse and the Tazreen fire incident which had caused the deaths of over 1,200 RMG workers, she appreciated the national and international initiatives to ensure safety at the workplace. While acknowledging that with the massive training under the ILO initiative, the number of trade unions in this sector had increased from 115 in 2012 to the present 450 trade unions, she regretted that this was still not sufficient in relation to the number of factories. However, despite this increase, cancellation of the registration of trade unions by the Department of Labour appeared to discourage the workers from uniting. The trade union movement in Bangladesh had always been fighting for protection from harassment by some employers who, being unaware of the benefits of trade unions, resorted to harassment of trade union leaders. Referring to their active protest against the Government, which had resulted in the withdrawal of cases filed against three trade union leaders, she called on the Government to take the necessary measures against such unfair labour practices and requested the ILO to exert pressure on the Government in this regard. Although the 2013 amendment of the Labour Act had brought about some positive changes, there still remained provisions which were not labour-friendly, such as the requirement of support from 30 per cent of workers for the establishment of trade unions. She urged the Government to initiate further amendments to the Labour Act covering the informal economy and to adopt and publish the regulations under the Labour Act without delay, as well as to take the necessary measures for their proper enforcement. In addition, the EPZ Labour Act, which had been approved by the Cabinet in 2014, needed to be adopted without delay in order to uphold workers' rights in EPZs. There had not been any visible progress in the trial related to the murder of the RMG trade union leader in 2012. The Government should complete the trial on a priority basis and ensure exemplary punishment. She emphasized the necessity for a free, fair and responsible trade union movement which would not only ensure workers' rights, but also sustainable industrial development through increased production. She expressed the hope that the Government would ensure effective social dialogue to achieve these goals. Lastly, she requested the ILO to continue providing technical assistance for capacity building of the trade union movement in Bangladesh.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Montenegro, Serbia, Albania, the Republic of Moldova and Armenia, noted the progress achieved in trade union registration, in particular in the RMG sector since the amendment of the Labour Act in 2013. The Government should continue to ensure that union registration processes were concluded in a timely manner and in accordance with due process, strengthening administrative capacities to this end. In this regard, the Government should continue to provide detailed information and statistics on the registration of trade unions. Moreover, it should guarantee effective, expedient and transparent investigation and prosecution of cases of violence and harassment against trade unions and workers' representa-

tives. With respect to the Labour Act, the Government should take measures as a matter of urgency to adopt implementing regulations and to amend the provisions requiring a minimum membership threshold of 30 per cent of the total number of workers employed to register a trade union, as well as the requirement of at least five trade unions to form a federation. She also urged the Government to hold full consultations with the social partners in order to elaborate new legislation for EPZs in conformity with the Convention so that workers could enjoy full freedom of association and collective bargaining rights. In conclusion, she expressed renewed commitment to continue intensive cooperation with the Government in the framework of the Sustainability Compact, to which Bangladesh and the EU were signatories.

The Government member of Switzerland indicated that his Government endorsed the statement made on behalf of the Member States of the EU.

The Employer member of Bangladesh, referring to the comments made by the Committee of Experts, said that many of the RMG factories either shared space in the same building, in adjacent buildings or were in close proximity to other factories. Consequently, when an industrial dispute arose in one factory, workers in several factories came out on the streets, joined by outsiders, which resulted in violence, vandalism and public disorder. On such occasions, the Government had to deal with the situation under criminal law, rather than labour law. He deplored any incident wherein anyone, be it a worker, employer or trade union leader, was hurt or killed in such violence. With regard to the registration of trade unions, the earlier requirement of sending the list to the management with the names of workers who wanted to form a union had been eliminated. He argued that any change in the threshold for registration of unions, as well as federations, would result in a proliferation of unions and federations which would be counter-productive to healthy industrial relations and economic growth. He indicated that this threshold was much higher in many countries. Consultations with the social partners over proposed changes to the labour legislation had been ongoing, while a draft EPZ Labour Act had been prepared based on consultations and sent to the Ministry of Law, Justice and Parliamentary Affairs for vetting. Recognizing the activities of the ILO to promote decent work and productive employment opportunities for men and women in Bangladesh, as well as to enhance working conditions and labour rights, he hoped that with time progress would be made.

The Worker member of the United States said that registration was the first step in the long process of building organizations for workers to exercise freedom of association and an industrial relations system that would be needed to advance decent work. He alleged that the Government was doing little to support this process, despite being required to do so by the Convention, despite its stated desire to consolidate its role as a major actor in the global RMG sector and despite considerable support from the international community in this sector, since the Rana Plaza disaster. Although, this would take time, the State must promote and facilitate this process which would lead to mature industrial relations and a sustainable economy. The inadequate measures and persistent delays in issuing the implementing regulations to the amended Labour Act was a matter of concern. In addition, he expressed concern that the draft of the proposed regulations did not clearly and objectively define the procedure and criteria to be followed for scrutinizing documents while processing applications. Apparently the Registrar of Trade Unions maintained broad discretionary powers. Moreover, the provision requiring all unions to renew their registration every three years could be used to exert pressure on workers' organizations and bargaining rights. The prob-

lematic registration rules, coupled with the Government's poor union registration practices, had led to increased rejection of union applications at a disturbing rate. The reasons provided by the Government for rejecting unions ranged from the questionable to the absurd, and included: the refusal to let government inspectors enter the factory to investigate; allegations that payroll signatures did not exactly match those on union membership forms; government inspectors' claim that they could not find the union office even when the same officers had previously visited the same union office; and interviews of workers about their union activity by government inspectors in the presence of the management, which had previously threatened and intimidated them. The online registration process had also failed to operate efficiently. In 2015, rejections outnumbered registrations by 31 to 26. He concluded that the Government had shown neither the political will nor a culture of facilitating the access of workers to freedom of association.

The Government member of Norway, also speaking on behalf of Iceland, emphasized that freedom of association was the foundation for other democratic rights and that trade union activities should not be unjustifiably curtailed. Moreover, trade unionists should under no circumstance face intimidation, violence or harassment. While investigations of complaints and progress in the registration of trade unions were to be welcomed, two years after the Rana Plaza tragedy concerns remained, with regard to working conditions in the country. Moreover, trade unions and workers continued to face obstacles in the enjoyment of freedom of association, particularly with respect to delays in registration and the high membership threshold to form trade unions. The Government should act expeditiously and decisively to investigate, prosecute and convict those responsible for violence and harassment against trade unionists and to ensure adequate protection of trade union representatives and members. While recognizing the significance of the RMG industry to the economy, she emphasized that the implementation of the Decent Work Agenda, including freedom of association, occupational safety and health, and decent wages was essential to ensure inclusive economic development in the long run. The Government should collaborate with the social partners, producers and buyers to take measures to ensure responsible supply chains in line with ILO standards and the principles of corporate social responsibility. In conclusion, she invited the Government to avail itself of ILO technical assistance.

An observer representing IndustriALL said that Bangladesh was monitored regularly by the supervisory bodies of the ILO in relation to the violence of the factory management against trade unionists and impunity of the persons responsible for such acts of violence and harassment. The Government had not made serious efforts to bring the perpetrators to court and the measures adopted up to now had been far too slow. She emphasized that cases of reinstatement of workers had only occurred as a result of international pressure, and not at the initiative of the Government. She gave several examples illustrating the widespread violence against trade unionists. She emphasized that the brutal attacks against trade unionists must end. The Government could not claim that progress was being made while failing to take significant measures to bring an end to violence and the impunity of the persons responsible for such acts.

The Employer member of South Africa recalled that the recent results obtained in terms of legislation demonstrated that tripartism should continue to play a major role in labour law reform and called upon the social partners to continue to engage in social dialogue in order to address all the issues arising in the country. If the majority of problems relating to the right to strike and freedom of

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bangladesh (ratification: 1972)

association were discussed constructively in the appropriate places, they would be resolved quickly. Condemning violence against trade unionists, he called on the Government to resolve the issue through law enforcement.

The Government member of Qatar took note of the information provided by the Government representative and encouraged the Government to pursue its efforts to give effect to its obligations under the Convention. The ILO should also continue providing technical assistance to Bangladesh to promote the rights of workers. The conclusions of the Committee should reflect the efforts made by the Government.

An observer representing the International Transport Workers' Federation welcomed some of the amendments to the Labour Act adopted in 2013, while expressing disappointment as the reforms fell well short of the requirements of the Convention. The adoption of the Labour Act in 2006 had been a backward step. The Committee of Experts had stated in 2007 that the new Act did not contain any improvements in relation to the previous legislation and in certain regards contained even further restrictions which run counter to the provisions of the Convention. It was therefore of great concern that the vast majority of the comments of the Committee of Experts had been disregarded by the Government. It was important to note, among other things, that there continued to be excessive limits on the right to strike and numerous restrictions on organizing, including in civil aviation and seafaring. For registration purposes, workers were still obliged to meet the minimum membership requirement of 30 per cent of the total number of workers employed in an establishment or group of establishments, which was a clear violation of Article 2 of the Convention. Referring to specific examples of violations of freedom of association as a result of restrictive labour laws, he indicated that in 2010, 13 dockworkers' unions at the port of Chittagong had been dissolved following the disbandment of the Dock Workers Management Board under section 263(A) of the Labour Act. This had also been made possible by the Bangladesh Labour (Amendment) Ordinance 2008, under which only one trade union organization was permitted at this port. As the sole trade union existing at the port of Chittagong organized only permanent employees, subcontracted workers, as well as security personnel, fire-fighters and other workers had no trade union representation. While there were several registered unions in the civil aviation sector, this was only possible because the Labour Act allowed registration of aviation unions which first affiliated to specialist international organizations. Clearly, small unions with limited financial means could not always afford to affiliate to such organizations, making this a de facto restrictive requirement for registration. He urged the Government to take the necessary measures to amend the provisions of the Labour Act without delay in accordance with the comments of the Committee of Experts.

The Government member of Canada commended the Government of Bangladesh on the progress made to improve the working conditions in the RMG sector, but emphasized that more work remained to be done to achieve change in this important sector and to advance women's empowerment. While freedom of association and the right to organize needed to be further strengthened in the RMG sector, these rights also needed to be extended to other sectors of the economy, including EPZs. Furthermore, recalling the need to ensure a more open and transparent environment in which trade unions and workers' federations could freely and effectively fulfil their roles, he expressed concern at the ongoing violence taking place in the country against trade unionists and urged the Government to apply a policy of zero tolerance against such practices. He called on the Government to amend the La-

bour Act in certain fundamental areas, in consultation with the social partners, in order to bring it into conformity with the Convention. Finally, he expressed the commitment of his Government to work with all stakeholders to improve safety and workers' rights in Bangladesh, particularly in the RMG sector.

The Worker member of the United Kingdom, noting that the Labour Act had serious flaws, recalled that Bangladeshi workers had been waiting almost two years for the adoption of its implementing regulations. There had been repeated promises, but no definitive action. The failure to issue those rules had jeopardized the transition to a sustainable garment industry and more mature industrial relations. The ILO Better Work programme and the training programme under the Bangladesh Accord depended on the adoption of those rules and regulations. At the factory level, the absence of the regulations meant that even where workers and employers wanted to set up representative systems and safety committees, they could not do so. International bodies had called on the Government to finalize the rules. On the second anniversary of the Rana Plaza tragedy on 28 April this year, the European Parliament had noted the importance of finalizing and implementing the rules without delay. While the rules should enhance labour rights and comply with core labour standards, the draft contained several significant shortcomings. Firstly, it did not set a procedure for the Department of Labour to deal with unfair labour practice complaints by workers. In the absence of strict deadlines to investigate and prosecute cases, the Department of Labour simply had not, and would not, respond effectively to address violations of labour legislation by employers. Secondly, the draft rules did not include any procedure for the registration of trade unions, and therefore permitted a situation in which the Registrar continued to enjoy "discretionary powers" which had been used to deny numerous applications for absurd reasons or for no reasons at all. Finally, in the absence of a trade union or a participation committee, the rules allowed for the Inspector General to nominate safety committee representatives. This might have serious consequences for the independence of safety committees, allowing interference by employers in the selection of representatives and in their functioning. These substantial failings needed to be addressed without delay.

The Government member of Nepal thanked the Government for the information provided on the legislative reforms (including the amendments to the Labour Act of 2006, the finalized draft regulations for its implementation, and the review of the legislation applicable in EPZs), as well as on the situation in the country concerning the application of the Convention. These reforms were to be commended as a means of improving the protection of labour rights, and the Government was encouraged to continue in this vein.

The Worker member of the Republic of Korea expressed deep concern that freedom of association was not fully guaranteed in the country. Supporting the comments made by the Committee of Experts in this regard, she emphasized the urgency of the adoption of new legislation applicable to EPZs. While the Cabinet had tabled a draft EPZ Labour Act to replace the EPZ Workers' Welfare Associations and Industrial Relations Act 2010, this Act had been elaborated without the consultation of workers' representatives and did nothing to address the concerns that had been raised in relation to the application of the Convention. In accordance with the existing and the draft legislation, it was impossible for workers in EPZs to establish trade unions. Workers' welfare associations (WWAs) could not be considered as workers' organizations within the meaning of the Convention, as they were heavily controlled by the BEPZA, which included the

control of the procedure for their establishment, including a referendum of workers. However, in most cases, WWA leaders were determined by the employer and workers did not even know who represented them. Where these leaders tried to exercise the right to collective bargaining, they might easily be dismissed. She also referred to the example of the privately run Korean Export Processing Zone (KEPZ) established by a Korean manufacturer of garments and shoes. As there was no clarity in terms of applicable laws, the employer applied the law that suited him best, resulting in the payment of the national minimum wage that was lower than the one in EPZs, but also in the banning of trade unions in accordance with the law applicable in EPZs. She supported the request by the Committee of Experts for the Government to engage in full consultation with national workers' and employers' organizations with a view to elaborating new legislation for EPZs that was in full conformity with the Convention.

The Government member of the United States recalled the link between freedom of association and the ability of workers to contribute to their own safety at work. Progress had been made towards protecting freedom of association in Bangladesh over the last two years, particularly in the RMG sector, where hundreds of new independent unions had begun to engage in collective bargaining with enterprise management. However, progress was still at a very early stage. In particular, the right of freedom of association continued to be threatened as only weak protections existed in practice. This was reflected, among others, in the increased rate of arbitrary union registration refusals and instances of violence and retaliation against trade unionists without a meaningful government response. There was an opportunity to address some of the long-lasting concerns raised by the ILO supervisory bodies by adopting appropriate and meaningful regulations of the Labour Act. Nevertheless, the recent draft of implementing rules raised serious concerns. She urged the Government to issue implementing rules that complied with ILO Conventions and incorporated inputs from stakeholders, such as the need for transparent and democratic elections of workers' representatives to participation and safety committees; the provision of fast and effective protection against retaliation and unfair labour practices; and support for the registration of independent unions avoiding the establishment of additional bureaucratic hurdles. Recalling that efforts by the EPZ Authority to attract and retain investments should not sacrifice the obligation to ensure workers' rights and safety, she also encouraged the Government to pass legislation, in consultation with the social partners, to ensure EPZ workers the right of freedom of association fully in line with the Convention. Finally, she urged the Government to take strong measures to end violence against and the intimidation of trade unionists, and to conduct full and thorough investigations of outstanding cases, as these would threaten not only the fragile progress but also the country's industrial relations in the years to come. Her Government remained committed to its partnership with the Government of Bangladesh to improve respect for workers' rights.

The Government member of Indonesia recalled that over 7,000 trade unions had been registered in Bangladesh, including around 300 over the past two years, and he commended the Government for the reforms adopted, including the 2013 amendments of the Labour Act 2006, in consultation with the social partners. He hoped that the implementing rules would be adopted in the near future. He noted with satisfaction the steps taken by the Government to comply with the Convention in EPZs through the designation of eight labour courts competent for labour disputes and the recognition of the exercise of the right to collective bargaining and the right to strike of WWAs. Finally, he invited the Government, in cooperation with

the ILO, to make all necessary efforts to address the challenges faced by Bangladeshi workers through the implementation of the Convention and the promotion of a better working environment in the country.

The Government representative indicated that the constructive comments made during the discussion would be very useful in the promotion of freedom of association and other workers' rights in different sectors. Concerning the allegations of harassment of trade unionists, notably in the RMG sector, he said that the Government had addressed all reported violations of labour standards. Law enforcement activities had been necessary to restore public order, but had neither been aimed at disrupting trade union activities nor at harassing trade unionists. Registration of trade unions was an important issue and it was very important to raise awareness among workers of their rights and responsibilities, including the creation and functioning of trade unions. Since 2013, some 2,752 trade unionists had been trained in the area of freedom of association in the four institutes of industrial relations of the Department of Labour. Training had also been carried out for more than 3,175 participants in programmes supported by the ILO and other partners. In 2014, an awareness-raising campaign in EPZs had been organized by the BEPZA for elected members of WWAs on numerous issues, including occupational safety and health, industrial relations and grievance handling. He added that WWAs were guaranteed rights relating to collective bargaining and the right to strike. All information on trade union registration was accessible to the public and a user-friendly website was being developed to further facilitate this. Trade unions and workers were given the opportunity to seek redress against anti-union acts. The main reasons for refusal of the 46 applications for redress concerning the non-registration of trade unions filed in January 2015 included: the failure to inform the committees of the creation of the proposed unions; the late submission of applications; and the non-submission of application or identity cards of workers. In the case of the 29 applications for redress in the same month concerning anti-union discrimination, 18 had been successful, five concerned unfair labour practices, and nine had been rejected as the relevant requirements had not been fulfilled. In conclusion, he said that the process of the adoption of the rules implementing the Labour Act would be completed on a priority basis and that the Government was committed to promoting freedom of association of workers, as enshrined in the relevant Conventions.

The Worker members emphasized that both the observation of the Committee of Experts and the information supplied to the Conference Committee highlighted the abuse suffered by the workers of Bangladesh, in the form of poor conditions of work, inadequate wages or anti-union aggression. By insinuating that certain collective actions had been instigated by "thugs", the Government had sent out the wrong signal. Despite the support and goodwill of the international community in the wake of the Rana Plaza tragedy, the Government had not taken the necessary steps to ensure respect for freedom of association. As a result, the United States had removed Bangladesh from the system of trade preferences. In April 2015, the European Union, through the European Parliament and the European Commission, had expressed concern at the lack of progress made by Bangladesh with regard to freedom of association. The increase in the number of trade unions registered during the previous two years in the RMG industry was positive, but not sufficient in itself, especially bearing in mind that nearly 100 trade unions had ceased to exist as a result of either anti-union practices or factory closures. The Government had also announced the drafting of rules to implement the Labour Act, but they had still not been adopted. The draft rules

also appeared to contain problematic provisions. Moreover, the Government, police and the labour inspectorate often remained passive in the face of anti-union discrimination, threats and the violence committed against trade unionists. Such impunity sent out the wrong signal. In 2014, the Committee had asked the Government, as part of the examination of the application of the Labour Inspection Convention, 1947 (No. 81), to prioritize the amendments to the legislation governing EPZs so as to bring EPZs within the purview of the labour inspectorate. The Government had disregarded those conclusions, since it had not taken any measures in that regard. In conclusion, the Worker members recalled the gravity of the situation and asked for a strong signal to be sent to the Government. A high-level tripartite mission should be conducted to convince the Government that it was essential for it to take the necessary steps to ensure freedom of association in law and in practice. Accordingly, the Government should: adopt and apply the implementing rules of the Labour Act, taking account of the issues raised by the workers that might compromise the exercise of freedom of association; amend the Labour Act to ensure its conformity with the Convention; secure to workers in EPZs the right to freedom of association; investigate all acts of anti-union discrimination, ensure the reinstatement of workers dismissed illegally and impose the appropriate penalties; and ensure that applications for trade union registration were processed quickly and accepted unless they failed to meet the objective criteria established by the legislation.

The Employer members said that the contributions made during the discussions had been helpful. Firstly, it should be made clear that all cases of violence and harassment should be investigated and the relevant procedures should be carried out expeditiously and fairly. In relation to the reform of the legislation respecting EPZs, it should be noted that changes were being made and even if many of those adopted following the Rana Plaza incident in 2013 were comprehensive, a number of aspects were yet unsatisfactory. The Employer members recalled the terms of Article 8 of the Convention, which provided that: "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"; and "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". It was important to recall that the whole Convention predicated on the fact that, irrespective of its principles, the reality of national law had to be taken into consideration. While it had been decided in the February 2015 tripartite meeting not to address the issue of the right to strike, which the Employer members considered as a matter of national law, it should be recalled that everything in the Convention was subject to the law of the land, as indicated in Article 8. When assessing the application of the Convention, a right balance needed to be struck to consider whether a situation infringed or supported the principles of the Convention. It would be useful for the ILO to provide assistance to Bangladesh in the process of reviewing its legislation, including the Labour Act and the EPZ Act, so that the overall outcomes, as provided for in the Convention, could be achieved and a distinction made between lawful industrial activities and public disorder. For the sake of decent work, dignity and absolute clarity, the balance between the law of the land and principles had to be respected.

Conclusions

The Committee took note of the statements made by the Government representative and the discussion that ensued. The Committee noted that the outstanding issues raised by

the Committee of Experts concerned numerous allegations of violence and reported harassment of trade unionists and trade union leaders and the absence of progress in investigations; delay in registration of new trade unions; the need to ensure freedom of association rights to workers in export processing zones (EPZs); and continued obstacles to the full exercise of freedom of association created by several provisions of the 2006 Bangladesh Labour Act.

The Committee noted the information provided by the Government that two suspects have been identified in the trade union leader murder case. They are still at large but the case has been classified as a sensitive one to ensure regular monitoring and an expeditious trial. The Government stated that 182 complaints of unfair labour practices were received during the period between 1 January and 30 April 2015, 177 of which were settled and criminal cases filed with respect to five. A helpline for workers was established on 15 March 2015 and is expected to improve transparency and governance in dealing with complaints. The Government indicated that 7,495 trade unions and 172 federations were now registered, with a total of 450 trade unions in the ready-made garment sector, and an online registration system has been introduced to ease the registration process. A website has been developed for disseminating reports on registration and is being made more user-friendly. After adoption of the BLA amendments in 2013, the Government acknowledged that the major task incumbent on it was the formulation of the corresponding rules which has required time and several rounds of consultations. The rules, following discussion and consensus in the Tripartite Consultative Council, were now being sent to the Ministry of Law for vetting prior to publication as a Gazette notification. Similarly, the draft Bangladesh EPZ Labour Act was sent to the Ministry of Law for vetting. The Government was engaged in awareness and capacity building to ensure freedom of association through effective trade unionism to over 2,700 worker leaders since 2013. The Government concluded by expressing its appreciation for the constructive engagement of the ILO and development partners in promoting rights at work.

The Committee takes note that the rules to implement the 2013 Labour Act are now two years overdue, while also taking note of the information from the Government that the rules have been drafted and are expected to be enacted shortly. The Committee recalls that it has previously called on the Government to ensure that workers in EPZs are able to exercise freedom of association in law and in practice and once again calls on the Government to pass legislation which guarantees to workers in EPZs the rights protected by Convention No. 87. The Committee also takes note that the Committee of Experts regret that no further amendments have been made to the BLA. Finally, the Committee takes note of reports of anti-union discrimination, including acts of violence and dismissals.

Taking into consideration the discussion, the Committee urged the Government to:

- undertake amendments to the 2013 Labour Act to address the issues relating to freedom of association and collective bargaining identified by the ILO Committee of Experts, paying particular attention to the priorities identified by the social partners;
- ensure that the law governing the EPZs allows for full freedom of association, including to form trade unions and to associate with trade unions outside of the EPZs;
- investigate as a matter of urgency all acts of anti-union discrimination, ensure the reinstatement of those illegally dismissed, and impose fines or criminal sanctions (particularly in cases of violence against trade unionists) according to the law; and finally
- ensure that applications for union registration are acted upon expeditiously and are not denied unless they fail to meet clear and objective criteria set forth in the law.

The Committee urges the Government to accept a high-level tripartite mission this year to ensure compliance with the recommendations.

BELARUS (ratification: 1956)

The Government provided the following written information.

With regard to the measures adopted by the Government to implement the recommendations of the Commission of Inquiry, in accordance with recommendation No. 2, the Government has adopted measures to abolish the requirements for the mandatory presence of at least 10 per cent of the total number of workers to establish a trade union organization. Presidential Decree No. 4 of 2 June 2015 was adopted, which amended Presidential Decree No. 2 of 26 January 1999 on some measures to regulate the activities of political parties, trade unions and other public associations (hereinafter, Decree No. 2), and excluded the above requirement. Thus, under Decree No. 4 of 2 June 2015, at least ten workers are enough to establish a trade union at an enterprise. The Government considers it appropriate to note the positive role played by the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, which proposed amendments to Decree No. 2.

With reference to the implementation of the proposals of the direct contacts mission, since the 103rd Session of the International Labour Conference, work on the implementation of the recommendations of the Commission of Inquiry has been organized in accordance with proposals of the direct contacts mission, approved by the ILO Governing Body at its 320th Session, in March 2014. The objective of the mission was to obtain a comprehensive picture of the trade union rights situation in the country and to assist the Government in the rapid and effective implementation of all the outstanding recommendations of the Commission of Inquiry. The Government accepted the proposal of the June 2014 Conference Committee and took the necessary steps to enable the direct contacts mission to carry out its tasks in full. The direct contacts mission visited the Republic of Belarus from 27 to 31 January 2014. Having held a number of meetings and having studied the situation on the ground, the mission noted that there had been some progress regarding implementation of the recommendations of the Commission of Inquiry. Moreover, the mission noted that there were elements of trade union pluralism in Belarus. The direct contacts mission paid special attention to the role of the tripartite Council, which was composed of all the parties concerned: representatives of the Government, employers' associations and trade union associations (the Federation of Trade Unions of Belarus (FTUB) and the Belarusian Congress of Democratic Trade Unions (BCDTU)). Over the past years, the Council has been the main body in which dialogue between the Government and the social partners on the implementation of the recommendations of the Commission of Inquiry has been taking place. At the same time, the mission expressed the need to improve the work of the Council. The direct contacts mission made a number of proposals, including for joint activities with the participation of the Government, the social partners and the ILO in the following areas: the work of tripartite consultative bodies; collective bargaining at the enterprise level; dispute resolution and mediation; and the training of judges, prosecutors and lawyers on the application of international labour standards. During the discussion at the 103rd Session of the Conference in June 2014, the Committee noted the fact that the Government had supported those proposals and expressed willingness to work together with the social partners and the ILO to implement them. The Government emphasized that the activities planned in accordance with the mission's proposals

would contribute to implementation of a number of recommendations of the Commission of Inquiry, in particular recommendations Nos 4, 8 and 12.

In accordance with the conclusions of the Committee on the Application of Standards in June 2014, the Government together with the Office and with participation of trade unions and employers' associations made concrete steps to implement the proposals of the direct contacts mission. For example, the Office, with the assistance of the Government, held a seminar to review the experience of work of tripartite consultative bodies of the social partnership (9–10 June, Minsk). The purpose of the seminar was to assist the Government and the social partners to develop proposals for improving the work of the tripartite Council. The seminar was attended by members of the tripartite Council and other interested representatives of the Government, associations of employers and trade unions (FTUB and BCDTU). International experience of the work of tripartite bodies was represented at the seminar by ILO experts, as well as by experts from Lithuania and Finland. The participants at the seminar developed proposals aimed at improving the effectiveness of the Council, which were discussed in detail at the meetings of the Council held on 23 January and 23 April 2015. Following the discussion, the parties represented in the Council reached a common position on amending the Regulations on the Council in order to enhance its efficiency. The new version of the Regulations on the Council for the Improvement of Legislation in the Social and Labour Sphere was approved by Order No. 48 of the Ministry of Labour and Social Protection of the Republic of Belarus of 8 May 2015. The new version of the Regulations has significantly expanded the mandate of the Council. In particular, the Council now has the right to analyse the existing legislation, draft laws and regulations in the sphere of social and labour relations for their compliance with ILO Conventions and Recommendations and international practice to ensure the application of international labour standards at the national level. The Council is empowered to send to legislative bodies its proposals on the implementation of the provisions of the ILO Conventions and Recommendations in the national law, and the amendment of laws and regulations on labour and trade unions, in accordance with the ILO Recommendations. The Council has the right to initiate a review of proposals for amendments and additions to laws and regulations on labour and trade unions made by the National Council for Labour and Social Issues. Also, the new version of the Regulations on the Council provides for more active involvement of international experts, including ILO experts in consideration of issues within the Council. In order to facilitate consideration of the issues, the Council can hold extraordinary sessions.

In 2015, the Government carried out the work related to the second area identified in the proposals of the direct contacts mission. On 13–14 May 2015, the Office, in cooperation with the Government and the social partners, held a tripartite seminar Collective Bargaining and Cooperation at the Enterprise Level in the Context of Pluralism. In this regard, it should be noted that, in the context of trade union pluralism, there are several trade union organizations in a number of enterprises in the Republic of Belarus, and each of them, regardless of its size, wants to participate in collective bargaining with the employer. According to the practice established in Belarus, only one collective agreement is concluded within an enterprise. The employer shall enter into collective bargaining with a single workers' side, represented by trade unions. However, the procedure of interaction between different trade unions within the single trade union group set up for negotiations with the employer is not clearly defined. In fact, the issue is solved by agreement between the trade

unions affiliated to the FTUB and the BCDTU. For example, at the largest enterprise of the republic, JSC “Belaruskali” (Soligorsk), three trade unions participate in collective bargaining with the employer to conclude a collective agreement (primary trade union organizations of the Belarusian Trade Union of Workers in the Chemical, Mining and Petroleum Industries and the Trade Union of Workers of Agriculture, affiliated to the FTUB, as well as the primary trade union organization of the Belarusian Independent Trade Union, affiliated to the BCDTU). However, in practice agreement between trade union organizations at other enterprises is not always achieved. This usually entails conflict between the trade unions, which in turn has a negative impact on collective bargaining process at the enterprise.

It should be emphasized that, given the current situation in the trade union movement in Belarus, the Government has been repeatedly informed by ILO experts that at this stage a most acceptable solution was not creating a legislative procedure for the formation of a united trade union group (as new legislative provisions were not likely to be accepted in a positive way by all the participants), but rather reaching an agreement by all the interested parties on the guidelines of interaction of the social partners during collective bargaining, including situations where there were several trade unions acting at an enterprise, and reflecting those principles in an agreement or some other document, which could be supported and approved by the social partners. The seminar, which took place on 13–14 May 2015 in Minsk, was attended by members of the Council and representatives of the employers’ and trade unions’ associations (including the heads of the FTUB and the BCDTU), as well as representatives from a number of enterprises (trade unions and employers), where several trade unions exist. As a result of the two-day debates, moderated by ILO representatives, the participants drew up conclusions, which provided for inclusion of representatives of all the trade unions, acting at the enterprise, into the Commission on Collective Bargaining. In the near future, the conclusions of the seminar will be discussed in the Council, which is to prepare a document to be presented to the social partners for approval expected.

The next activity in relation to the proposals of the direct contacts mission will be a tripartite seminar on dispute resolution and mediation. It is expected that the exchange of views by all the parties concerned will improve the situation for the settlement of labour disputes in the framework of the existing national system, and generate new effective mechanisms in the framework of the tripartite Council. Thus, the work to implement the proposals of the direct contacts mission is being carried out in full compliance with the agreements reached between the Government and the ILO. The joint activities are aimed at solving specific problems, directly arising from the recommendations of the Commission of Inquiry. The Government considers it is also necessary to emphasize the fact that the intensification of cooperation between the ILO and the Government, as well as joint activities involving all the parties concerned, have a positive impact on the nature of relations between the social partners within the country. Thus, despite certain differences, the Government has noted positive trends in the development of relations within the trade union group. The issue of the participation of BCDTU representative in the work of the National Council on Labour and Social Issues has been resolved. The BCDTU leader Mr Yaroshuk participated in all of the last three meetings of the National Council, which took place on 25 September 2014, 13 January 2015 and 1 April 2015. The Government assesses positively the level of cooperation between the parties to social dialogue reached at this stage within the social partnership system.

The National Council for Labour and Social Issues is carrying out its work. Along with the Government, all the associations of employers and trade unions are represented within the National Council. A General Agreement between the Government, national associations of employers and trade unions for 2014–15, in the development of which representatives of both the FTUB and the BCDTU had been taking part, was signed on 30 December 2013. As well as the previous General Agreement, this General Agreement shall apply to all employers, workers and all trade union organizations in Belarus. Both trade union associations (the FTUB and the BCDTU), regardless of their representativity, have an opportunity to take advantage of the guarantees provided by the General Agreement. Thus, at present, the principles of trade union pluralism are fulfilled in practice in the Republic of Belarus.

In addition, before the Committee, a **Government representative**, after referring to the written information provided, informed the Committee of the steps taken, in collaboration with the social partners and the ILO, following the direct contacts mission to the country in January 2014 for the implementation of the recommendations of the Commission of Inquiry. As reflected in the written submission, concrete results had been achieved since the discussion in the Conference Committee in 2013, particularly concerning the removal of the 10 per cent minimum membership requirement through the repeal of Presidential Decree No. 2, and the implementation of the proposals made by the direct contacts mission. She highlighted the positive role played by the ILO in this regard and emphasized that the country was open to dialogue and discussion in relation to all outstanding issues.

The Employer members thanked the Government for the thorough oral and written information provided and welcomed the constructive tone of the Government, as well as its willingness to continue to engage in collaboration with the ILO and the social partners. The case was complex and had a long-standing history, with 21 observations made by the Committee of Experts on the application of the Convention since 1998 and 11 discussions of the case in the Conference Committee since 1989. Recalling the developments since the establishment of the Commission of Inquiry following a complaint submitted under article 26 of the ILO Constitution in 2003, the Employer members recalled the discussion and conclusions on the case adopted in June 2014, and noted that there had been positive developments recently. In its 2015 comments the Committee of Experts noted four primary concerns. First, the Government had not taken measures to amend Presidential Decree No. 2 of January 2009 to remove obstacles to trade union registration (specifically relating to the legal address and the 10 per cent minimum membership requirements). In this regard, noting the Government’s explanations that the 10 per cent minimum requirement had now been abolished through the adoption of Presidential Decree No. 4 of June 2015, the Employer members requested the Government to provide the Committee of Experts with more detailed information. The second issue concerned the situation in which authorization for demonstrations by trade unions had been denied and the fact that they constituted a violation under the Act on Mass Activities, as well as the absence of a stated intention by the Government to amend the Act. Recalling that peaceful protests organized by either workers’ or employers’ organizations were protected by the Convention, they encouraged the Government to amend the Act on Mass Activities, particularly the provisions relating to the penalty of liquidation of an organization for a single breach of the Act, which corresponded to recommendation No. 10 of the Commission of Inquiry. The third issue related to Presidential Decree No. 24 concerning the use

of gratuitous aid and the absence of any stated intent by the Government to amend the Decree. According to the Government, in practice, trade unions had not been prevented from receiving financial assistance. The Employer members recalled that the prohibition on national employers' and workers' organizations from receiving financial assistance from international employers' or workers' organizations, unless approved by the Government, was not in conformity with the Convention. In this regard, they urged the Government to repeal or amend the Decree, in consultation with the social partners, to ensure that employers' and worker's organizations could effectively organize their administration and activities and benefit from international aid, if they so chose. Concerning the fourth issue, which related to the implementation of the recommendations of the Commission of Inquiry, the Government had explained the steps taken for their implementation as a result of the direct contacts mission that had visited the country in January 2014. The direct contacts mission had welcomed the role of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere in this regard, as well as the Council's role relating to the implementation of the proposals of the direct contacts mission. They welcomed the fact that, with the participation of the social partners, concrete steps had been taken to implement the proposals of the direct contacts mission. They particularly welcomed the Government's explanations on the expansion of the mandate of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, including its role in amending labour laws. This Council was a useful platform for discussions and exchanges of views, and efforts should be made to transform the Council into an effective and established forum with the full participation of the social partners. They urged the Government to provide more information to the Committee of Experts in this regard, to continue to engage in social dialogue within the Tripartite Council, as well as in other forums, and to continue to cooperate with the Office. The adoption of Presidential Decree No. 4 repealing Presidential Decree No. 2, in accordance with recommendation No. 2 of the Commission of Inquiry, was also to be commended. The Employer members expressed the firm hope that this positive engagement would mean that the Government was also committed to addressing the other outstanding issues without further delay, and in particular the implementation of the outstanding recommendations of the Commission of Inquiry.

The Worker members noted that, although a decade had passed since the ILO Commission of Inquiry had adopted its conclusions and recommendations regarding the situation of freedom of association in Belarus, only two of the 12 recommendations made had been fully implemented, while for most there had not yet been any action at all. The consolidation of power by the present regime had only resulted in increased repression of trade unions. Workers were forced to renounce membership in democratic unions, and leaders and activists of free unions faced discrimination and dismissal. Union registration continued to be denied, and demonstrations organized by independent unions were still prohibited. The workplan designed in 2009 with the participation of the ILO and social partners had not been implemented, and the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere was merely a facade, as it lacked any genuine functions. The BCDTU, which comprised free and independent unions, had submitted proposals for improvements to the legislation and had raised concerns about violations of trade union rights in several enterprises. These calls had been entirely unheeded. They noted that, although the Committee and the Committee of Experts had repeatedly called for the amendment of Pres-

idential Decree No. 2, which created obstacles to the establishment of trade unions, nothing had yet been done. Thus, to register, trade unions still had to provide the official address of their headquarters, which was often the premises of the enterprise concerned, as unions were not allowed to submit their leaders' home addresses as the legal address. A letter from management confirming the address was also usually required, making trade unions dependent on the goodwill of the employer. A list of names of the founding members of trade unions also had to be sent to the Ministry of Justice. All of these obstacles, combined with the brutal repression of and reprisals against trade union activists, had made the development of the independent trade union movement virtually impossible. Indeed, no independent union had been registered for years.

In accordance with Ministry of Justice Instruction No. 48 of 2005, the registration of a trade union could be cancelled, without the possibility of judicial review, if its charter or structure was deemed not to be in compliance with the law. A union could also be dissolved by the Registrar if its data had not been correctly registered. Presidential Decree No. 29 had introduced a short-term contract system covering 90 per cent of workers. This system served to repress the trade union movement, principally through the refusal of contract extensions to union activists and their families. There was no adequate protection against acts of anti-union discrimination, and many union members had been forced to leave independent trade unions. Additionally, the law imposed severe restrictions on the organization of protests and meetings and any violation could result in a union's dissolution. The Worker members emphasized that, under such grave circumstances, workers were forced to take extreme measures, including hunger strikes, to protest the continued acts of reprisal and repression against trade unionists. With regard to these acts, they cited the example of one tractor parts company, where over 200 members had been obliged to leave their union to join the Free Trade Union of Belarus (SPB). The union leader, Mr Mikhail Kovalkov, had not been allowed to enter the enterprise, despite a decision by the Bobruisk district and city court ordering the employer to unblock Mr Kovalkov's permanent pass. In 2014, the contracts of Alyaksandr Varankin, Alyaksandr Hramyka and Victor Osipov had not been renewed in retaliation for having participated in union activities. Since 2008, the local union of an oil refinery affiliated to the Belarusian Independent Trade Union (BNP) had been subject to a harsh anti-union campaign by the management of the refinery. Members of that union regularly received disciplinary punishments due to the fact of their membership, over a six-year period more than 700 workers had been forced to give up their membership. In October 2014, the union leader, Mr Yuriy Shvets, had initiated a hunger strike, but that had not changed the situation. They also cited the example of the trade union of the "Granit" enterprise, established in 2012, which had not been registered. All 200 of its members had been forced to renounce their membership, and its leaders, including Mr Oleg Stakhaevich, Mr Nicolay Karyshev, Mr Anatoliy Litvinko, and Mr Leonid Dubonosov had been dismissed. They observed that in 2014 Belarus had once again been included in a special paragraph of the Committee's report, and that other laws had been adopted which further violated the rights of Belarusian workers. At the end of 2014, Presidential Decree No. 5, intended to "strengthen labour discipline" in both public and private companies, had been adopted. This Decree allowed employers to unilaterally change working conditions and facilitated the blacklisting of union members. Presidential Decree No. 3 of April 2015 also imposed severe fines on citizens who were able to work, but who had been unem-

ployed for several months. The Worker members expressed their deep concern at the situation with regard to freedom of association in Belarus and condemned the Government's continued failure to implement the recommendations of the Commission of Inquiry, which had been adopted ten years ago. The current process of trade union monopolization and the use of the state-controlled FTUB to suppress the independent trade union movement were also cause for deep concern. As long as the FTUB remained under Government control, the free exercise of workers' rights would not exist in the country.

The Employer member of Belarus emphasized that, in the context of the follow-up to the recommendations of the Commission of Inquiry, and following the visit of the direct contacts mission, the social dialogue system in his country was improving significantly, with the active participation of employers. The regular functioning of the National Council for Labour and Social Issues and the tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, in which both the FTUB and the BCDTU participated, was evidence of that improvement. Sectoral accords and enterprise collective agreements had been concluded under the General Agreement. The employers of Belarus aimed to adopt an even-handed approach towards all trade unions and all issues, and it was important to hold open and impartial discussions in order to identify mutually acceptable solutions to those issues. Nevertheless, more objective criteria should be established to determine the extent to which the submission of certain complaints met the requirements for examination by the ILO. The seminar on trade union pluralism and collective bargaining held in May 2015 in conjunction with the Office had strengthened the relationship of trust between the social partners and fostered a better understanding of how to implement the provisions of the Convention. In view of the fears aroused by the current economic crisis, which had been exacerbated by the sanctions imposed on the Russian Federation by western countries, collaboration between employers and workers had become increasingly important. In that context, the employers of Belarus would make every effort to ensure that the recommendations of the Commission of Inquiry were implemented.

The Worker member of Belarus expressed support for the statement made by the Worker members concerning the need to examine each situation in both law and practice. The current legislation posed no insurmountable obstacles to registering trade unions. In that regard, the most important fact was that the provisions of Decree No. 2 had been amended by Decree No. 4 with the aim of facilitating the implementation of the Commission of Inquiry's recommendations in respect of the requirement that at least 10 per cent of the total number of workers must be members in order to form a trade union. The problem had been resolved through the common efforts of all the social partners within the framework of the country's tripartite dialogue system. That was clearly demonstrated by the fact that only over the past six months in Belarus some 30 first-level trade union organizations had been registered in the private sector. Altogether, there were currently some 24,000 registered trade unions in the country. However, some employers in the private sector were actively raising obstacles to the creation of trade unions by their workers. That situation was unacceptable for the workers of Belarus and the issue had been raised in the FTUB Congress in May 2015 and had received some understanding and support from the Government. Today the country had two trade union federations, the FTUB and the BCDTU, both of which were able to cooperate with the Government and employers in the framework of the supreme social partnership body, the National Council on Labour and Social Issues, as well as in the tripartite Council for the Im-

provement of Legislation in the Social and Labour Sphere, which had been established at the recommendation of the ILO. This was a clear sign that trade union pluralism existed in Belarus. The FTUB was participating actively in improving legislation on workers' social and economic rights and interests and was ready to participate further in discussions on bringing it into conformity with international labour standards. The Law on Mass Activities contained no significant restrictions on peaceful trade union events. This had been demonstrated in practice by the fact that the FTUB had held over 80 public events in 2015 alone. There might have been occasional exceptions, but there was no systematic restriction on carrying out peaceful activities. The Committee of Experts and the ILO direct contacts mission to Belarus had indicated in their reports that complaints from trade unions concerning the provisions of Presidential Decree No. 24, which governed the use of foreign donations, were unfounded, as in practice trade unions were able to make use of financial assistance. He added that current legislation on trade unions guaranteed the right for 1 per cent to be paid by union members' from their monthly wages as union dues and those funds should in most cases be enough for unions for their activities if the budgets of trade unions were used properly and their finances were managed properly. In conclusion, he noted that the Government was systematically taking measures to apply the recommendations made by the ILO supervisory bodies, was creating an opportunity for social dialogue with all interested social partners in the country and was establishing all the necessary institutions, mechanisms and standards to apply the Convention effectively. The Committee on the Application of Standards and the ILO supervisory bodies could acknowledge the significant progress made on the issue of respect by the Government for the rights of trade union organizations in Belarus.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as Montenegro, Serbia and Norway, said that the EU attached great importance to its relations with Belarus and intended to maintain its critical engagement with the country. She expressed deep concern at the lack of respect for human rights, democracy and the rule of law. She recalled that the case had been on the agenda of the Conference Committee since 1997 and regretted that the follow-up to the direct contacts mission remained slow, despite the significant progress needed to achieve compliance with the recommendations of the 2004 Commission of Inquiry. In this context, she recalled that the failure of Belarus to implement the recommendations had led to its suspension from the EU Generalized System of Preferences since 2007. While acknowledging the change in the minimum requirement for the establishment of trade unions, she expressed concern with regard to the actual improvement in practice. She reiterated the call on the Government to eliminate the other obstacles which hindered the establishment and functioning of trade unions in practice, and in particular the requirement imposed by Presidential Decree No. 2 of 1999 on their legal address. She also once again urged the Government to provide the information requested by the Committee of Experts, particularly concerning the refusal to authorize the holding of demonstrations and the restrictions on assembly imposed by the Law on Mass Activities. She again urged the Government, in line with the request of the Committee of Experts, to amend Presidential Decree No. 24 concerning the use of foreign gratuitous aid. This was essential to ensure that workers' and employers' organizations could benefit from assistance from international organizations of workers and employers. She also urged the Government to provide all the information requested by the Committee of Experts and to intensify its efforts in cooperation with all

the social partners concerned to implement the recommendations of the Commission of Inquiry. She noted that the Government had accepted no technical assistance. She expressed the hope that the renewed engagement with the Office and cooperation with the social partners would give rise to concrete results for the rapid and effective implementation of the outstanding recommendations of the Commission of Inquiry.

An observer representing the International Trade Union Confederation (ITUC) emphasized that ILO action in Belarus was of particular importance on account of the authoritarian nature of its political system. Respect for freedom of association remained a critical issue and the adoption of Presidential Decree No. 4 had not improved the situation. Independent trade union representatives had been subject to extreme pressure and discriminatory dismissals to such an extent that for some of them the only option was to resort to hunger strikes. Other representatives had sought refuge in anonymity to avoid repression, which had resulted in many members of the BCDTU not being able to participate in collective bargaining. The protests of 7 October 2014 and 1 May 2015 had not been authorized. Presidential Decree No. 3 allowed for executive salaries to be reduced in retaliation for any trade union activities. Similarly, the requirement to provide a certificate of employment when applying for a new job made recruitment less certain for members of the independent trade union movement. During a meeting with the FTUB on 22 May 2015, President Lukashenko had said that the FTUB constituted a pillar of government action and that all workers should join it. If that was the case, it would be difficult to achieve compliance with the recommendations of the Commission of Inquiry. Infringements of the right to freedom of assembly were of particular concern.

The Government member of the Syrian Arab Republic noted that the Government of Belarus had undertaken several measures to implement the recommendations of the Commission of Inquiry. For instance, in response to the second recommendation of the Commission of Inquiry, the previous requirement of 10 per cent of the total number of workers to form a trade union had been abolished; under Presidential Decree No. 4 of June 2015, a minimum of ten workers presently sufficed for the establishment of a union. In addition, the ILO direct contacts mission of January 2014 had been able to note some progress in the implementation of the Commission of Inquiry's recommendations, including the existence of some elements of trade union pluralism. He recalled that the direct contacts mission had made several proposals to facilitate the implementation of the Commission of Inquiry's recommendations, which involved activities in the areas of enterprise-level collective bargaining, dispute resolution and mediation, the operation of tripartite consultative bodies, and training for judges and lawyers on the application of international labour standards. The Government had taken concrete steps to implement these proposals, thus demonstrating its commitment to resolving the issues raised by both the Committee of Experts and the Commission of Inquiry.

The Worker member of Poland recalled the conclusions adopted by the Conference Committee in 2014 and regretted that the number of violations of human and trade union rights had increased since then, and that members of independent trade unions still suffered from anti-union discrimination. She drew attention to the abolition of the requirement of at least 10 per cent of the total number of workers to establish a trade union organization. However, she observed that these measures had been undermined by a presidential decree under which new trade unions must be established in all private companies and must affiliate by 2016 with the FTUB, which was under the strict con-

trol of the Government. According to the President, as the protection of workers was his prerogative, it therefore depended on his good or bad will, but not on a guaranteed legal basis on which workers could rely. With reference to the denial of workers' rights in Belarus, she called on the Government to honour the commitments made to social dialogue and cooperation with the ILO, and to implement effectively all the recommendations of the Commission of Inquiry in order to improve the situation of all workers in the country, beginning with a system which guaranteed civil liberties for all and their respect.

The Government member of the Bolivarian Republic of Venezuela emphasized that the measures taken by the Government to implement the recommendations of the Commission of Inquiry in relation to the Convention represented significant progress in comparison to previous discussions of the situation. Trade union pluralism existed in Belarus, social dialogue had been strengthened, there had been improvements in social and labour legislation, and seminars and meetings had been held on freedom of association and protection of the right to organize. The Committee should take account of the willingness shown by the Government and the efforts it had made, as reflected in its explanations and arguments, and its conclusions should be objective and balanced, so that, the Government could take them into consideration.

The Worker member of the United States regretted that, despite the fact that this case had been discussed by the Committee several times over the years, the repression of independent trade unions continued. For instance, in October 2014, the management of an enterprise in Slonin had launched a campaign of harassment against over 30 workers for having joined the independent Radio and Electronic Workers' Union (REP). The workers concerned had been subjected to various discriminatory acts, including reductions in wages and threats of dismissal. Another worker, in a different enterprise, had been disciplined for having encouraged colleagues to join the REP. Recalling the comments of the Committee of Experts on the systematic suppression of the BNP in the Granit enterprise, she noted that yet another trade union activist had been dismissed in December 2014, in keeping with a pattern of dismissals of virtually all BNP activists in the enterprise. That this dismissal had occurred despite the dispute having been examined by the enterprise tripartite council, and despite the Government having accepted ILO technical assistance on improving social dialogue, was a cause for serious concern. She also noted the various acts of discrimination and harassment in 2014 against workers in a tractor factory who had chosen to join the SPB. With regard to Presidential Decree No. 5 of January 2015, which gave managers additional rights to unilaterally modify working conditions, she stated that the law had been heavily criticized for providing employers with expanded means of punishing workers for engaging in trade union activity. These developments showed that the repression of trade unionists remained severe and widespread. In conclusion, she called upon the Government to make serious and thorough efforts to honour its obligations under the Convention.

The Government member of Switzerland recalled that the case had already been discussed on several occasions by both the Governing Body and the Conference Committee. The Government of Belarus had been encouraged to take all necessary steps to guarantee freedom of association and expression and the right to peaceful assembly, including, in particular, amending the Law on Mass Activities, as requested by the Committee of Experts. With assistance from the Office and international social partners, Switzerland hoped that the Government would implement all outstanding recommendations of the Commission of Inquiry. In particular, employers' and workers' organiza-

tions must be able to organize their activities freely, and in this regard international social partners could provide valuable support and share relevant experience. Such steps could contribute to strengthening the role of civil society in Belarus and to creating a more favourable environment for respecting human rights.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries and Estonia, regretted that once again the Committee had to discuss the violation of the Convention in Belarus. Although the Commission of Inquiry had adopted its recommendations over ten years ago, and the Government had appeared before the Committee several times, no significant progress had been made. She noted that trade union rights were still violated due to the Government's lack of political will. Trade union leaders and activists in independent unions faced dismissal and discrimination, harassment and arrest, as well as the prohibition on participating in meetings and strikes. The establishment and registration of an independent union was burdensome because of the requirement of providing the legal address, which was often the premises of the enterprise. A letter from the management of the enterprise confirming the address was usually required, which made registration dependent on the support of the employer. Another serious concern was the short-term contract system that covered over 90 per cent of workers. This system was used as a mechanism to prevent people from joining independent unions and to punish union activists in independent unions. Their contracts would not be extended if the workers became members of independent unions. In addition, she noted that Presidential Decree No. 3, adopted in 2015, established severe fines for citizens who were unemployed if they were able to work. Recalling that Nordic workers enjoyed the right to form and join organizations of their own choosing and to bargain collectively, she urged the Government to ensure in law and practice the right of workers to freely join and establish organizations, and to organize their activities free from any interference by public authorities. Finally, she called on the Government to comply with the obligations deriving from ILO membership and to implement all the recommendations of the Commission of Inquiry.

The Government member of the Russian Federation noted the efforts that had been made, the substantial progress that had been achieved and the willingness shown by the Government to cooperate constructively with the ILO to guarantee all workers the right to freedom of association, in accordance with the Convention. He highlighted the workshops that had been organized in accordance with the recommendations of the 2014 direct contacts mission. Belarus had created favourable conditions for social dialogue and the implementation of the right to freedom of association. The Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere was the most important body for guaranteeing tripartite dialogue. Its competencies had been substantially increased in May 2015 to take into account the relevant ILO recommendations. The Tripartite Council now had additional competencies for evaluating national and draft legislation with a view to ensuring compliance with ILO Conventions and Recommendations, and also had the right to submit proposals on the application of international labour standards to the state authorities. A big step had been taken towards the practical application of the recommendations made by the ILO. He called on the trade union organizations of Belarus to cooperate with the Tripartite Council and utilize it in a constructive manner with a view to defending workers' rights. In view of the range of measures that had been taken to improve social and labour legislation, the accusations made against the Government were not justified. He requested the ILO to continue providing tech-

nical assistance to Belarus on the application of the Convention with a view to removing the issue from the Committee's agenda.

The Worker member of India said that recent developments clearly demonstrated the progress achieved by the Government of Belarus. The law regarding minimum membership requirements for forming a union had been amended, and the Committee of Experts had noted signs of progress in implementing the recommendations of the Commission of Inquiry. Furthermore, the fact that two national trade union confederations now existed was further proof of the Government's commitment to realizing trade union rights in Belarus. Recalling that this case had been discussed by the Committee on several occasions, he wondered whether this was necessary or just, or perhaps driven in part by political considerations. Regardless, recent developments were clear proof of the Government's willingness to address seriously the issues raised by the Commission of Inquiry and the Committee of Experts, and these efforts deserved due recognition from the ILO supervisory bodies.

The Government member of Cuba said that the Government had shown its willingness to cooperate with the ILO supervisory bodies by accepting the Commission of Inquiry, receiving a direct contacts mission, carrying out technical assistance activities and providing information at sessions of the Governing Body and the Conference Committee, which demonstrated its respect for and commitment to the principles of freedom of association and the right to organize. It had also provided sufficient information on the functioning of the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere, and on activities to improve social dialogue and cooperation among the tripartite constituents and to raise awareness of the right to freedom of association. To arrive at an objective and impartial analysis of the case, it was necessary to take into account the conclusion of the direct contacts mission that the situation of trade unions had changed, and the Committee should acknowledge the progress that the Government had made. This would make the activities of the supervisory mechanisms more effective while fostering an atmosphere of cooperation with the Government.

The Worker member of the Syrian Arab Republic expressed the support of Syrian workers for the workers of the FTUB in Belarus with regard to the violations of the Convention. The Committee of Experts had found that there had been significant progress in the diversity of trade unions in the country. The Syrian Arab Republic's trade unions had been cooperating for many years with trade unions of the FTUB in Belarus and had learned a great deal from their activities, such as their defence of trade union rights and social dialogue. Belarus did have tripartite social dialogue, although there were still some problems with respect to the application of the Convention, and the steps taken by all the social partners to implement the recommendations of the Commission of Inquiry was evidence of a real willingness on their part. Belarus had two national trade union federations and 30 industrial and national unions, which were able to hold meetings without government involvement. Workers in Belarus could therefore ensure that the Convention was applied, as they had been able to do in the past. He was certain that, through dialogue with the other social partners, those workers would be able to cope with the problems identified by the Commission of Inquiry.

The Government member of Canada recalled the concern expressed in 2013 and 2014 at the overall situation of human rights, including the rights of workers. He was concerned by the continued reports of numerous violations of the Convention, including interference by the authorities in the activities of trade unions. The Govern-

ment had improved its degree of cooperation with ILO supervisory bodies, including through the direct contacts mission in 2014. While some measures had been taken by the Government in 2015, the follow-up to the recommendations of the direct contacts mission remained slow and incomplete. Significant progress was needed in implementing the remaining recommendations of the Commission of Inquiry. He regretted that, despite the numerous requests by the ILO supervisory bodies, few tangible measures had been taken to address discrimination against trade union members and the violations of workers' rights in the country. The Government should take the necessary measures to address these allegations and the outstanding recommendations, accelerate its responses and make efforts to eliminate human rights violations, including the right to participate in peaceful protests and to associate freely to protect occupational interests. He called on the Government to fully follow up on the recommendations of the Commission of Inquiry of 2004, respect its obligations under the Convention, refrain from measures that inhibit the effective exercise of trade union activities, and cooperate fully with the ILO.

An observer representing the World Federation of Trade Unions (WFTU) said that her Federation was proud to count the FTUB among its members. The FTUB had made a tremendous contribution and the Government should not be appearing before the Committee. The FTUB wanted trade unions in the country with a fixed address and without foreign funding. All the social partners concerned were participating in the process of the implementation of the recommendations of the Committee of Experts and the Commission of Inquiry. The EU should focus on European countries, where there were numerous anti-union practices, a staggering number of unemployed and cuts in rights and wages imposed in the context of austerity policies.

The Government member of China congratulated the Government on its close cooperation with the ILO and on its progress in implementing the recommendations of the Commission of Inquiry, notably by the conclusion of a tripartite agreement. It was still necessary to apply ratified Conventions. The Government had shown a willingness to implement the recommendations of the Commission of Inquiry, and the ILO should provide Belarus with technical assistance to enhance its capability to apply the Convention.

The Government representative recalled the positive work being undertaken in the country, including measures to give effect to the recommendations of the Commission of Inquiry, and said that such efforts would continue. The recommendations of the Commission of Inquiry had been implemented through the adoption of amendments to Presidential Decree No. 2, and statements regarding pressure on independent trade unions had no factual basis. The direct contacts mission had noted several developments, including that some recommendations had been implemented and that trade union pluralism existed in the country. The recommendations of the direct contacts mission were being implemented with the involvement of all parties. It was necessary to focus on these positive changes in order to continue dialogue. The tripartite Council for the Improvement of Legislation in the Social and Labour Sphere was the relevant platform to examine the issues raised, and the direct contacts mission had supported this Council. The country had enforcement mechanisms to which workers could have recourse if they felt they had been discriminated against. Dismissals that had taken place had been linked to issues related to production, and the dismissals had been carried out in accordance with the legislation. An analysis of the workers who had been dismissed revealed that 7 per cent had been members of the FTUB and 5 per cent of the BCDTU, so such dismissals

were not linked to trade union membership. The new realities of the country required a new approach, and the Government had taken measures in that regard, including steps relating to overtime and the promotion of small enterprises. The Government actively consulted the social partners when adopting measures to regulate labour matters. The Government was also required to send any draft legislation on labour issues to the social partners, and to examine their proposals, prior to its adoption. The Government had taken measures to implement the past recommendations of the Conference Committee, including the amendment of Presidential Decree No. 2 and the promotion of tripartite seminars. It had achieved concrete results in giving effect to the recommendations of the Commission of Inquiry. Nonetheless, the recommendations of the Commission of Inquiry had not been fully implemented, and the Government would continue with its work, with the social partners and in cooperation with the ILO.

The Employer members recalled that interference in the freedom of association of workers' or employers' organizations was unacceptable. They recalled that this was a long-standing case. They noted the measures that had been taken since the Committee's last discussion, and welcomed the fact that these measures included the amendment of Presidential Decree No. 2, through Presidential Decree No. 4 of June 2015, and urged the Government to provide detailed information to the ILO on this legislative amendment. They welcomed the Government's willingness to collaborate with the ILO on issues related to the reform of labour legislation, and issues of freedom of association and its promotion within the national context. They noted that a number of recommendations of the Commission of Inquiry of 2004 had still not been implemented. They therefore hoped that the Government's positive engagement the previous year with the ILO and the national social partners would also mean that it was committed to implementing the outstanding recommendations of the Commission of Inquiry. The recommendations should be implemented without further delay and in full cooperation and consultation with the social partners at the national level.

The Worker members said that it had taken too long to see progress regarding freedom of association and that the case had been before the Committee for many years. The Government refused to make any meaningful progress to comply with the recommendations of the Commission of Inquiry. Workers were facing constant repression and independent unions were not able to conduct their activities freely. Leaders and activists were dismissed without recourse and the short-term contract system was used to force workers to leave independent unions and dissuade them from joining them. The requirement of a legal address was still an obstacle to the registration of independent unions in the country. The Government had only made symbolic steps and the abolition of the 10 per cent membership requirement had hardly made a difference in achieving free trade unionism, as it had not been a key obstacle. In this regard, the Government should provide specific information on the number of new unions registered. The Government needed to ensure that unions that chose not to be part of the FTUB could be created and registered. On that basis, the Committee would be able to assess the extent to which the reported changes could contribute to the implementation in practice of recommendation No. 2 of the Commission of Inquiry. ILO activities in the country, particularly the two seminars held in 2014 and 2015, could help to improve the situation of independent unions in certain enterprises. There was a need to continue to strengthen the capacity of all the social partners in relation to freedom of association and collective bargaining. However, cooperation was limited and did not

allow for systematic follow-up. A strengthened presence in the country was necessary if ILO technical assistance was to have an impact. The situation in the country remained a matter of concern. The Worker members called for full compliance with the recommendations of the Commission of Inquiry, but so far no meaningful steps had been taken.

Conclusions

The Committee took note of the written and oral information provided by the Government representative and the discussion that ensued. The Committee took note of the comments of the Committee of Experts concerning restrictions on the right of workers to form organizations of their own choosing in Decree No. 2, obstacles to the right to participate in peaceful demonstrations under the Law on Mass Activities and certain prohibitions on the use of foreign gratuitous aid under Presidential Decree No. 24. The Committee recalled the outstanding recommendations of the 2004 Commission of Inquiry and the need for their rapid and effective implementation.

The Committee noted that the Government has continued to follow up concrete proposals formulated by the direct contacts mission through ILO technical assistance related to a series of activities aimed at improving social dialogue and cooperation between the tripartite constituents at all levels, including most recently through the seminar on collective bargaining and cooperation at the enterprise level in the context of pluralism. The Committee noted the indication that Presidential Decree No. 4 was adopted on 2 June 2015, amending Decree No. 2 to replace the 10 per cent minimum membership requirement with only ten workers. The Government emphasized the positive role played by the Tripartite Council for the Improvement of Legislation in the Social and Labour Sphere in this regard. The Government further spoke of the amendments agreed to the Regulations of the Tripartite Council on 8 May 2015, which would significantly expand its mandate. The next activity within the framework of the direct contacts mission's proposals is expected to be a tripartite seminar on dispute resolution and mediation mechanisms.

The Committee expresses its deep concern that, ten years after the Commission of Inquiry's report, the Government of Belarus has failed to take measures to address most of the Commission's recommendations. Workers continue to face numerous obstacles in law and in practice to the full exercise of their right to form or join trade unions of their own choosing. The Committee expects full compliance with the recommendations of the Commission of Inquiry urgently.

Taking into account the discussion, the Committee urges the Government to:

- comply in full with the rest of the recommendations of the 2004 Commission of Inquiry before the next Conference, and to report to the Committee of Experts prior to their 2015 Session;
- provide information to the Committee of Experts related to the functions and role of the Tripartite Council;
- ensure, in light of reports of discrimination and harassment of trade union leaders and activists, that such activity is immediately brought to an end; and
- accept substantially increased technical assistance in the country, the aim of which is to assist in compliance with the recommendations of the Commission of Inquiry in the shortest time possible.

A Government representative took note of the Committee's conclusions and indicated that his Government would consider them and subsequently provide the requested information. The Government of Belarus would continue to cooperate with its social partners to promote the rights of workers. The Government representative also indicated that his Government would welcome ILO technical assistance and would continue to cooperate with the Organization.

EL SALVADOR (ratification: 2006)

A Government representative emphasized the importance accorded by her Government to the work of the ILO, especially its promotion of freedom of association and tripartite dialogue. Regarding the regrettable events resulting in the death of a representative of the trade union movement, the Government had strongly condemned the incident and had ordered an investigation to be launched in order to identify the perpetrators. She emphasized that it had been an isolated incident. The investigation was in the hands of the Attorney-General of the Republic who, in order to expedite matters, had transferred the case from the city of Santa Ana to San Salvador. According to the latest information, the Office of the Attorney-General had requested the national civil police to provide further evidence and information. Unfortunately, the high crime rate and level of violence in the country were keeping the Office of the Public Prosecutor extremely busy, which was resulting in delays in investigations. She reiterated the Government's commitment to strengthen the justice system, combat impunity and to step up its efforts to ensure respect for the life and integrity of the Salvadorian people. Regarding the participation of workers' and employers' representatives in bipartite and tripartite decision-making bodies, she confirmed that a significant reform was being undertaken of 19 public and autonomous institutions which would allow broader participation by small, medium and large enterprises, and by trade unions, federations and confederations, which had previously been excluded. The reform was particularly important for bodies that played a decisive role in promoting the rights of workers, including the Salvadorian Social Security Institute (ISSS), the Social Housing Fund (FSV) and the Salvadorian Vocational Training Institute (ISAFORP). No change had been made in the bipartite and tripartite structure envisaged in the Legislative Decree of 2 July 1993, nor in the tripartite forums in which employers' organizations, such as the National Business Association (ANEP), participated. They also continued to participate effectively in, for example, the National Minimum Wage Board and other tripartite bodies. The Higher Labour Council (CST) was currently not functioning because of a disagreement among the trade union representatives. The Ministry of Labour had made every effort to resolve the issue, as could be seen from the numerous meetings that had been convened between May and October 2013 to determine the CST's composition, and the three meetings that had been held to elect the trade union representatives. At the first meeting the representatives formed two blocks, each supporting its own list of candidates, and it had proved impossible to settle on a single list. In view of the disagreement, a second meeting of trade union representatives had been convened, which had been attended by representatives of 37 federations and eight confederations. Once again no agreement had been forthcoming. In July 2013, a meeting had been organized of the executive board of the CST. As there were no elected workers' representatives, and in order to find a solution to the situation, the meeting had convened members whose mandate had ended. The representatives of workers whose mandate had ended urged the Ministry of Labour to swear in the candidates on one of the lists on the grounds that they were the most representative. Although the employers' adviser to the CST had agreed to the procedure, it had been deemed impossible because it did not comply with the electoral procedure laid down in the regulations. Since the reactivation of the CST had continued to be a matter of high priority from June 2014 to June 2015, a total of 16 bilateral and joint meetings had been held with the various trade union representatives to continue to seek a solution, but no satisfactory outcome had been forthcoming. How-

ever, this all showed the clear determination of the Government to ensure the operation of the CST.

Regarding the right to organize of public employees, she observed that the number of legally established and registered unions in the country had increased over the previous five years. Of 464 active trade unions, 99 represented the public sector and 35 were in autonomous institutions. She added that the first Union of Paid Women Domestic Workers had now been registered. The objective was that the process for the establishment of unions should be rapid and efficient, in compliance with the national legislation and the Convention. The national legislation nevertheless needed to be reviewed as it still imposed certain limitations on the effective exercise of freedom of association. Regarding the legislation setting a maximum of six months for a trade union to obtain legal personality, she said that the problem had been resolved in practice as trade unions generally completed all the necessary formalities in a much shorter time. She referred to the recent establishment, at the initiative of the President, of the Presidential Committee on Labour Affairs by Executive Decree No. 86, in response to the request by workers' representatives for direct access to the Office of the President of the Republic. The Presidential Committee, which was mainly focussed on the public sector, was a forum for dialogue that did not in any way seek to replace the tripartite machinery that already existed, and the issues that it discussed would be referred to the appropriate bodies. She regretted that the employers' representatives were discrediting the initiative and were interfering in matters and forums that were legitimately intended for workers. She also regretted that ANEP had taken the step of expressing opinions on issues that were not on the table, such as the minimum wage. She emphasized that the Government had created social dialogue platforms with all sectors of society, including private enterprise, which was one of the cornerstones of economic growth and employment generation in the country, as indicated in the five-year development plan 2014–19. She expressed her appreciation of the valuable offers of support from the ILO and reiterated the commitment of the Ministry of Labour to make every effort to ensure compliance with the observations and recommendations of the Conference Committee.

The Worker members voiced great concern at the prevailing climate of violence in El Salvador. In May 2015, some 20 workers had been murdered, the highest level of violence since the end of the civil war in 1992. The situation was extremely worrying, especially as the violence was directed against representatives of trade unions. In January 2010, the Secretary-General of the Union of Workers and Employees of the Municipality of Santa Ana, Victoriano Abel Vega, had been murdered. The Committee of Experts had condemned the murder and the Committee on Freedom of Association had taken up the case. The Committee on Freedom of Association was also examining Cases Nos 2957 and 2896 concerning the detention of a trade union representative, the dissolution of a branch union and the creation of an enterprise union controlled by the employer. The national legislation was not in compliance with Article 2 of Convention No. 87, specifically in relation to the time required between a refusal to register a trade union and the submission of a new request, the possibility for a worker to join more than one organization, the registration procedure and the requirement that trade unions certify the status of their members. On the first point, section 248 of the Labour Code provided that no new request for registration of a trade union could be submitted for at least six months following a previous request. In 2009, as set out in the White Paper, the Government had undertaken to reform the national labour legislation and to amend section 248 of the Labour

Code. Despite the Government's repeated promises and the failure to amend section 248, the Worker members expressed concern and trusted that the issue would be resolved very soon. Regarding the possibility of joining more than one trade union, section 204 of the Labour Code prohibiting workers from doing so would need to be amended. As to the registration procedure, section 219 of the Labour Code provided that employers must certify that founding members of a trade union were employees. The Government would therefore have to take steps to amend the provision, for example by empowering the Ministry of Labour to provide such certification. In conclusion, the Worker members drew the Committee's attention to the non-compliance of article 47 of the Constitution, section 225 of the Labour Code and section 90 of the Public Service Act with Article 3(1) of the Convention. All of those provisions required that, to be members of a union executive committee, workers had to be Salvadorian by birth. So far the Government had still not amended those provisions. Under those conditions, it was important for the Government to take steps at the earliest opportunity to make the necessary amendments so as to guarantee respect for freedom of association and collective bargaining.

The Employer members indicated that this case was considered to be very serious, owing to the nature of the actions taken by the Government and the fact that they had continued for three years. Despite the comments of the ILO supervisory bodies, far from being resolved, the situation had deteriorated. In 2012, the President had submitted a bill to Congress to amend 19 basic laws on official autonomous institutions and to modify participation by employers' representatives in the various executive boards by empowering the President to nominate and appoint the respective employer representatives. They explained that it was the granting of that power, and not the changes in the structure of those bodies, as claimed by the Government representative, that was the focus of criticism. The bodies in question included the ISSS, the ISAFORP and the FSV. Such action constituted a clear violation of the Convention, as it prevented employers' organizations from exercising their right to elect their representatives in full freedom. They noted that the reforms in question were also in violation of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and emphasized that measures that placed organizations under the Government's control constituted acts of interference. Such would be the case if the President designated employer representatives to these bodies. They recalled that, in the context of Case No. 2980, the Committee on Freedom of Association had drawn the Government's attention to the principles relating to the freedom to appoint employers' representatives and to tripartite consultation, requesting it to respect those principles fully in the future. On the same occasion, the Committee on Freedom of Association had also requested the Government to conduct urgently in-depth consultations with workers' and employers' organizations within the CST. They noted that the Government's response could not have been more disappointing. The Government had aggravated the situation by ceasing to convene the CST on the pretext that one of the social partners had not been able to reach agreement on the nomination of its representatives, which was not a requirement under the Council's rules. They considered that the Government had used that excuse to avoid convening the CST and complying with the recommendations of the Committee on Freedom of Association. Moreover, the Government had established a new bipartite body, under Presidential Decree No. 86, which excluded the employers. They also regretted having to disagree with the Government representative, as their reading of the Decree suggested a different interpre-

tation. In practice, the Presidential Committee on Labour Issues was assuming the functions of the CST and the Wages Commission and of other tripartite bodies and higher-level legal bodies. They expressed the view that it seemed to be the intention to prevent employer representatives from participating in decision making. Needless to say, the abovementioned bodies had been established without consultation, in clear breach of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

In the light of the above, a request for urgent intervention had recently been presented to the ILO Director-General by ANEP and the International Organisation of Employers (IOE). However, there had been no sign of positive changes from the Government to date. They said that it was not the first time that the Committee had discussed the case of a government that guided consultations with social partners to reflect its interests by handpicking those who attended tripartite meetings. They considered that such behaviour should not become a trend and should be immediately brought to an end, otherwise it would inevitably lead to authoritarianism and destroy the cornerstone of the ILO. The Government seemed to be showing total indifference to the recommendations of the ILO supervisory bodies, even though those recommendations were intended to enable the social partners to nominate their representatives to the country's various tripartite forums. That power was now vested by law in the President, in clear violation of the Convention and to the detriment of social dialogue in El Salvador. In conclusion, they were of the view that the Committee should call for a series of urgent measures, without ruling out a direct contacts mission.

The Worker member of El Salvador said that trade unions had been drawing up proposals and contributing to public debate on establishing and strengthening democratic institutions in the country, despite the slowness of the procedures intended to ensure profound structural change. There were various factors explaining the fact that the CST was not yet functioning properly. The CST's regulations did not define clearly, or even tacitly, the procedure for elections for workers' representatives. Moreover, there was no consensus among the country's trade unions on the composition of the CST, as those who had traditionally been appointed were not prepared to allow election procedures to be made more transparent and democratic to guarantee the participation of other organizations that had emerged recently. She condemned the interference of ANEP, which had publicly requested the former Minister of Labour to recognize the list put forward by a group of workers who were linked or close to employers, in a bid to undermine other legally constituted and representative organizations. The matter had at the time been brought to the attention of the Director-General of the ILO. She urged ANEP to respect the autonomy and independence of trade unions to elect their representatives and requested the Government to take steps to set the CST in motion as soon as possible and to ensure the membership of more trade union representatives. Referring to the complaint presented to the Committee on Freedom of Association by ANEP (Case No. 2980), she said that the decree that had given rise to the complaint was designed to establish a procedure that would guarantee the participation of other employers' organizations, including those representing micro- and small enterprises. She believed that one of ANEP's main concerns was that it might lose the control that it had enjoyed up to now over tripartite institutions.

She welcomed the Government's initiative in creating a bipartite forum through the creation of a roundtable on industrial relations in order to move towards genuine social dialogue and citizens' participation. The objective of the forum was to formulate and propose public policies

and legislative reforms, such as the improvement of industrial relations in the public sector. The participants included the various movements within the trade union sector. She regretted the position adopted by ANEP which, because it did not agree with that type of forum, had announced that it would present a complaint to the ILO alleging that such matters should be discussed in a tripartite context. She explained that so far the forum had not discussed any issue that came within the purview of tripartite bodies. Although a number of new trade unions had emerged, they were for the most part in the public and informal sectors, while in the private sector unions were tending to disappear. She called on private sector enterprises to respect the provisions of the Convention and allow the establishment of trade unions without let or hindrance. She urged the State to respect the exercise of freedom of association, especially the right to strike. Historically, only two strikes had ever been declared legal in El Salvador, which was clear evidence of the impunity that prevailed and of a flawed judicial system. The workers she represented hoped that the current Government would ensure a labour administration that was fair and just and which applied labour law effectively. In conclusion, she urged the State to speed up the judicial inquiry into the murder of trade unionist Victoriano Abel Vega, clarify the motives behind the crime and punish those responsible.

The Employer member of El Salvador indicated that on 12 August 2012 the Government had introduced 19 legislative reforms that had subsequently been approved by Congress without consultation. Their effect was to expel private sector representatives from 19 autonomous institutions, some of which were tripartite bodies. Among these were the ISSS, to which the private sector was the main contributor, and the ISAFORP, where employers were the only contributors. He added that there were also institutions that were not tripartite in composition, but which received private sector contributions. He observed that, at present, these funds were managed by the Government and used for internal campaigns and to pay off gangs. Moreover, the 19 institutional reforms had changed the method of nominating private sector representatives. Since August 2012, representatives had been nominated by the President of the Republic, rather than on the basis of a shortlist submitted by organizations within the sector or a simple majority of an assembly convened for the purpose. He recalled that the situation had prompted ANEP to present a complaint to the Committee on Freedom of Association alleging the violation of Conventions Nos 87 and 144 (Case No. 2980). In its recommendations, the Committee on Freedom of Association had drawn the Government's attention to the principles of the freedom to nominate employers' representatives and of tripartite consultation, and had requested the Government to respect those principles fully in future. The Committee had also requested that the Government conduct in-depth consultations with workers' and employers' organizations within the CST so that agreement could be reached on ensuring the balanced tripartite composition of the executive boards of the autonomous institutions referred to in the complaint. He observed that, when the Committee on Freedom of Association had made its recommendations, the Ministry of Labour had stopped convening the CST on the pretext of the lack of consensus among workers, with the result that no agreement had been reached. The requirement for consensus, rather than an election by simple majority as provided for in the CST rules, meant that any federation close to the governing party could veto a majority agreement. He expressed regret that the new Minister of Labour had maintained the same position on consensus, which was a ruse to ensure that tripartite dialogue within the CST remained paralysed. When the time

had come to nominate candidates to the board of the ISSS, organizations affiliated to ANEP had proposed certain names, but the President had decided to choose another person who had been rejected by ANEP because of links to the pharmaceutical sector and the existence of conflicts of interest. As the person in question now sat as the representative of the private sector on the ISSS committee for the purchase of medicines, which had authorized direct purchases (with no bidding process) amounting to over US\$50 million, there were grounds for wondering where the responsibility lay if any acts of corruption came to light. He added that, in January 2015, the Presidential Committee on Labour Issues had been established, through which the Government had begun bipartite dialogue with workers' unions from both the public and private sectors. He explained that private sector unions had also been invited, but had later been told that the decree establishing the Committee only applied to public employees. That assertion was at odds with the text of the decree in question and with the words of the President, who had stated that the Committee would pursue a strategy to adjust the minimum wage gradually and to strengthen workers' organizations. This had various implications, including the existence of a new means of interfering in workers' organizations and the demise of tripartite dialogue in the National Minimum Wage Board. He expressed support for the call made by the Employer members for the Conference Committee to approve a direct contacts mission to determine whether the conclusions of the Committee on Freedom of Association were being applied. He hoped that such a mission could be undertaken before the meeting of the Committee of Experts so that its conclusions could be reported to the next session of the Conference.

The Government member of Mexico, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), said that he had listened with interest to the statement made by the Government representative regarding respect for freedom of association and protection of the right to organize in law and practice. He also referred to the arguments put forward by the Government concerning police action and investigations carried out and the current situation in the CST. Those arguments had been covered by the report of the Committee of Experts. He took note of the Government's openness and willingness to engage in dialogue with all the economic and social sectors. In light of Article 8(1) of the Convention, he reiterated GRULAC's commitment to applying the Convention and to respecting freedom of association. He was confident that the Government would continue to comply with the Convention.

An observer representing the International Transport Workers' Federation (ITF) said that the absence of convictions of those guilty of crimes against trade union leaders and members had created a situation of impunity which was extremely damaging to trade union activities, such as in the case of the tragic murder of Victoriano Abel Vega. He also referred to Gilberto Soto, a leader of the International Brotherhood of Teamsters, who had been murdered in 2004 and whose death still remained unsolved. According to the investigations by El Salvador's Human Rights Ombudsman and the Human Rights Institute at the Central American University: (1) three men had shot Gilberto Soto in the back without taking his belongings; (2) the police had neglected to secure the crime scene or evidence; (3) the Interior Minister had declared that Gilberto Soto had not been killed by a death squad; (4) a Salvadorian ambassador had told American union officials that the police had refused to send him a copy of their report; (5) the national civil police had denied the constitutionally guaranteed right of the Human Rights Ombudsman to inspect its files and observe the progress of the investiga-

tion; and (6) the police had allegedly extracted confessions from three gang members by torturing them, and they had later recanted their statements. He emphasized that the Government should reopen this case to identify those who had ordered the crimes and who had covered them up. Furthermore, he emphasized that 159 members of the cargo and security departments of the international airport had been dismissed in 2001 in violation of their collective agreement. Management had also proceeded with an intimidation campaign to force the workers to withdraw from the El Salvador International Airport Workers' Union, affiliated to the ITF. Referring to Case No. 2165 of the Committee on Freedom of Association, which had been closed more than ten years ago, unionized airport workers who organized had continued to face dismissals and the union had ended up ceasing all organizing activity as of 2013 due to constant anti-union discrimination. In conclusion, he urged the Government to heed the call of the airport workers' union and to ensure compliance with the principles of freedom of association.

The Employer member of Uruguay supported the allegations made by ANEP. He expressed concern about the situations described on repeated occasions in the Committee, such as the trend for certain governments to choose their partners to engage in social dialogue. He called for respect for traditional tripartism, which had been the lifeblood of the Organization, or in other words, effective and constructive dialogue between the Government and the most representative workers' and employers' organizations. He emphasized that it was not for the Government to appoint like-minded social partners to implement its political agenda. On the contrary, it should take into account how representative the organizations actually were, as this had a direct impact on levels of representation and the legitimacy of any dialogue established. He expressed concern that certain types of dialogue served no other purpose than to bypass legitimate and representative organizations, both of workers and employers. He urged the Committee to consider these matters and to call for tripartite dialogue in the form established by the ILO. Existing safeguards on the representativeness of constituents attending the Conference and participating in discussions and in the adoption of international labour standards would be meaningless if false dialogue was promoted at the national level which allowed certain governments to impose their own solutions unilaterally.

The Government member of Honduras emphasized the Government's openness and willingness to engage in dialogue with all social and economic sectors in his country which, according to what the Government had said, did not replace tripartite social dialogue. He also emphasized the Government's will to continue working with workers and employers, with assistance from the ILO, and to take the necessary measures to give effect to the Convention.

The Employer member of Belgium said that the Federation of Belgian Enterprises supported the position of employers in El Salvador concerning the freedom to establish organizations and to nominate their representatives. It was important to note in that regard that the term *liberté d'association* in French, and its equivalent in Spanish, was the expression that best corresponded to the term "freedom of association" used in English. The term "trade union freedom" (*liberté syndicale* in French) could in fact imply that only the workers' right of association was protected, while the Convention enshrined equality of treatment between workers' and employers' organizations. However, in El Salvador the rights of employers' organizations were not guaranteed, which was to be deplored. There should be reflection on this linguistic distinction, which could lead to misunderstanding and provoke deliberate or unintentional errors of assessment.

The Worker member of Argentina referred to a series of provisions in the national legislation that were contrary to the Convention. Article 221 of the Constitution expressly prohibited strikes by public and municipal workers, and the collective stoppage of work, and authorized the militarization of civil public services in the event of a national emergency. However, a general prohibition of the right to strike by public sector workers was incompatible with the provisions of the Convention. Moreover, articles 529 and 553 established a cumbersome procedure for declaring strikes legal and required very strict majorities for calling strikes, which made it easier for them to be found illegal. The United Nations Committee on Economic, Social and Cultural Rights had expressed concern at the restrictions imposed on the exercise of the right to strike and the significant number of strikes declared illegal. It had also regretted that it had not received precise and up-to-date information on the number of strikes declared illegal and the grounds on which these decisions had been made. Restrictions on the right to strike were not limited to these two provisions. Other restrictions existed. It should be noted that the Labour Code also provided for compulsory arbitration in the case of essential services, namely in any situation that could be considered as endangering or threatening the normal living conditions of the whole or part of the population. The right to freedom of association was not being fully observed if strikes were declared illegal every time that workers called them. Collective bargaining could not exist if workers did not have the right to call a strike as their main means of collective action. The very existence of social dialogue presupposed that workers could exercise the right to strike with all legal and institutional guarantees. Those restrictions only benefited employers. The removal of such limitations would be a major sign of progress.

The Worker member of South Africa emphasized the need for legitimacy and autonomy of employers' and workers' organizations when taking action in matters related to work and the labour market. Turning to the cases of homicide of trade union leaders, he said that the number of unsolved cases was a matter of great concern. It was also distressing that the perpetrators of these crimes had not been detained and hence could enjoy the fruits of their sordid work. This situation needed to be condemned in the strongest terms possible. The Committee of Expert's primary role was not to investigate said matters, but to remind the Government of its obligations arising out of the ratification of a Convention. The Government should therefore be urged to comply with the Convention it had ratified.

The Worker member of Uruguay said that the discussion had drawn attention to inconsistencies. ANEP had complained of interference in its activities in violation of the Convention, yet once attention focussed on the national level it was forgotten that the same Convention provided for the right to strike. The right to strike was applied in a very restrictive manner in the country. Furthermore, the rate of unionization was very low. He expressed indignation at the working conditions in *maquilas* (export processing zones) and emphasized that the type of dialogue advocated by the Government was not equivalent to tripartite dialogue. Dialogue should be effective and address all issues. Finally, he expressed the hope that investigations into the murders of trade union leaders would be completed without delay.

The Employer member of Honduras said that the Government was trying to eliminate tripartism by selecting the delegates from employers' organizations. The objective of the Convention was to protect the right of organization of workers and employers, which included establishing organizations, drawing up their constitutions and rules, the internal procedures for electing their representatives and

organizing their activities in accordance with national law. The Committee on Freedom of Association had recommended that the Government refrain from interfering in the selection of employer and worker delegates. The fact that the workers within the CST were not in agreement did not justify the Government failing to recognize employer delegates or holding tripartite meetings. The Government was trying to replace legitimate employer representatives with pro-government representatives and to prevent them from participating in tripartite bodies so it could avoid their surveillance and engage in the improper use of funds. Legitimate employer representation had thus been eliminated from 19 autonomous institutions. ANEP represented over 90 per cent of private enterprises and included members from small informal enterprises. ANEP therefore had the moral authority to demand that the Government repeal legislation that was not in conformity with Conventions Nos 87 and 144. The Committee should request the Government to repeal provisions that allow it to select employer representatives immediately.

The Employer member of Turkey indicated that the intervention of the President of El Salvador in the appointment of members of joint and tripartite executive boards constituted a clear violation of Article 3 of the Convention. This act by the President had hampered the autonomy of the employers' organization namely ANEP. The rights of employers' organizations to elect their representatives needed to be respected and the related provisions of the legislation therefore needed to be amended. As a representative of the employers' organization of Turkey, he supported ANEP and urged the Government to respect the autonomy of this association.

The Government representative reiterated her Government's willingness to work with all those who wanted a prosperous country that generated decent work, were committed to the health, education and welfare of families in El Salvador and fostered the development of micro-, small, medium and large enterprises. The Government's commitment to dialogue had been shown, for example, by the recent withdrawal of the complaint made by the Sugar Cane Workers' Union (SITRACAÑA) to the Committee on Freedom of Association. The establishment, through the reforms of joint and tripartite forums did not mean regression in the exercise of freedom of association. On the contrary, the Government was making the participation of employers and workers stronger and more democratic, in accordance with the Constitution. Changes in the legislation had been initiated to extend and comply with trade union rights, eliminating the limitations imposed by previous governments on public employees, which had impeded their right to organize. As a result, the number of trade unions, federations and confederations had increased in the public sector. Workers were key to achieving social, economic and political change. Steps were therefore being taken to ensure that all tripartite and joint forums functioned with the balanced participation and representation of all workers' and employers' organizations representing small, medium and large enterprises. There was not only one employers' organization in the country, but several. Many had found it impossible to participate in tripartite or joint forums because of the hegemony exercised by certain employers' organizations. Public sector unions had been similarly disadvantaged because, as they were not legally recognized, their participation in such bodies had been limited. Under the previous and current governments, trade union freedoms had been expanded and the number of legal and active unions had increased, as had the number of unionized workers. It was the Government's wish that working women and men should have decent living conditions and that their fundamental rights should prevail over essentially economic interests so that the country could be an example of dem-

ocratic practices where trade union rights were exercised in an autonomous manner in coherence with the historic struggles of the working class. The workforce needed to be the driving force behind economic and productive development, and not a commodity dominated by individual interests. In recognition of all the social and labour struggles throughout the country's history, the Government would continue working to ensure that all organized workers could freely engage in trade union activities and achieve, in both the public and private sectors, decent living and working conditions, with decent wages and social benefits, without any kind of discrimination. With regard to the situation of insecurity in the country, the Government shared the workers' concern and was undertaking comprehensive action in the context of the Plan for a Safe El Salvador, which had been formulated with broad social and sectoral participation. The same applied to the Council for Public Safety, composed of representatives of the Government, private enterprise, including ANEP, organized workers, churches, the media and social organizations, with the assistance of the United Nations.

The Employer members considered that the information provided by the Government confirmed its deliberate intention to sideline the most representative employers' organization. This was a legal debate to determine whether law and practice in El Salvador were in compliance with the Convention. The appointment of employer representatives to tripartite forums by the President was contrary to the Convention, as emphasized by the Committee on Freedom of Association. However, it was clear that the Government did not wish to collaborate with the supervisory bodies. Employers were being driven out of all tripartite forums and were being replaced by individuals close to the President. This undermined democratic values. The Employer members requested the Government to take steps to: guarantee the full autonomy of workers' and employers' organizations in tripartite and joint bodies; immediately convene and appoint members to the Higher Labour Council, which should be consulted on the legal reforms needed to guarantee the autonomy of these bodies; revise, under the auspices of the Higher Labour Council, Presidential Decree No. 86 establishing the Presidential Commission on Labour Issues; accept a direct contacts mission to visit the country before the next session of the Committee of Experts to ensure, together with the social partners, that the above actions were taken; accept technical assistance from the ILO to align its law and practice with the Convention; and inform the Committee of Experts at its next session in November 2015 of the progress made on the issue.

The Worker members observed that, while they concurred with the observation of the Employer members regarding equality between workers' and employers' organizations, the terminology used since 1948 had never given rise to any ambiguity that might suggest the contrary and had never stood in the way of the examination of that right in the context of the ILO's work. Apart from the terminology used, which could vary from one country to another, it was a question here of the right to organize collectively and its corollary, the right to collective action, which for the workers meant the right to strike. Returning to the case under discussion, it should be observed that the situation in the country had worsened and the current circumstances called for urgent measures from the Government, in particular regarding the irregularities in the legislation, for which technical assistance would be necessary. It should be noted that the Government had requested such assistance. The latter would relate in particular to the procedure for the registration of trade unions and the requirement imposed on trade unions to certify the status of their members. Those two elements called for precise, effective and prompt legislative amendments.

Regarding the nationality requirement to become a trade union representative and the possibility of joining more than one union, the Government should follow through on the many pledges that it had made and take remedial action as soon as possible. Furthermore, with regard to the murder of Victoriano Abel Vega, the justice system needed to do its work, otherwise there would be an unacceptable situation of impunity in a democratic State which would aggravate the climate of violence and insecurity and have an adverse effect on the exercise of trade union activities. The Government should therefore take all the necessary measures without delay and report on the matters raised before the next meeting of the Committee of Experts.

Conclusions

The Committee noted the oral information provided by the Minister of Labour and Social Welfare and the discussion that followed.

The Committee observed that the issues raised by the Committee of Experts related to: the murder of a trade union leader; observations by the ITUC and IOE; lack of autonomy of workers' and employers' organizations to select their representatives on joint and tripartite bodies; legislative restrictions on the right to establish trade union organizations for certain categories of public employees; requirement for the employer to certify that the founding members of a trade union are employees; requirement to be a national of El Salvador by birth in order to hold trade union office; and, in the event of refusal of trade union registration, the existence of an excessive waiting period before submission of a new application.

The Committee noted that the Minister of Labour and Social Welfare indicated that the Government condemned the killing of trade union leader Mr Victoriano Abel Vega, that it was still being actively investigated at present by the Prosecutor's Office, which was stepping up inquiries to elucidate the facts with the express intention of preventing the crime from going unpunished. The Government was maintaining a constant social dialogue with all social sectors including private enterprise but, contrary to hegemonic practices in the past, with all employers' organizations – small, medium and large – and also with all trade union organizations, including those which had been excluded in the past. Tripartite social dialogue existed in 19 autonomous public institutions and, further to the major reform undertaken and in the light of regulatory aspects, there was a further opening up for the participation of all organizations. With regard to the problems of constituting the Higher Labour Council, the Government representative referred to numerous initiatives and meetings instigated by the Ministry up to June 2015 to resolve the impasse on the basis of democratic, inclusive and representative practices and the regulations in force. She indicated that the existing problem was due to disagreement on the part of the trade union representation, which was divided into two blocks supporting two lists of elected representatives and that the impasse had not been caused by the Government. The Presidential Commission for Labour Affairs which focused mainly on the public sector was a response to the request from the Workers to have a mechanism for direct communication in relation to the Government's Five-Year Plan; and that this labour forum would not replace the mechanisms for tripartite participation. The Government had achieved changes in the legislation in order to guarantee the trade union rights of public employees and in the past five years the number of active trade unions had risen to 464, with 99 unions in the public sector and 35 in autonomous institutions. According to the practice followed by the Ministry of Labour and Social Welfare, trade union organizations whose registration had been refused could submit a new application the following day. The Government had noted the importance of the provisions and issues

referred to by the Committee of Experts and had pledged to ensure compliance with the latter's observations in conformity with the legislation in force. Action was being taken with regard to an automated record of participation of all unionized workers in relation to the various reforms requested by the Committee of Experts.

The Committee recalled the emphasis placed during the discussion on the fact that a climate of violence and insecurity was extremely damaging to the exercise of trade union activities. Moreover, it recalled that the Convention concerned the right of all workers and employers to establish and join the organizations of their own choosing and for their organizations to carry out their activities without government interference.

Taking into account the discussion in this case, the Committee requested the Government to:

- take all necessary measures without delay to identify those responsible for the murder of Victoriano Abel Vega and to punish those guilty of this crime;
- ensure the full autonomy of employers' and workers' organizations in the joint and tripartite decision-making bodies, which necessitated the convocation and immediate setting up of the Higher Labour Council where the legal reforms necessary to guarantee this autonomy should be consulted. In order to achieve this, the Government should abstain from requesting consensus from the trade union confederations and federations for the nomination of their representatives to the Higher Labour Council;
- revise on a tripartite basis in the Higher Labour Council Presidential Decree No. 86, which created the Presidential Commission for Labour Affairs;
- accept ILO technical assistance with a view to bringing its legislation and practice into conformity with the provisions of the Convention; and
- submit a report to the Committee of Experts on the progress made in achieving the full application of the Convention for consideration at its next meeting in November 2015.

The Government representative indicated that the Government had noted the conclusions and would continue to work with a view to achieve compliance with the Convention and progress in relation to labour rights. The Government was committed, through democratic practices and openness for dialogue, to solve the disagreements, in conformity with the national legislation, and reiterated the Government's interest to avail itself of ILO technical assistance.

GUATEMALA (ratification: 1952)

A Government representative emphasized the Government's continued action focused on lawful labour relations, social dialogue and its commitment to the promotion of decent work and freedom of association. With regard to the deaths of trade unionists, since the adoption of the "roadmap" concluded on 17 October 2013 by the Government of Guatemala in consultation with the country's social partners, with a view to accelerating the implementation of the Memorandum of Understanding between the Workers' group of the ILO Governing Body and the Government of Guatemala ("the roadmap"), there had been significant progress in ensuring and respecting freedom of association, strengthening trade unionism and protecting trade union leaders. The Special Representative of the ILO Director-General in Guatemala had aided and witnessed technical assistance activities, including the provision of training to the judicial authorities, the Office of the Public Prosecutor and the Ministry of the Interior, which had been the result of substantial political and institutional efforts and commitment. All the cases had been transmitted to the Special Investigation Unit for Crimes

against Trade Unionists of the Public Prosecutor's Office with a view to improving the monitoring and developing criteria for investigations. A general directive for the effective criminal investigation and prosecution of crimes against trade unionists, members of workers' organizations and other labour and trade union activists had been agreed upon and was being implemented. The Public Prosecution Services were investigating 70 cases, and it should be borne in mind that the country was beset by problems of criminality and violence that affected the entire population. With a view to better dealing with and solving the 58 cases of violent deaths of trade unionists brought before the Committee on Freedom of Association, the Office of the Public Prosecutor and the International Commission against Impunity in Guatemala (CICIG) had concluded a collaboration agreement in September 2013 as part of reinforcement of investigation capacity. The CICIG had found that in only 37 of the 56 cases examined had the victim been a trade union member. The motives for the murders had varied, and only six people appeared to have been murdered as a result of their trade union activities, and in four cases, the connection of the victims with a union was not clear. Proceedings were under way and the results would be reported in due course. The Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists in Guatemala was also being applied to trade unionists. There had been 25 requests for protection made to the Public Prosecution Services. The trade union protection committee held monthly meetings with all trade union organizations as well as weekly meetings with trade union representatives and investigators from the Office of the Public Prosecutor to follow up on cases being investigated. The Ministry of the Interior had set up a direct telephone hotline and, most importantly, the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining had been successfully established. The latter was examining cases submitted to the Committee on Freedom of Association and information would be provided on developments. Regarding legislative matters, the Government had submitted draft legislative reforms to the Tripartite Committee on International Labour Affairs, while the social partners had made their own proposals. As agreement had not been reached, the various proposals, together with the comments of the Committee of Experts, had been forwarded to Congress. With ILO assistance, the Government would continue its efforts to ensure that freedom of association and collective bargaining were respected. He therefore requested the strengthening of ILO presence in Guatemala.

The Employer members said that this case had been addressed on numerous occasions and was being examined by several ILO bodies through various mechanisms, and they therefore considered that, as it was before the Governing Body, the present case should not be examined by the Conference Committee. In addition to the complaints before the Committee on Freedom of Association, various matters considered serious and urgent relating to freedom of association and workers' rights were covered by an article 26 complaint to the Governing Body. The case contained several elements, among which the murders of trade unionists affecting the peaceful exercise of freedoms should be highlighted. Over recent years, further murders had been reported. The case also referred to legislative issues, the application of the Convention in practice, registration of trade unions and rights in the *maquila* (export processing) sector. With regard to the murders, 58 cases were being examined by the Committee on Freedom of Association, 12 of which since 2013. At the national level, in addition to the Public Prosecutor's Office, there was the CICIG, which was an international investigation body

and which had analysed 37 cases, six of which were related to trade union activities. The CICIG had made suggestions for improving investigation methods. Most of the murders had occurred in areas of the country that were particularly violent and it had not been demonstrated, at least during the present discussion, that there was a practice of killing trade union members. The Special Investigation Unit for Crimes against Trade Unionists established in the Office of the Public Prosecutor had been strengthened, and there was also a mechanism for the protection of trade union leaders and members. The Government had adopted measures. An ILO high-level mission had also visited the country and a Special Representative of the ILO Director-General had been sent to the country to provide close and direct support for the required changes in law and practice. A request had been submitted to the Governing Body for the appointment of a commission of inquiry, and the Conference Committee was also examining the same allegations. It was therefore necessary to define the approaches and the most effective mechanisms for the proper examination of the application of Conventions and government replies to the supervisory bodies. With regard to legislation, several points needed to be emphasized, such as the number of members required to establish a union, and the requirement to be nationals of Guatemala and to work in the enterprise to be able to be elected as a trade union leader. These limitations should be reviewed. With reference to nationality, it should be understood that there was reasons of national sovereignty for limiting foreign nationals in trade union executive bodies. The Employer members had described in detail in their intervention during the general discussion of the General Report of the Committee of Experts their disagreement with the views of the Committee of Experts concerning Convention No. 87 and the right to strike. They emphasized that as there were no ILO standards on strikes, the scope and conditions of the exercise of the right to strike should be regulated at the national level, a position that had also been endorsed by the Government group in its position statement at the tripartite meeting held in February 2015, and endorsed by the Governing Body in March 2015. The Employer members reaffirmed their intervention during the discussion of the General Report that as there was not a specific standard on strikes, governments could legitimately adopt a different approach to strikes, to be determined at the national level. Regarding the roadmap and the application in practice of the Convention, certain institutions were operational and social dialogue should be prioritized to address the problems. There were two trade union organizations and awareness-raising campaigns in the *maquila* sector and information had been requested on their impact. In conclusion, this case, as it was on the agenda of the 324th Session (June 2015) of the Governing Body, should be settled by the Governing Body and not the present Committee.

The Worker members said that the Government of Guatemala had been conspicuous in having been invited to appear before the Committee on 21 occasions over the past 25 years. Such frequent inclusion of the country in the Committee's list stemmed from the fact that it systematically refrained from taking corrective measures in response to the observations and conclusions of the ILO supervisory bodies in the field of freedom of association and collective bargaining. In many cases, the Government had simply chosen not to reply. Despite the conclusion of a Memorandum of Understanding and the Government's commitment to follow a roadmap with respect to labour policy, and also the dispatch of technical missions and a high-level mission by the ILO, the Worker members observed that no substantial progress had been made. With regard to trade union rights and civil liberties, the Worker

members deplored the fact that no light had been cast on the cases of 74 trade union members who had been assassinated over the past ten years, including 16 trade unionists in 2013 and 2014. Analysis of the report submitted to the Committee of Experts by the Government confirmed that none of the perpetrators of these crimes had been arrested to date. Moreover, no progress had been made on constructing a normative and institutional framework to protect workers against violations of their rights. In addition, no specific measures had been taken to ensure the free exercise of freedom of association in a climate in which trade union leaders and their families could be safe from all violence, pressure and threats. The Government had not paid sufficient attention to workers' human rights. Rather than focusing its efforts on positive measures aimed at meeting its commitments towards the ILO, it had adopted measures that ran counter to decent work and workers' rights. Such measures had been imposed without any consultation with the trade unions, which constituted a clear violation of the Conventions on collective bargaining and freedom of association. Furthermore, the unilateral announcement by the Government regarding non-renewal of collective agreements in the public sector was an infringement of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Even though the Government imputed that measure to the need to tackle the budget deficit, it should not refuse to negotiate, as this would constitute a flagrant violation of ILO Conventions. With regard to the serious problems of anti-union discrimination in the *maquila* sector, the legal obstacles, lack of inspections and slowness of the labour courts partially explained why there were only three enterprise unions and one collective agreement in the sector, which employed some 70,000 workers. In the majority of cases, the Government had not guaranteed the reinstatement of workers who had been dismissed illegally even though it had additional instruments that would have enabled it to revoke tax incentives and other advantages granted to exporters. Anti-union discrimination thus persisted in the sector, despite the Government's indications. With regard to legislative issues, the Worker members regretted that the Employer members did not agree with the observations of the Committee of Experts. They expressed their concern at such a position being used as a pretext by the Government not to submit draft legislation to the Congress. Legislative reforms were sorely needed to enable the labour inspectorate to fulfil its mandate. With regard to the registration of trade unions, the Worker members emphasized that the labour judges and magistrates recognized themselves that there was an extremely high number of instances of non-compliance with court rulings ordering employers to reinstate individuals who had been dismissed for establishing trade unions. The obligations in question had never been fulfilled and, on the contrary, the processes for the selection of magistrates for the Supreme Court of Justice and the Court of Appeal clearly showed the total absence of judicial independence. Those processes were not in conformity with international standards, especially as far as their objectivity and transparency were concerned. In conclusion, the Worker members considered that the Government had failed to honour all of its commitments made in the context of the roadmap and had persisted in its indifference towards the repeated recommendations of the ILO supervisory bodies. Moreover, the Government had been brought before an arbitration board for systematic non-observance of its own Labour Code. The Worker members deplored the fact that the lack of significant progress was not due to a lack of instruments or resources, but the persistent lack of will by the Government. They welcomed the presence of the Special Representative of the ILO Director-General in Guatemala and considered the

support of the international community to be of incalculable importance in view of the gravity of the situation concerning trade union rights.

The Employer member of Guatemala contested the fact that the present case was being discussed by the Committee as the facts under discussion had served as the basis for the complaint lodged under article 26 of the ILO Constitution, which would once again be examined by the Governing Body. The requirements of the roadmap were being complied with. The employers in the country were actively participating in tripartite forums, particularly in the framework of the elaboration of draft legislation in response to the comments of the Committee of Experts. There was the hope that the draft legislation would be submitted to Congress in the near future. Another issue on which the employers in the country were actively working was the awareness-raising campaign concerning freedom of association. With regard to the acts of violence, the ILO missions had managed to verify the will of the Office of the Public Prosecutor to solve the issues that had been raised by the Committee of Experts in its report. In any case, account should be taken of the information provided by the CICIG, which indicated that most of the crimes that had been reported as acts of anti-union violence had had in reality other causes. That was not an excuse for those crimes to go unpunished. He acknowledged that it would be very difficult for the Committee to solve the problems caused by the wave of criminality that affected the country, which went beyond the field of labour. The efforts that were being made by the Special Representative of the Director-General and the Committee for the Settlement of Disputes before the ILO were to be welcomed.

The Worker member of Guatemala welcomed the appointment of a Special Representative of the ILO Director-General in Guatemala, with a far-reaching role. The observations of the Committee of Experts were based not only on the usual sources, but also on information collected by ILO missions. The latest mission to visit the country in May 2015 had confirmed that the issues raised by the Committee of Experts had still not been resolved. Violations of human and civil rights in the country continued to be a serious problem. Up to now, no individuals had been imprisoned for the murders committed. A request had been made for an agreement to be reached with the CICIG to investigate these crimes, but there had been no response. Regarding the roadmap, there were no significant changes worth noting, as the Government had yet to move from general measures to specific action to protect trade unionists. Concerning the legislative reform which limited freedom of association, no progress had been made. On the registration of trade unions, nothing had improved, and statistical information was being sought on registrations and collective agreements. The Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining had not addressed these issues and had only just started to examine a few cases, with little progress being achieved so far. Violations of trade union and labour rights were serious and were becoming more intolerable every day. The Government had failed to take advantage of the opportunity presented by the roadmap to take really significant action on the issue. Such commitments, which involved social and institutional change, required genuine participation by workers in identifying issues, developing solutions, and applying and monitoring those solutions. The trade unions were willing to meet to move forward in that regard, as the current labour situation left no room for delay.

The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), recalled that the Government of Guatemala

had appeared before the Governing Body on six occasions and one discussion of the present Committee to address the case. The Government had reiterated its commitment to the ILO supervisory bodies and had provided regular information on the situation and on the strengthening of the relevant institutions in the country. The Committee of Experts had noted that the Government was taking all possible steps to combat violence and impunity. She appealed to all sectors to continue working together to implement the measures agreed upon and any other measures that might be agreed to on a tripartite basis in the future. GRULAC was confident that the constituents would pursue their efforts to apply the Convention and supported the request to strengthen ILO presence in the country. Lastly, the parallel use of different mechanisms to address the same allegations continued to be a matter of concern, as it could weaken the functioning of the ILO supervisory bodies.

The Employer member of Panama said that it was not clear why the case had been included on the list of individual cases for examination by the Committee, as there had been a procedure since 2012 under article 26 of the ILO Constitution on the same issues. Since the complaint had been lodged, measures had been taken and concrete results had been achieved, such as the signing of the Memorandum of Understanding, the appointment of a Special Representative of the Director-General of the ILO, the preparation of a roadmap in October 2013, the creation of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, and the high-level mission of September 2014. The Government had demonstrated its willingness to comply with the commitments made in the roadmap. The efforts made by the ILO to promote the creation of dialogue round tables and to help the country to solve its problems were very important and had been fruitful. Guatemala was the third country in Latin America which was endeavouring in good faith to replace the tradition of confrontation with social dialogue and had offered proof that it was working to fulfil those objectives. For that reason, the discussion of the case was in contradiction with the aims of the ILO, especially since it was already under examination by the Governing Body.

The Government member of Norway, also speaking on behalf of the Government members of Denmark, Finland, Iceland and Sweden, said that trade unionists should under no circumstances face harassment, intimidation, and certainly not death. While noting the information provided by the Government, she expressed serious concern about the persistent threats experienced by trade unionists and that little tangible progress had been made. During the discussion at the 323rd Session (March 2015) of the Governing Body on the article 26 complaint, the governments of the Nordic countries had supported the appointment of a Commission of Inquiry. She called on the Government to comply with its commitments regarding individual freedoms and public participation, the rule of law and legal protection. She urged the Government to take action for the investigation, prosecution and conviction of the perpetrators of the murders of trade unionists as well as other acts of violence. She expected that the Government would promptly take all the necessary measures to ensure the protection of trade union officials and members. She urged the Government to adopt the necessary reforms to align the national legislation with the Convention. The Congress of Guatemala should adopt on an urgent basis the legislative reforms requested by the Committee of Experts. The ILO was playing an important role in implementing the Memorandum of Understanding, but the Government had not taken sufficient advantage of that support. She urged the Government to strengthen its efforts to give effect to commitment to the roadmap and the

Memorandum of Understanding, and she encouraged it to deepen and strengthen its engagement with the ILO, as well as with the social partners.

An observer representing Public Services International (PSI) said that up to now the crimes against trade union leaders had still not been punished. Several trade union leaders were under threat and had lodged complaints, that had gone unanswered. Impunity in the public service fuelled corruption, nepotism and the removal of workers' collective rights and prerogatives. Short-term contracts and precarious work, without any type of social security or minimum benefits, were the Government's preferred tools to maintain strict control over workers. Collective agreements were banned on the pretext of the need to deal with the huge fiscal deficit. There was a media campaign against the main trade unions, and therefore on collective bargaining. The Government refused to comply with the collective agreements that had been concluded or to participate in joint committees. The existence of "yellow unions" was also a major problem, as they entered into collective accords that reduced workers' protection. The political climate was becoming increasingly volatile, which was having a major impact on the provision of public services, working conditions and trade union rights. The prevention of violence, the development of a culture of peace and dialogue, democracy and high-quality public services were key elements in ensuring the future that the country deserved. For these reasons, he called for the urgent establishment of a round table for the public sector in the Ministry of Labour and the creation of a permanent ILO office in Guatemala.

The Government member of Honduras said that his Government supported the statement made by GRULAC. It was the seventh time that the case had been discussed since November 2012. He welcomed the continuous co-operation between the Government and the ILO supervisory bodies. He trusted in the Government's openness and willingness to engage in dialogue with all social partners and in its commitment to continue working with assistance from the ILO. He encouraged the Government to continue working to apply the Convention effectively.

The Worker member of Colombia said that anti-unionism was systematic in Guatemala. As such, the measures that had to be taken should go further than the creation of round tables for dialogue and promises of legislative change. An ambitious plan was required to establish freedom of association. In this case, as in no other, the ILO was providing proof of its effectiveness and utility. In Guatemala, the situation was characterized by impunity and a persistent generalized atmosphere of violence against trade unionists. There had been no significant progress in investigating acts of violence, and the protection measures taken bore no relation to the severity of the circumstances, and were therefore ineffective. There was a legal and institutional blockage of freedom of association, and the Committee of Experts had urged the Government to take steps to amend the Labour Code. Legal obstacles made it impossible to exercise trade union rights, including the right to strike, which was an integral part of the right to organize protected by the Convention. Trade unions were an example of democratic resistance and had held mass demonstrations to voice their anger at violence and corruption. The conclusions of the Committee should go beyond the expression of the usual concerns and general calls on the Government to accept ILO technical assistance and should specify the elements and deadlines of a plan to overcome the problems identified during the discussion.

The Employer member of Honduras indicated that it was curious that the case was being discussed once again, as it was under examination by the Governing Body under article 26 of ILO Constitution. The case should not there-

fore be discussed by the Committee. The Government was complying with its commitments in relation to the Special Representative of the Director-General and this case should be considered a case of progress as well as an appropriate, effective and ongoing intervention of the ILO. All of that was well-known to employers' and workers' organizations, which needed to work together to improve the labour environment in the country. Support should be provided for the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining, which had a tripartite structure and reported good results.

The Government member of Switzerland emphasized that the serious acts of violence against leaders and members of trade unions, including alleged assassinations, were a matter of great concern. She echoed the regret expressed by the Committee of Experts concerning the situation and climate of violence and impunity that continued to prevail in Guatemala. New allegations of assassinations of trade unionists had emerged since the adoption in October 2013 of the roadmap to accelerate the implementation of the Memorandum of Understanding between the Government of Guatemala and the Workers' group of the Governing Body. In this regard, she noted the efforts of the Government, particularly the establishment of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining and with the assistance of the Special Representative of the ILO Director-General, which contributed to the application of the Convention in practice. She also fully supported the request of the Committee of Experts that the Government investigate, without delay, all those allegations of violence and take rapid measures to ensure the adequate protection to trade union leaders and members. She commended the renewal of the mandate of the CICIG as a positive signal.

The Worker member of Spain, also speaking on behalf of the Confederation of Workers of Argentina (CTA Workers), the Confederation of Workers of Argentina (CTA Autonomous) and the General Confederation of Labour of the Argentine Republic (CGT RA), said that Guatemala had not allowed the Convention to be applied effectively since its ratification. The report of the Committee of Experts described some extremely serious events over many years that showed evidence of a resurgence. Reprehensible acts of violence against trade unionists, civil society leaders and rural workers, including 70 murders, were continuing with total impunity. Freedom of association was an inherent right in a democratic society, and civil liberties, especially respect for human life, were a vital prerequisite for the exercising of freedom of association. Losing that right would be detrimental to other civil guarantees concerning labour. There was an alarming gulf between law and reality in Guatemala. The Government must comply with the Committee's conclusions. She recalled the conclusions of the missions and the supervisory bodies concerning the situation in the country, which observed the lack of progress and expressed profound concern. Murders were still occurring and there were systematic violations of civil liberties. Neither the rule of law nor democracy existed in the country. Collective bargaining was severely hampered by the actions of the State, which delayed the approval of collective agreements and prevented collective bargaining in the *maquila* sector. This ongoing policy of elimination of trade unionism needed to be seen in conjunction with the impunity of state and para-state forces, and with the ineffectiveness of the justice system, as almost no murders of trade union leaders had been solved. In conclusion, he proposed the creation of a special ILO permanent mission to monitor the situation, take action and assist the Government in its legal reforms and practice.

The Government member of the United States said that serious violations of freedom of association, including acts of violence against trade unionists, the need for the reform of the Labour Code and the lack of full respect of trade union rights in the *maquila* sector, persisted in Guatemala. While the Government had regularly informed the ILO supervisory bodies of its plans to bring law and practice into compliance with international standards, both the reports of the Committee of Experts and of the Governing Body indicated that this goal had not been achieved. The investigation and prosecution of murders and other acts of violence against trade unionists required additional and urgent action. Some measures had been taken to improve the effectiveness of investigations, but significant steps were still needed to identify and prosecute perpetrators of violence and to protect trade union members at risk. The enforcement of labour laws respecting the right to freedom of association and to collective bargaining remained inadequate. She expressed concern at the Government's consistent failure to investigate effectively and sanction adequately anti-union retaliation. Measures had to be taken in this regard. Action was also needed to enforce compliance with court decisions, particularly in cases of anti-union discrimination and unfair dismissals in which the court had ordered the payment of back wages and reinstatement. The lack of protection for the right of workers to organize and to engage in collective bargaining had a negative effect on unionization, particularly in the *maquila* sector, in which there were only three active unions. She urged the Government to make all the necessary efforts to address these issues as a matter of urgency, and to provide information to the ILO on any steps taken. She looked forward to a review of the government report on the 2013 roadmap submitted to the Governing Body at its 324th Session (June 2015).

The Worker member of Honduras said that the Government, through acts of intimidation and repression which prevented the establishment of trade unions, was denying workers the right to organize as guaranteed by the Convention. He recalled that the Convention allowed the right to strike, but in Guatemala, persons who went on strike endangered their life and were subjected to threats and persecution, which were methods used to intimidate those who dared to exercise their rights. He hoped that the various interventions during the discussion would lead to action to ensure respect for freedom of association and the right to strike, in accordance with the Convention. He considered that ILO assistance had been important, but that the Government had not complied with all the recommendations made. He urged the ILO to establish mechanisms to guarantee good enterprise practices and the existence of trade unions and respect for union activities by workers' representatives. The most sacred human right was the right to life and nothing could justify taking this right away from union leaders who defend labour rights and the improvement of the lives of workers.

The Employer member of El Salvador believed that the serious acts of violence that were occurring in Guatemala and El Salvador were mainly due to lack of appropriate government policies and the lack of coordination between the various public entities involved, including the police, prosecutors and the CICIG. These problems were also due to the lack of adequate training for judges, police inspectors and prosecutors, especially regarding the use of science and technology which, despite the progress made in recent years, were still not being used fully in Central American countries. He referred to the example of DNA analysis laboratories which, if they employed staff specialized in evidence gathering, could greatly contribute to reducing impunity. According to recent studies, more than 93 per cent of the most serious offences committed in Guatemala, Honduras and El Salvador were not solved by

the authorities, which explained the lack of credibility of the criminal justice system. He shared the indignation of the Worker members that the murder cases discussed had still not been solved. Central American countries needed more effective security policies, and a better coordination between the police, prosecutors, judges and forensic science for the operation of the criminal justice system. This was particularly important as it affected private investment, and therefore job creation. He admitted that the case of Guatemalan trade union leaders was a problem that also affected the countries in the northern part of Central America. He supported the position of the Employer members that the report submitted to the Governing Body provided evidence that progress was being made in the investigations. As there was already a complaint under article 26 of the ILO Constitution regarding this case and the Committee for the Settlement of Disputes before the ILO was achieving positive results, he believed the case should continue to be dealt with by the Governing Body, rather than the present Committee.

The Government member of Belgium expressed concern at the climate of violence that prevailed in the country. Investigations into the murders of some 20 trade unionists had still not been completed and the situation of impunity persisted, as confirmed by the report of the CICIG which had been sent to the ILO. In addition, various legislative measures that had been announced, such as the protocol for the implementation of security measures, had not been adopted by the Government. Even though the case had been on the Committee's agenda for a number of years, and despite the adoption of the roadmap in 2013, nothing suggested that sufficient progress had been made to bring an end to the killings and violence. One murder of a trade unionist was one murder too many and a climate of violence meant the absence of the rule of law. The Government needed to implement specific and determined measures to ensure observance of the Convention, which would be the subject of close scrutiny at the next session of the Governing Body in November 2015.

The Worker member of the United States indicated that there were two reasons why this case should be discussed by the Committee. The first reason was the number of murders of trade unionists in the country. The second was the ineffectiveness of governments in applying ILO standards to protect workers' rights in the context of trade. The Central American Free Trade Agreement (CAFTA) concluded between Guatemala and the United States in 2006, required both countries to recognize and protect freedom of association and other rights included in the ILO Declaration on Fundamental Principles and Rights at Work of 1998. The Conference Committee had raised serious concerns regarding the application of the Convention in Guatemala before the entry into force of the CAFTA. The Committee on Freedom of Association had heard 25 cases regarding Guatemala. The Workers' group had filed a complaint under article 26 of the ILO Constitution. However, Guatemala continued to receive trade benefits without demonstrating its compliance with the Convention. In 2008, the unions of Guatemala and the United States had filed a complaint concerning abuse of labour rights under the labour chapter of CAFTA. Since then, efforts to address the situation in Guatemala had been made through consultations and dispute settlement mechanisms under CAFTA. Evidence presented during this process had demonstrated systematic failure by the Government to enforce laws on freedom of association. A report by the United States Government Accountability Office, published in November 2014, documented violations of freedom of association in Guatemala, including: attempts to bribe union leaders to encourage them to quit their jobs and discourage workers from joining a union; firing workers for their union affiliation or for not dis-

banding unions; non-enforcement of relevant laws; inadequate budgets to investigate, prosecute and punish perpetrators of violations of freedom of association; and the failure to reinstate illegally dismissed workers. Virtually the same information had been sought under the ILO and the CAFTA mechanisms, but no sufficient evidence of progress on these violations had been provided by the Government under either process. Neither process had offered remedies to the workers concerned. In conclusion, he recalled that the instruments supervised by the Committee played a role in protecting rights outside the ILO and its supervisory mechanisms, and that ILO fundamental Conventions were increasingly being used to underpin agreements on trade and workers' rights between member States, although they were failing so far to offer the hope of globalization with social justice.

The Government representative said that he had taken note of the points raised by the participants in the discussion. The country's major structural problems had and would take time to resolve. All sectors would have to be involved, just as they would have to appreciate the positive side of the changes required by globalization and the technological era. Labour issues, which had been completely disregarded by previous governments, were no exception. The current Government intended to address those issues in a responsible manner, despite the difficult context and repeated complaints to ILO bodies, and would continue to follow up the issues that were being discussed in Committee, as well as others, with a view to improving the circumstances of the approximately 80 per cent of citizens who were not fully employed. The Political Constitution of Guatemala guaranteed freedom of association as a fundamental human and trade union right. That was why legal provisions had been adopted to ensure that freedom of association was respected, and it was the Government's duty to establish the necessary safeguards. The reform of the Labour Code that increased the power to impose sanctions was currently before Congress, whose responsibility would be to adopt a text that was in line with the Constitution. The impact of measures guaranteeing the right to organize was visible. The functioning of the labour courts had improved and proceedings were now more rapid, in particular with respect to decisions to refer cases to the Office of the Public Prosecutor of persons who had not given effect to court rulings. In 2014 alone, 987 such decisions, and some 476 already in 2015, had already been made, which meant that those guilty of not giving effect to a court ruling might face penal proceedings. As a result of the protection measures introduced recently, trade union leaders now enjoyed protection, and there had been convictions in 58 cases of violent deaths of trade unionists. Examples included the murder of Luis Arturo Quinteros Chinchilla, who was not a trade union member, who had been attacked with a firearm during a fight in a car park, and Luis Ovidio Ortiz Casos, a union leader, murdered by a minor and two youths involved in criminal activities. The Government had the courage to take the action that was still needed, together with the other state bodies, in the hope that the social dialogue that had been developed in recent years would remain permanently. Finally, he announced that, in view of the total readiness of Guatemala's workers to collaborate, a tripartite decision had been made to hold a tripartite meeting the next day with Conference delegates to address the issues under debate.

The Worker members said that they would have preferred not to have to address the murders of trade unionists, as that would mean that the Government had implemented all the conclusions of the supervisory bodies. They referred to the comments made during the discussion questioning whether dealing with this case in the Conference Committee and the Governing Body might

undermine the supervisory system. The problem was that no real will had been shown by the Government in either body. There was no choice but to seek approval for the establishment of a Commission of Inquiry under article 26 of the ILO Constitution. In October 2013, the Worker members had agreed to give the Government one last chance and had agreed to the tripartite roadmap to address some of the issues raised by the supervisory mechanisms. Over 18 months had passed since then, and more than a year had elapsed since the deadline for compliance, but there had been no progress on the substantive issues. The time granted to Guatemala had now run out. Significant technical assistance, most recently for the judicial system, had been already provided. There had not been any political will by the Government to establish the rule of law, as demonstrated by the fact that high-ranking officials were involved in illegal activities. Trade unionists were being murdered and dismissed for their union activities. Labour inspection was not effective. The rare court rulings that upheld workers' rights were ignored with impunity. There were no trade unions in the garment sector. This case could not be discussed for another 25 years. They urged the members of the Committee who were also members of the Governing Body to support the establishment of a Commission of Inquiry at the November 2015 session of the Governing Body. The Worker members further called for: the Government to implement the roadmap, including the amendment of the relevant legislation, and to accept the support of the CICIG to reopen investigations into crimes against workers and trade union members; the Government to institutionalize tripartite consultations on all matters covered by the Convention; and the representative of the Director-General in Guatemala to produce a detailed report on the implementation of the roadmap for discussion at the November 2015 session of the Governing Body. They called for the conclusions of the case to be included in a special paragraph of the report of the Conference Committee.

The Employer members, taking note of the different views expressed on developments in the situation in the country, considered that the ILO, through its special representative, should continue its process of observation, support and assistance so that the institutions could operate more effectively. In Guatemala, the institutional structure was adequate and confidence should be placed in the authorities, affording them assistance so that they had the necessary mechanisms. Noting that support for the CICIG would demonstrate the Government's political will to make progress with the investigation of criminal acts committed against trade union members, the Employer members called for the work of the CICIG to be strengthened and supported the proposals made by the Worker members in that regard. They also emphasized the importance of pursuing social dialogue and strengthening bodies in order to arrive at joint solutions. In particular, the Committee for the Settlement of Disputes under the ILO should be strengthened and that the experience of other countries could be useful in that respect. In addition, progress should continue to be made on all the elements of the roadmap, taking into account the observations and comments already made by the Employer members in their first intervention. The Office of the Public Prosecutor should also take decisive action to ensure that investigations were carried out more rapidly and progress should be made on coordination through inter-ministerial agreements, leading to concrete results on the investigation of crimes. The protection of trade union members should be ensured by allocating the necessary resources. It was also important to continue with the programmes for investigators and prosecutors with a view to facilitating investigations in these areas. With respect to legislative issues relating to the right to strike, the Employer members indi-

cated that these issues should be addressed by the competent body in accordance with Guatemalan domestic legislation, and hoped that the most appropriate mechanisms could be found through social dialogue. As the questions raised were being addressed in the context of the various cases that were before the Committee on Freedom of Association, and that they would be discussed in the next session of the Governing Body, the Employer members considered that it should be for the Governing Body to decide on the best approach to be adopted.

Conclusions

The Committee took note of the oral information provided by the Minister of Labour and Social Protection on the issues raised in the Report of the Committee of Experts and the discussion that followed.

The Committee observed that the issues raised by the Committee of Experts principally related to: (i) numerous murders of, and acts of violence against, trade union leaders and members and the need for these events to be properly investigated and punished and for rapid and effective protection to be given to trade union leaders and members at risk; (ii) the need to bring various aspects of domestic legislation into conformity with the provisions of the Convention, including the requirements for forming industrial trade unions, the conditions for election as a union leader, and the exclusion of various categories of public sector workers from enjoying the right to organize; and (iii) recurrent comments from trade union organizations denouncing, on the one hand, the practices of the Ministry of Labour and Social Protection, which allegedly made it difficult to register trade union organizations freely, and, on the other, serious problems with the application of the Convention in relation to trade unions' rights in the *maquila* sector.

The Committee took note of the Minister of Labour's emphasis on the Government's commitment to decent work and freedom of association, as could be seen in the following results related to the application of the Convention: (1) the Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor was now centralizing the investigation of all such cases (70 in total); (2) a general instruction on investigating and prosecuting these crimes had been agreed between the Office of the Public Prosecutor and a technical group from the trade union sector and was now in effect; (3) of the 58 cases of violent death under investigation, convictions had been handed down in eight and ten arrest warrants had been issued in other cases, while an arrest warrant had been requested in one further case; (4) in Guatemala, as in other countries in the region, there was a problem with criminality and violence affecting the population in general; (5) the Office of the Public Prosecutor and the International Commission against Impunity in Guatemala (CICIG) had signed a collaboration agreement in 2013 to build investigation capacity; (6) from an examination of 56 criminal cases, it appeared that a significant number of victims were not members of trade union organizations and that in the majority of cases the motives were unrelated to trade unionism (gang related, extortion, etc.); (7) 25 requests for protection of trade unionists had been submitted under the protocol for the implementation of immediate preventive security measures to protect human rights defenders in Guatemala; (8) an emergency telephone line had been set up to deal directly with threats of violence against trade unionists; (9) at present, failure to abide by court rulings could give rise to criminal proceedings and hundreds of breaches had been reported; and (10) Congress was seeking to strengthen the power of the labour inspectorate to impose penalties for labour violations. In addition, tripartite dialogue had been strengthened. In that regard, a Special Committee on the Handling of Conflicts referred to the ILO in the areas of freedom of association and collective bargaining had been set up and begun examining cases. In addition, the Govern-

ment had submitted draft legislative reforms to the country's tripartite body relating to the comments of the Committee of Experts. When an agreement had not been reached, the draft, including the comments of the social partners, had been transmitted to Congress. The Guatemalan tripartite delegation had agreed to meet during the Conference to address all the above issues at once and make progress. Lastly, he expressed appreciation for the technical assistance and training for public institutions provided by the Special Representative of the ILO Director-General in Guatemala and requested that the Special Representative's office be strengthened.

Bearing in mind the discussion, the Committee requested the Government to:

- take note of the Committee's regret at the murders of unionized workers referred to in the observation;
- apply the roadmap to combat violence and impunity, and in particular, to: (i) reach an agreement with CICIG on investigating cases of trade union deaths with a view to arresting and charging those responsible, including the instigators; (ii) strengthen the Unit for Crimes against Trade Unionists; (iii) guarantee that meetings of the Trade Union Round Table for Comprehensive Protection would be held, with the participation of the social partners; (iv) reinforce the programme to protect trade unionists and allocate additional financial resources to cover all leaders requiring protection; (v) guarantee the application of the Framework Agreement for cooperation among the various international agencies in order to facilitate exchange of information on crimes against trade unionists; (vi) ensure that investigators and prosecutors within the Public Prosecution Services receive training, in collaboration with the ILO; and (vii) guarantee the functioning of the emergency telephone line set up in May 2015 for submitting complaints of failure to respect freedom of association;
- institutionalize participation by the social partners in formulating policy within the various social dialogue bodies, particularly the Economic and Social Council, the Tripartite Commission on International Labour Affairs and the Special Committee on the Handling of Conflicts referred to the ILO, in order to find solutions to problems arising in practice on labour matters, and, in consultation with the most representative workers' and employers' organizations, prepare a bill based on the comments of the Committee of Experts and submit it to Congress as a matter of urgency and bring domestic legislation into conformity with the Convention, as stipulated in point 5 of the roadmap; and
- continue activities with the Special Representative of the ILO Director-General, with technical cooperation support, so that the Special Representative can prepare a report on the implementation of the roadmap, to be submitted to the Committee of Experts at its next meeting and to the Governing Body before its November 2015 Session.

The Committee requested the ILO to continue supporting the Office of the Special Representative of the ILO Director-General in Guatemala.

The Government representative took due note of the conclusions. He reiterated the commitment made by the Minister of Labour who stated that the Government will continue to follow up on these issues with due consideration.

KAZAKHSTAN (ratification: 2000)

The Worker members deplored the fact that the Government had not felt the need to appear before the Committee on the Application of Standards, even though Con-

vention No. 87 was not only one of the eight fundamental ILO Conventions but also the cornerstone of collective bargaining, social dialogue and the ILO itself. In its 2012 observation, the Committee of Experts had already formulated a series of comments to the Government regarding the application of the Convention. The Government had then sent copies of two draft laws on trade unions and employers' organizations to the Office for technical guidance. Despite several minor changes, the new Law on Trade Unions had entered into force in July 2014 without taking into account the key changes proposed by the Office, thus prompting several comments from the Committee of Experts. They maintained, in this connection, that the application of the Convention could be summarized as comprising seven principal issues. First, trade unions were not authorized until they had been registered and, in order to remain registered, local and regional trade unions had to affiliate to a national confederation within six months. That registration procedure could seriously restrict freedom of association, as demonstrated by the refusal of the Ministry of Justice to register the Confederation of Free Trade Unions of Kazakhstan (CFTUK) on 25 May 2015. Second, the new law established strict rules concerning the establishment of sectoral and territorial trade unions. Sectoral trade unions had to include at least half of the workers in the sector or half of the trade unions in the sector. Such thresholds were, according to the Committee of Experts, contrary to Article 5 of the Convention. Moreover, all enterprise unions were required to be affiliated to a sectoral trade union and all sectoral trade unions had to belong to a national trade union. It was furthermore mandatory for territorial trade unions to join territorial organizations created by national trade unions. That complex and compulsory structure made it impossible to establish independent trade unions, thereby undermining the very essence of freedom of association, which presupposed the freedom to choose the structure of organizations. Third, judges did not always have the right to form trade unions and, according to the Committee of Experts, the present union, the Union of Judges of the Republic of Kazakhstan, did not constitute a workers' organization within the meaning of the Convention. Fourth, neither firefighters nor prison staff could establish trade unions, whereas the only exclusions from the right to organize authorized by the Convention were members of the police and the armed forces. Fifth, the right to strike of numerous categories of workers was severely restricted. This was the case with workers in "dangerous industrial activities" (concept that was not defined by the legislation), and with workers in round-the-clock industries and industries providing various public services. In those various cases, the legislation provided that strikes should not jeopardize the maintenance of services or the meeting of users' essential needs, which was why it was necessary to remind the Government that a minimum service should remain a minimum service and that workers' organizations should be able to participate in defining it. With regard to the prohibition of the right to strike in the public service, even though the Government had made it clear to the Committee of Experts that it did not cover certain categories, such as teachers, doctors or bank employees, it should be recalled that the ban on the right to strike should be limited to civil servants exercising authority in the name of the State. On account of their scope, the abovementioned prohibitions and restrictions on the right to strike constituted a significant infringement on trade unions' right to collective action. Sixth, the legislation still forbade trade unions from receiving assistance from international organizations, which was a clear violation of the Convention. Seventh, since the start of the year, trade union activities were even more threatened by the entry into force of a new Code on Administrative Vio-

lations and a new Penal Code whose provisions were sufficiently vague to allow them to be applied selectively. The new Administrative Code reinforced the responsibility of the leaders and members of public associations in the event of actions not provided for by their constitutions, without specifying which actions would thus be covered by the law. The new Penal Code reaffirmed that foreign funding of trade union organizations and calls for illegal strikes constituted criminal acts. The new Penal Code also introduced the concept of leader of a public association and provided that the latter could be held criminally liable in the event of violation of various existing laws. The arbitrariness made possible by the abovementioned new provisions inevitably evoked the Zanaozen tragedy of 2011 and the resultant plight of the strikers who had been sentenced to several years in prison or in a penal colony.

The Employer members joined the Worker members in deploring the Government's failure to appear before the Committee. Such failures prevented the Committee from exercising a key part of its mandate, which was the evaluation of the information and views supplied by governments. They regretted that the Government was unable to indicate whether it had amended the minimum membership requirement laid down in section 10(1) of the Law on Public Associations, in line with the request of the Committee of Experts. As concerned the Law on the National Chamber of Entrepreneurs, she recalled the various concerns the Committee of Experts had raised with respect to a number of its provisions, including: section 5, which empowered the Government to approve the maximum membership fees to be paid by members of the Chamber; section 9, which apparently granted the Chamber the exclusive right to represent the employers of Kazakhstan in international bodies; and section 19, which empowered the Government to participate in the Chamber and veto its decisions. These provisions, which collectively infringed upon the freedom of association rights of employers' organizations and threatened their independence from the Government, were deeply problematic. They called on the Government to take all measures requested by the Committee of Experts regarding the Law's amendment, so as to guarantee the full autonomy and free functioning of employers' organizations, and to consider accepting the technical assistance of the Office in this regard. With regard to section 106 of the Civil Code and article 5 of the Constitution, which prohibited the receipt of financial assistance to national trade unions from international organizations, they emphasized that these provisions violated the rights enshrined in the Convention and urged the Government to remove this prohibition, as per the Committee of Experts' request. With respect to the strike provisions laid down in section 303 of the Labour Code, they recalled that their views on this particular issue diverged from those of the Worker members and referred to their explanation of their views during the discussion on the General Report. They reiterated that, in their opinion, the right to strike was not regulated by Convention No. 87 and that the parameters of the right to strike were to be regulated at the national level. They concluded by again expressing their disappointment at the Government's failure to appear before the Committee.

The Worker member of Norway, speaking on behalf of the trade unions in the Nordic countries and Estonia, expressed deep concern over recent developments in the country that limited freedom of trade union activities and allowed the Government to interfere with trade union activities. The recently adopted law seriously limited the ability to freely define trade unions' structure, put forward demands and realize the right to strike. The provisions hampered the procedures for the registration, reorganization and liquidation of trade unions. Pursuant to the new

law, sector trade unions should be established by at least half of the total number of employees or organizations in the industry, or should have structural subdivisions in more than half of the regions, cities of national significance and in the capital. Similarly, it was almost impossible to form trade union confederations because of the high legal thresholds. These requirements hindered the free establishment of trade unions and could lead to trade union monopoly. The obligation to re-register created risks for existing trade union, of not fulfilling the new requirements, as observed by the International Trade Union Confederation (ITUC) and the CFTUK. Indeed, the Government refused the registration of CFTUK on 25 May 2015 based on a number of reasons concerning the charter of the organization. The requirements were in clear violation of the Convention which provided workers with the right to formulate charters and decide freely on the structures of the unions. She urged the Government to remedy this situation and allow for the registration of CFTUK, which otherwise would be illegal starting from 1 July 2015. She finally called on the Government to enforce the recommendations of the Conference Committee and ensure compliance with the Convention as well as to ensure in law and in practice the right of workers to freely join and establish trade union organizations and to organize their activities free from any interference by public authorities as well as to allow for the trade unions to represent and protect the rights of their members.

The Worker member of the United States recalled that the Government had started introducing changes to its labour legislation in 2011, following a seven-month strike that year by workers in the oil sector that had ended in the deaths of 17 of them, and injuries to dozens more. The Law on Trade Unions was passed in 2014, and although the Government had requested and received the Office's technical comments on the draft of the said legislation in 2013, several recommendations set out in those comments were not reflected in the adopted version. Several of the latter's provisions consequently contravened the Convention, particularly those minutely regulating the structure of the trade union movement. She expressed concern that the registration application of the CFTUK was denied on 25 May 2015. This denial of registration to an established and well-recognized union, one that had previously been recognized as a participant in the tripartite structure, suggested that the Government's position vis-à-vis trade unions had become more restrictive with the legislative reforms. Moreover, amendments to both the Civil and Penal Codes introduced further restrictions on the exercise of the right to strike. The definition of illegal strikes had been amended under the former law, whereas the latter imposed penalties of up to three years in prison for issuing calls to continue a strike that had been declared illegal. She noted with concern that developments following the strike of 2011 reflected a deterioration in the trade union rights situation, and urged the Government to undertake the legislative reforms necessary to ensure full compliance with the Convention.

The Employer member of Germany regretted that, pursuant to the Law on the National Chamber of Entrepreneurs, the membership to the Chamber was mandatory, maximum membership fees were established, and the Government participated in the work of the Chamber with compulsory competencies. She noted that the Confederation of Employers of the Republic of Kazakhstan, recognized by European and International organizations, embraced a system of democratic governance based on voluntary membership. She emphasized that the mandatory structure hampered the role of the Chamber and was incompatible with the definition of social partners and with the principle of freedom of association.

The Worker member of Poland said that the case of Kazakhstan was a source of concern, as the issues raised by the Committee of Experts were of great importance for the workers. She recalled the different points highlighted by the Worker members. That situation was all the more worrying given that the Committee of Experts had repeatedly requested the Government to amend the national legislation, with a view to bringing it into line with the Convention. Worse still, the Government had completely ignored the technical comments of the ILO regarding the draft Law on Trade Unions. She reminded the Government that: all workers, without distinction, including judges, firefighters and prison staff, had the right to establish organizations of their choice without previous authorization; the free exercise of the right to establish trade unions presupposed the free determination of their structure, composition and affiliation to a higher level organization; the legislative provisions governing the internal functioning of workers' organizations implied serious interference by the public authorities; the right to strike was an essential means by which workers could promote and defend their economic and social interests, and it was therefore crucial that national legislation did not deprive workers of that right or restrict the exercise thereof; and that the right to receive financial assistance from international organizations was legitimate, particularly for unions that required advice and support from other firmly established organizations. She therefore urged the Government to make the necessary amendments to the national legislation to bring it into conformity with the provisions and principles established under Articles 2, 3 and 5 of the Convention, and thereby put an end to the violations of workers' basic rights.

The Worker member of Germany expressed the support of the Confederation of German Trade Unions (DGB) for its colleagues in Kazakhstan. The problems relating to freedom of association in Kazakhstan affected workers and employers, taking into account especially the serious events surrounding the strikes that had taken place in the oil sector. They expressed disbelief that the delegation had failed to come before the Committee, given that the ILO had helped to set up bases for social dialogue in the country. The Law on Trade Unions of 2014 imposed many restrictions to the establishment of trade unions, particularly regarding registration. Within six months following their registration, trade unions had to mandatorily join a higher level trade union organization and if they did not fulfil this requirement they were struck off the register. The risks of this principle of prior agreement imposed by law had been highlighted by the ITUC and the CFTUK. The DGB considered that these restrictive provisions constituted a violation of Articles 3 and 4 of the Convention. Trade unions should be able to choose their structures, regulations and operating rules without interference from the authorities. Furthermore, a legislative provision prevented trade unions from seeking financial assistance from other international trade union organizations, which was a violation of Article 5 of the Convention. Trade unions were a fundamental part of a democratic society. He therefore invited the Government to bring legislation into line with the Convention and to guarantee the free exercise of freedom of association.

The Worker members pointed out that the various statements made on the case all tended in the same direction. They underlined the fact that, since the Committee's last meeting, a new trade union act had been adopted. It provided for compulsory registration of trade unions and established a highly restrictive structure under which organizations appeared to be obliged to join higher level unions, which was a violation of the Convention. Moreover, setting very high thresholds for forming higher level trade unions so as to restrict trade union pluralism was

also contrary to the Convention. Furthermore, since the beginning of the year, a new Penal Code and a new Code on Administrative Violations had imposed restrictions on trade union activity. In the light of the Committee's discussions, the Worker members requested the Government to: amend its legislation to recognize the rights of judges, firefighters and prison staff to form trade unions; remove the restrictive conditions and procedures for registering trade union organizations; re-register the CFTUK immediately; put an end to the obligation for local, sectoral and regional trade unions to join a national organization within six months of their registration; amend legislation to lower the thresholds required to form a sectoral trade union; lift the prohibition on receiving financial aid from international employers' and workers' organizations; and amend the new Penal Code and the new Code on Administrative Violations to clarify vague notions such as "civil society leader" or "social discord". Lastly, the Worker members urged the Government to request technical assistance from the Office. Given the Government's attitude towards the Committee, they considered that it would be appropriate to include the Committee's conclusions on the case in a special paragraph.

The Employer members concurred with the Worker members that both groups agreed upon a number of points, while holding divergent views on others, particularly as concerned the exercise of the right to strike. They stressed that the Law on the National Chamber of Entrepreneurs substantially infringed upon the freedom and independence of Kazakhstan's employers' organizations. Legislative reforms urgently needed to be introduced to bring about an environment where employers' organizations could freely exercise all rights guaranteed under the Convention. They urged the Government to fully comply with the Committee of Experts' requests to amend those sections of the Law representing undue Government interference in the functioning of employers' organizations, as well as to clarify whether the Law indeed provided that only members of the Chamber could represent the interests of employers' organizations in international bodies. Expressing once again their disappointment with the Government's failure to appear before the Committee, they concluded by calling for the Committee's conclusions on the case to be included in a special paragraph of the report.

Conclusions

The Committee deplored the total absence of a Government representative during the discussion of this case, despite its accreditation and presence at the International Labour Conference.

The Committee observed that the pending matters raised by the Committee of Experts concerned both restrictions on workers' freedom of association (including the right to organize of judges, firefighters and prison staff, the mandatory affiliation of sector, territorial and local trade unions to a national trade union association, the excessively high minimum membership requirement for higher-level organizations and the ban on receiving financial assistance from an international organization) and on employers' organizations (an excessive minimum membership requirement for employers' organizations and the adoption in 2013 of the Law on the National Chamber of Entrepreneurs which undermined free and independent employers' organizations and gave the Government significant authority over internal matters of the Chamber of Entrepreneurs).

The Committee noted the actions of the Government that had infringed both the freedom of association rights of workers' and of employers' organizations in violation of the Convention.

Taking into account the discussion and the failure of the Government to attend before the Committee, the Committee required that the Government:

- amend the provisions of the Law on the National Chamber of Entrepreneurs in a manner that would ensure the full autonomy and independence of the free and independent employers' organizations in Kazakhstan. The Committee requested the Office to offer, and urged the Government to accept, technical assistance in this regard;
- amend the provisions of the Trade Union Law of 2014 consistent with the Convention, including issues concerning excessive limitations on the structure of trade unions found in Articles 10 to 15 which limit the right of workers to form and join trade unions of their own choosing;
- amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union; and
- amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization.

As a result of the Government's failure to attend, the Committee decided to include its conclusions in a special paragraph of the report.

A Government representative apologized for the absence of the Government delegation during the discussion and informed that the delegation had only arrived in Geneva on 9 June 2015. He nevertheless wanted to express the Government's view on the case. Article 23 of the Constitution guaranteed freedom of association and the national legislation governed the activities of trade unions. In accordance with the national legislation, members of the armed forces, the judiciary and the police did not have the right to establish and join organizations. Civil servants, including those within the police, the armed forces and the judiciary, had a specific status under the law, since they had to ensure the proper functioning of the State. However, civilian workers in the armed forces and the police had the right to establish and join organizations. There were several trade unions of civilian workers, including staff working in the armed forces and the police. There was no impediment for the creation of new trade unions. In fact, section 14 of the Law on Public Associations only required a membership of three persons to form a first-level trade union. However, it was true that not many first-level unions had been established yet. In relation to the comments of the Committee of Experts about the requirements for the creation of local and regional trade unions, he indicated that a new law specifically provided that it was essential that trade unions were represented at the regional, local and enterprise levels. While a great number of trade unions existed in the country, there was no trade union unity, with trade unions being rather dispersed. Only branch and sectoral trade unions were able to conclude collective agreements, and over 600 trade unions at the local and regional level were not associated to them. However, at the national level there was no problem in this regard. Kazakhstan was a young country and needed more time to implement the internationally recognized principles. While the existing laws did not provide for impediments to constitute trade unions, new laws could be adopted where necessary, in accordance with international standards and international best practice. The Government was committed to improve the situation and would take into account the discussions in, and the conclusions of, the Committee.

MEXICO (ratification: 1950)

A Government representative said that freedom of association was at the core of the ILO's values and was the

essence of collective bargaining, leading to fair and equitable labour relations. He reiterated his Government's absolute commitment to freedom of association. He added that the legislative reform process included representative workers' organizations without restriction and that it was important for workers and employers to participate in the country's economic and social growth. With respect to the requests of the Committee of Experts, he indicated, *inter alia*, that: (a) with regard to the murder of two *campesino* (farmer) leaders, a causal link between the events and the exercise of freedom of association could not be drawn because the victims had been coffee producers, not workers, they had not been engaging in trade union activity, and the claims did not relate to an employment relationship. While the gravity of the events should not be underestimated, there had been no violation of the Convention; (b) with regard to the transparency of trade union registration, the legislative reforms provided for the registers to be published electronically. Although the Committee of Experts indicated that there had been no publications, registers had already been published in two cases and other districts were well on the way to doing so, in all cases within the legal time limits; (c) with respect to the legal provisions that were allegedly in violation of the Convention, international treaties took precedence in the legal hierarchy over domestic legislation, and the principle of the most favourable treatment applied to workers, with the provisions of treaties being directly applicable; (d) with regard to the question of whether provisions prejudicial to freedom of association were being applied, as indicated by the Committee of Experts (such as, for example, that workers who resigned from a union would lose their jobs, or that multiple unions could not exist within the same state service, or the prohibition on public service trade unions affiliating with *campesino* organizations), those provisions had not been applied for more than 50 years and had been superseded by jurisprudence; and (e) with respect to the ban on foreigners serving on trade union executive committees, the administrative and regional authorities did not ask for proof of nationality from representatives. In conclusion, he said that the Government of Mexico was in compliance with the Convention and would continue to show the political will to do so.

The Worker members thanked the Government of Mexico for the information provided which would be analysed, particularly the cases of assassination. In Mexico, protection contracts presented the most serious obstacles to the exercise of freedom of association. A protection contract was a false collective agreement signed between an employer and a union, often established by the employer, and even subject to criminal elements, without the participation of the workers, and even without their knowledge. Its objective was to prevent any independent trade union representation and most afforded employers full discretion with respect to wages, working hours and employment conditions. Once the protection contract had been registered and was in force, it was extremely difficult to form another trade union within the enterprise to negotiate a new legitimate collective accord. When workers attempted to organize freely through a vote (*recuento*), the employer and the trade union that were signatories to the protection contract often acted in unison to intimidate the workers through verbal threats, sometimes physical violence and summary dismissals. Furthermore, the electoral processes were often manipulated to ensure the defeat of the democratic trade union. This corrupt system, unfortunately, did not appear to be restricted by the Secretariat of Labour and Social Welfare. At the local level, the protection contracts were registered with the full knowledge of the local conciliation and arbitration boards, on which the unions who were signatories to the protec-

tion contracts were represented. The Mexican system of conciliation and arbitration boards had been widely criticized for a lack of effectiveness, political partiality and corruption. Although they were nominally tripartite, in practice, these boards were controlled by the executive authorities. While workers benefited, in theory, from direct representation, the procedures for the election of workers' representatives were unclear. Several experts had proposed replacing the system of conciliation and arbitration boards with a system of labour tribunals, which would come under the judicial rather than the executive authorities. Experts estimated that approximately 90 per cent of all collective agreements in Mexico were protection contracts, and that the number had been rising over recent years. The persistence of these contracts was explained by corruption and the networks which plagued politics, the administration, the judiciary, the economy and trade unions. This phenomenon had been widely documented in the public reports of the North American Agreement on Labour Cooperation, in academic research and recent case studies. In its 370th Report, the Committee on Freedom of Association recommended the Government to avail itself of ILO technical assistance to carry out an evaluation of national law and practice with regard to protection contracts. They referred to an example of a protection contract concluded between the management of an automobile factory and a "yellow" trade union and the resulting obstacles for the establishment of an independent trade union. On 1 December 2012, the Government of Mexico had enacted a significant reform of the Federal Labour Act, which did not include any provision aimed at restraining the widespread use of protection contracts, but centred on introducing more flexible labour relations. Other aspects of the Mexican system restricted freedom of association: the obligation for the trade union election results to be approved by the labour authorities (a procedure known as *toma de nota*, which had been used to remove leaders from union duties for political reasons); the limitation of trade union representation rights to workers in specific industries (*radio de acción*) and the fact that trade unions could not change their status to represent workers in other industries; the very small amount of the penalties provided for by law for violations of labour law and trade union rights, since workers often received less than a third of the amount legally due to them further to legal proceedings relating to dismissal based on discrimination (as the reform of the 2012 Labour Act, had limited salary arrears to 12 months in the case of illegal dismissal, even though the procedural deadlines were often much longer which, in addition to the malfunctioning of the conciliation and arbitration boards, had a dissuasive effect on workers); the fact that conciliation and arbitration boards systematically declared strikes illegal, often on technical grounds (even though the courts had revoked such decisions by the boards, it nevertheless entailed costs and considerable delays for workers), the right to strike was also severely restricted by the possibility for the employer to declare the collective agreements null and void on grounds of force majeure.

In conclusion, they denounced the use of physical violence against workers defending their rights, which was a widespread practice in Mexico. Four members of the National Union of Mine and Metal Workers had been murdered since 2006. Nobody seemed to have been charged. Santiago Rafael Cruz, an organizer with the agricultural workers' organizing committee, had been murdered on 9 April 2007 in Monterrey. The three suspects were still at large. The collective actions of the Los Mineros union had been targeted with systematic attacks by police and armed groups. Violence had also been used against the independent union of electricity and telephone workers and the Authentic Labour Front. Furthermore, non-

governmental human rights organizations, which also defended the rights of workers, had been subjected to threats, surveillance and intimidation. They emphasized that attacks on freedom of association in Mexico, a G20 country, were unacceptable, as had been stated repeatedly in international forums. It was time for Mexico to tackle its problems seriously, starting with protection contracts, so as to nurture a dynamic and independent trade union movement in the country that would improve labour relations. Noting that Mexico was currently considering ratifying the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Worker members encouraged it to do so, as it would be a significant step but which would require real political will to give full effect to the provisions of Conventions Nos 87 and 98.

The Employer members referred to the issues raised by the Committee of Experts. With regard to the murders of two *campesino* leaders, they noted the Government's statement to the effect that they were not related to freedom of association matters, since the victims had not been workers but coffee producers, they had not been acting as part of a trade union and their claims had not concerned a labour issue. It was not clear where the information had originated. With regard to the registration of trade unions, they welcomed the measures taken by the Government with respect to computerization and adapting technologies to meet the targets it had set as part of reforming the Federal Labour Act. They also referred to paragraph 561 of the Report of the Committee on Freedom of Association in Case No. 2694, in which the Committee had noted with interest the reform of the Federal Labour Act that had come into force on 30 November 2012, eliminating the exclusion by separation clause in collective contracts (which authorized dismissals in cases of resignation of union membership), required the Federal Conciliation and Arbitration Board to make the contents of collective agreements public and eliminated the local conciliation and arbitration boards, making the Federal Conciliation and Arbitration Board alone responsible for the resolution of labour disputes. The Committee on Freedom of Association had also noted that the Government's reply indicated that the legislative reform also provided for greater transparency and democracy in trade unions, the professionalization of the legal staff of the boards, the adoption of rules to prevent irregular or corrupt practices in their proceedings, measures to expedite and streamline procedures and more serious fines for deliberate delays. The progress made by the Government of Mexico should not therefore be ignored. Moreover, in paragraphs 562 and 563 of the same report, note was taken of the information provided by the Government on the legal provisions and the national jurisprudence regarding the minimum number of workers required to establish a trade union; the entitlement of the majority trade union to collective agreement rights; the rights of minority trade unions; the right of all workers to join or not join, and to create a trade union; and the right to refuse membership. The Committee on Freedom of Association had observed that the provisions described by the Government did not appear to violate the principles of freedom of association and collective bargaining. It had also taken note of the information provided by the Government regarding its social dialogue and tripartite dialogue policy. They concluded by emphasizing the importance of tripartite dialogue in solving problems. With regard to the right of trade unions to organizing their activities and formulate their programmes, the Committee of Experts had requested the Government to amend the legislation that recognized the right to strike of state employees only if there was a general and systematic violation of their rights. They reiterated that the right to strike was not recognized as deriving

from the Convention and that only national legislation should be taken into account.

The Worker member of Mexico referred to the request of the Committee of Experts in the context of Case No. 2694 of the Committee on Freedom of Association to apply effectively at the local level the legislation on the publication of the registration of trade unions. In its reports on compliance with the Convention, the Government had indicated that the Federal Labour Act had been amended by a Decree that had taken effect on 1 December 2012. It had, inter alia, reformed, supplemented and repealed various provisions of section 365bis, which provided for compulsory publication of trade union registrations and rules by the Secretariat of Labour and Social Welfare at the federal level and by local tripartite conciliation and arbitration boards in the states and the Federal District. However, two and a half years later, section 365bis was only being fully complied with at the federal level by the Secretariat of Labour and Social Welfare and partially by the local board of the Federal District, which meant that the 31 state boards were not giving effect to it. The widespread lack of transparency in registrations had consequences for the whole working class because it seriously hampered the exercise of freedom of association and was an obstacle to genuine collective bargaining. The harmful effects of the lack of transparency in registrations had also led to the registration and proliferation of illegitimate trade unions that had signed false collective agreements concluded without consulting the workers (commonly referred to as "employer-protector agreements"), which hindered the legitimate exercise by workers of the right to strike to obtain genuine collective agreements, since the labour legislation provided that if a collective agreement had been concluded and registered, strikes were not permitted in support of a demand to conclude a different collective agreement.

The Employer member of Mexico noted the progress made by the Government of Mexico. The murders of two *campesino* leaders, while deplorable, had no relation to labour matters. While the legal provisions on trade union pluralism had not yet been amended, they had been declared unconstitutional, meaning it was now possible for more than one trade union organization to exist in the same state entity. The labour reform had resolved many pending issues. The Committee of Experts had referred to laws and regulations that did not exist and had made erroneous references. Regarding the observation made by the Committee of Experts that the forced mobilization of workers who were on strike was only justified if it was to ensure essential services in the strict sense of the term, he emphasized that this situation had not arisen. Regarding the right to strike, the information referred to by the Committee of Experts was incorrect, and in any case the draft conclusions should not refer to this issue. Regarding the registration of trade unions, the Committee of Experts had welcomed the adoption of a number of provisions aimed at making trade unions more transparent and democratic, including the new section 365bis of the Federal Labour Act, which made it compulsory for the Department of Labour and Social Provision and the conciliation and arbitration boards to publish trade union registrations and by-laws. It needed to be borne in mind that the legislative reform had taken effect at the end of 2012, and that the Government would enforce the new legal provisions in the near future. He emphasized that it was not acceptable for the Committee of Experts to refer to Case No. 2694 of the Committee on Freedom of Association, as that could cause confusion between the two bodies, which dealt with different matters. He requested the Committee of Experts to work with the information provided by the Government. The progress made by the Government should be taken into account.

The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean countries (GRULAC), noted the information provided by the Government concerning the murders of two *campesino* leaders during a public demonstration. She noted the Government's statement that the complaint presented in September 2014 concerning those events contained no evidence that would suggest a causal link with the exercise of freedom of association. GRULAC noted with interest the Mexican Government's will to investigate the case and trusted that it would provide the Committee of Experts with further information in due course. She also noted the progress made by various federal entities in the application of the Federal Labour Act, which required them to publish registers, trade union by-laws and collective agreements with a view to improving the transparent and democratic functioning of trade union organizations while respecting their autonomy. GRULAC acknowledged the significant efforts involved in computerizing and adapting technology to meet the Government's own targets to reform the Federal Labour Act and encouraged the Government to continue making efforts to extend compliance with section 365bis of the Act to the rest of its federal entities. The Mexican Government had provided information concerning judicial rulings from the Supreme Court of Justice and the interpretation of the Federal Conciliation and Arbitration Tribunal which had found that legal restrictions on the freedom of association of civil servants were not applicable. She noted with interest the Government's explanations concerning the interpretation of the Federal Conciliation and Arbitration Tribunal, which considered that, even though the legislative authorities had not amended the freedom of association legislation that applied to workers employed by the State, the 2011 Constitutional reform in the area of human rights had made it clear that international treaties, once ratified, were binding. Under Article 133 of the Constitution, acts of Congress deriving from the Constitution and all treaties that were in conformity with it, with the approval of the Senate, constituted the supreme law of the land. In that respect, compliance with the Convention was not conditional on the provisions of the Federal Civil Servants Act, as the Convention took precedence over the latter. Rulings of the Supreme Court of Justice had also recognized the hierarchical position occupied by international treaties ratified by Mexico within its domestic legal framework. Lastly, GRULAC welcomed with interest the Government's will to continue promoting social dialogue with all of the most representative workers' and employers' organizations and reiterated its commitment to the strict application of the Convention and respect for freedom of association. She trusted that the Mexican Government would continue taking steps to give effect to the Convention.

The Worker member of the United States emphasized the volume of exported fruit and vegetables from Mexico to the United States, which had tripled to US\$7.6 billion over the last decade. He said that trade and profit under the North American Free Trade Agreement (NAFTA) had benefited employers along the supply chain, but denied labour rights to workers. Mexico had ratified Convention No. 87 and the Rural Workers' Organisations Convention, 1975 (No. 141), but continued to exclude that workforce from labour rights and protections. Workers, including children, lived in poor conditions and were exposed to toxic chemicals and wages were often illegally withheld. Employers rarely registered workers in social security or made the required contributions to the system. He cited an example of farmworkers in San Quintin who had organized and exercised their right to strike, negotiated improvements in the terms and conditions of their work and demanded an end to union registration that had been se-

cretely held by non-representative organizations. As workers were negotiating with employers and the Government, organizations that held the official union registration tried to impose a wage increase well below what workers were seeking. The officially registered union had played no role whatsoever in negotiating the 4 June agreement which actually represented the interests of workers. The 4 June and 14 May agreements concluded by employers, the Government and workers were an important but tenuous victory that would have to be watched closely, supported by all the signatory parties and built upon. The exercise by workers of their rights under the Convention, including the right to join an organization of their own choosing and to collective action, such as the right to strike, had taken place outside, and despite, Mexico's predominant labour relations system. That example illustrated that Mexico did not respect freedom of association. However, it also showed that workers could solve that problem by exercising their fundamental rights, including the right to strike, regardless of shortcomings in national law and practice. Until union registrations were made public and non-representative entities were barred from signing protection contracts, Mexico would not be in compliance with the labour rights protections in trade agreements that included Convention No. 87. The Trans-Pacific Partnership which was being negotiated between twelve countries, including the United States and Mexico, was supposed to include strong commitments to core Conventions. Without real reform of law and practice, Mexico would be in violation from the moment such a treaty entered into force.

An observer representing IndustriALL Global Union denounced the protection contracts labour relations system in Mexico. The reports on Case No. 2694 of the Committee on Freedom of Association showed that over 90 per cent of all workplaces were still controlled by the official protection unions. Despite the repeated recommendations from the Committee on Freedom of Association and the Governing Body over the past five years, and the Government's public and written promises, there had been no progress for Mexican workers. The protection contract system and the conciliation and arbitration boards prevented workers from establishing unions. Despite the 2012 reform to the Federal Labour Act, there was still no access to information concerning collective bargaining agreements, transparency and labour inspection. Workers in the leather and shoe industry, rural areas, mines, the oil and gas industry and export processing zones who had refused to recognize official protection unions had suffered physical harm, been dismissed, had criminal charges brought against them and been subject to other threats. The Government had been promising to ratify Convention No. 98 for the past three years, and had been promising that the 2012 reform of the Federal Labour Act would be submitted to the ILO for technical revision, but it continued the persistent violations of Convention No. 87 through the protection contract system.

The Government member of the United States said that, in November 2012, the Government of Mexico had taken steps to modify key provisions of the Federal Labour Act. She welcomed the inclusion of provisions designed to strengthen freedom of association and collective bargaining. The reforms, however, had not been sufficient to ensure full conformity with international standards and Mexico lacked appropriate structures for their effective enforcement. The persistence of false trade unions, or "protection unions", remained a major challenge and constituted a serious limitation of the right to freedom of association, particularly as collective agreements were concluded with these protection unions without the knowledge and consent of workers, often even before enterprises had opened. Section 365bis of the Federal

Labour Act provided for compulsory publication of trade union registration and rules by the local conciliation and arbitration board. The National Union of Workers (UNT) had reported that this legal obligation was not currently effectively fulfilled by any of the local boards in practice in Mexico's 31 states. This failure facilitated the persistence of protection unions. She indicated that the 2012 reforms had failed to address key deficiencies in the Federal Labour Act that allowed the continued existence of protection unions, including the absence of any provision that would require the demonstration that an employer was operational and that its workers supported the initial collective bargaining agreement at issue before that agreement could be deposited. She was also concerned by the enabling role of conciliation and arbitration boards in the establishment and perpetuation of protection unions, particularly through their authority to register collective agreements and to administer the *recuento* process through which a union attempted to secure collective bargaining rights for its workplace. The structure of these local boards did not provide for adequately inclusive worker representation and often perpetuated a bias against independent unions. It was time for the Government of Mexico to transfer these functions to the judicial branch or some other independent entity to ensure honest representation of workers and the full and fair administration of labour law and adjudication of disputes. She called on the Government of Mexico to undertake these critical legal and administrative reforms to adequately address the continued presence of protection unions and the failings of the boards in order to ensure workers the right to freedom of association in law and practice as soon as possible.

The Worker member of Finland indicated that national legislation should never be used as an excuse to undermine core ILO labour standards. Companies should respect the same core labour standards wherever they operated. All workers had the fundamental right to join the union of their own choosing without any interference or harassment, and had the right to negotiate collectively. She added that, unfortunately, the examples she was raising were from a Finnish multinational company operating in Mexico. It was currently an employer of 7,000 workers and she emphasized that the workers employed by the company had not learned of the existence of the protection contract until they had sought to organize an independent union at their factory. The management had denied their request and had referred to the existing protection contract. The independent union, Los Mineros, had requested the labour authorities for an election to allow workers to choose their union. The authorities had delayed the election for a year, giving the company and the protection union time to pressure workers, including with threats to close the plant. The independent union had narrowly lost the election. Immediately following the election, the company had dismissed more than 100 workers, including the entire executive committee of Los Mineros. The dismissed workers also included all the union observers in the election. Workers were had been called individually and told to sign a "voluntary" resignation letter. Officials of the Federal Labour Board had been present and had encouraged the workers to sign. Moreover, ten workers had not signed the resignation letters and had filed for reinstatement. After more than two years, the Federal Conciliation and Arbitration Board had ordered the reinstatement of four workers in a decision of 8 March 2015. The Board had ordered the payment of back pay from the date of their illegal dismissal. The other six workers were still awaiting a decision on their case. She believed that the company had not yet reinstated the four workers. Instead, it had offered to pay them off, which the workers had not accepted. She urged the Government to

fulfil its obligations and ensure that all companies operating in Mexico, including Finnish companies, complied with freedom of association in conformity with the Convention.

An observer representing the Confederation of University Workers in the Americas (CONTUA), also speaking on behalf of Public Services International (PSI), expressed support for the claims made by the UNT. The underlying issue was the lack of democratic institutions and the manipulation of legal and technical instruments to undermine the standards laid down in Mexican labour legislation, to the detriment of workers and in violation of the right to freedom of association. He denounced State complicity with powerful and unscrupulous entrepreneurs and connivance with false unionists. Protection contracts were a collective bargaining farce, a widespread practice to prevent the development of autonomous unions which upheld democratic values. Such contracts were still in force, despite having been denounced at the national and international levels for so many years, and they were even still used in the public sector. He called for an end to this shameful practice. He observed that the case under discussion showed that anti-union pressure had intensified. The failure of the Government to meet its obligation to make trade union registrations and by-laws public was another means of protecting false unions and restricting and failing to protect democratic trade unions, whose registration was either refused or delayed excessively without any grounds whatsoever. He agreed with the Committee of Experts, which had indicated that there was a conflict between Mexican labour legislation and the Convention, namely the prohibition on two or more unions co-existing in the same state agency; the creation of mixed organizations (combining trade unions and other sectors of society); and the recognition of trade union federations at state level. He conceded that many of those contradictions had been resolved through the courts, with the provisions in question being declared unconstitutional after long legal proceedings. However, in addition to judicial rulings, it was vital to repeal once and for all the provisions that were in violation of the Convention. He emphasized the serious legal restrictions in Mexican legislation limiting the right to strike of state employees, which were inconsistent with international standards and with the historical stance taken by the ILO supervisory bodies, in addition to being in violation of the Convention, which clearly protected the right to strike as a human right at work. In conclusion, he noted that collective labour relations in Mexico were in need of continuous analysis by the ILO, sustained support for those who promoted and fought for democracy and the momentum of political and social change.

The Worker member of Colombia agreed with the International Trade Union Federation (ITUC) and the Trade Union Confederation of the Americas (CSA-TUCA) that there was reason to fear that the concept of employer protection collective contracts might be exported to other countries, as had happened in Colombia, whose union contracts operated as employer protection contracts. He recalled that employer protection collective contracts had been defined as contracts that employers concluded with trade unions, or rather with a person with a trade union registration, who guaranteed that the employer would be able to operate without any union opposition or any demands from the workers, in exchange for paying the "trade union" offering the service. In reality, the whole process involved a false union and a false collective agreement. Certain studies suggested that around 90 per cent of registered collective contracts in Mexico were in fact employer protection collective contracts. That was a result of three factors: the existence of a large number of enterprises and false trade unions that were willing to

violate the law; the existence of legal provisions under which collective protection contracts were possible; and the inaction or complicity of State institutions. Although collective labour contracts had to be deposited with conciliation and arbitration boards, the union did not have to prove the membership of the workers in the enterprise with which they were concluded. Furthermore, almost all collective contracts contained an “exclusion clause” that prohibited employers from recruiting workers who were not members of the union (“exclusion from recruitment”) and a clause obliging them to dismiss workers who resigned or were expelled from the union (“exclusion by separation”). He considered that: it was necessary to review the power of the authorities to refuse the registration of a trade union or to recognize its representatives; that when depositing a collective agreement, the existence of the enterprise concerned and of its workers, and their representatives, should be required; and that “exclusion from recruitment” and “exclusion by separation” clauses should be prohibited. It was also essential to adopt measures to guarantee in practice the enforcement of the new legislative provisions requiring that the registration information and by-laws of unions be made public and accessible, as well as the measures on the transparency and democratic functioning of trade unions. In conclusion, he urged the Committee to reiterate appeal made by the Committee of Experts for the amendment of Mexican legislation so that the right to strike of workers in the service of the State, including workers in the banking sector, was fully recognized, as that right was inherent to Convention No. 87.

The Government representative said that there were a number of issues that warranted analysis and clarification. He reiterated the Government’s commitment to freedom of association and the free exercise of the right to organize. He expressed particular concern at the fact that the matters raised predated the labour reform, the first of the major structural reforms undertaken in the country, which had entailed significant changes in the manner in which those issues were addressed. Referring to the claims that 90 per cent of collective agreements were protection contracts, he observed that that figure originated from a survey conducted in 2004, and that, regardless of the criteria used in that analysis, it was important to indicate that there had been substantial developments and changes in enterprises in Mexico. He emphasized that virtually 99 per cent of enterprises in the country were micro, small and medium-sized enterprises. Statistical information should be treated with particular care. With regard to the *toma de nota* provisions on the recognition of unions, under section 693 of the Federal Labour Act it was possible for legal personality to be granted to trade unions on the basis of other documents. He said that the acknowledgement of the legal personality to a trade union did not affect its operation. He emphasized that *toma de nota* certificates were issued within an average of five working days, and sometimes even three. With regard to the coverage of unions, any trade union was free to include any worker as its member; the point was to prevent the creation of false unions. With regard to the references made to Cases Nos 2694 and 2478 of the Committee on Freedom of Association, he considered that the Conference Committee was not the appropriate forum to which to transfer discussions from the Committee on Freedom of Association, as confusion would ensue. The delay in the online publication of union by-laws and registrations had been presented as showing lack of transparency in union matters. He emphasized that the obligation to ensure transparency had existed from the time when the law had come into force; and that at present action was being taken to facilitate access to information. With regard to the claim that there had been no communication with the UNT to address those issues, he recalled that in July 2013 a spe-

cific collaboration agreement had been signed with the UNT establishing that one of the issues to be dealt with would precisely be respect for collective bargaining and freedom of association. He invited the UNT to give effect to agreement and to review its content, and called for the information used to be up to date. He considered it a matter of concern that respect and protection for workers’ rights were being confused with an issue that related to market competition between enterprises. He added that the “exclusion clause” had been removed from the Federal Labour Act during the reform. The reform also introduced penalties for staff of conciliation and arbitration boards who interfered unduly in or delayed proceedings; and that the penalties could include detention. He refuted the assertion concerning the availability of information, referring to what had been said previously concerning two districts (San Luis Potosí and the Federal District). He added that, in view of the complexity of the transformation needed in the conciliation and arbitration boards, the labour reform had allowed three years for a series of improvements. He reiterated that the Government of Mexico would continue working intensively and listening to all voices in seeking the best way to safeguard the right to freedom of association and legitimate representation for workers. Nevertheless, he explained that, in so doing, particular care would need to be taken to avoid simulations or actions which, without directly representing the legitimate interests of workers, sought to obtain representative positions to which they were not entitled. He referred to situations that had been remedied by judicial rulings. The Government would be receptive to requests for information made by the present Committee.

The Employer members said that they had listened carefully to the various issues raised. They noted that opinions varied on matters that probably fell outside the scope of the Convention. They recalled that it was important for the Committee to restrict itself to examining Convention No. 87, as Mexico had not ratified Convention No. 98. They added the many references had been made to matters that were directly related to Convention No. 98, which they would not address in detail. They recalled certain information presented by the Government representative regarding the need for trade union registration to be transparent, the significant reforms that had been implemented in the Federal District and San Luis de Potosí, and the setting of a deadline of three years, which they considered reasonable. They noted that the principle of the most favourable treatment was applied. Trade unions could coexist and no one had been dismissed for belonging to a trade union. And there were *campesino* organizations that were affiliated with other organizations. Although the Federal Labour Act still contained a prohibition on foreigners serving on executive committees, this requirement did not apply in practice for registration. They emphasized that the information available came largely from the cases of the Committee on Freedom of Association. Four meetings had recently been held with different types of organizations, two of which had been attended by the President of Mexico. At one of these, in August 2013, a meeting had been held with the CSA-TUCA, the Industrial Global Union and the United Steelworkers, during which many issues relating to the legislative reforms had been discussed. In April 2014, the President of Mexico had also held a meeting with the UNT, the organization that had submitted the complaint to the Committee on Freedom of Association. In addition, the Secretary for Labour and Social Welfare had held several meetings, including with the UNT, the Revolutionary Confederation of Workers and Campesino Farmers, and the Regional Confederation of Workers of Mexico. Progress was being made in many areas that were addressed. Extensive social dialogue was being undertaken, not only with Mexican

workers' organizations, but also with international organizations. They emphasized that it was important that existing conflicts were being resolved and that social dialogue, inspection mechanisms and the justice system were functioning. They also recalled that it had been reported that many legislative provisions were not only inapplicable, but also unconstitutional. They noted that ILO technical assistance could be associated with a process of legislative development. To that end, the Government itself had announced the possibility of carrying out a technical revision of Mexican legislation. They invited the Government to avail itself of ILO technical assistance, where appropriate.

The Worker members said that it was positive that the Government recognized the problems it faced regarding freedom of association, including those related to "protection contracts" that were flagrant violations of the principle of freedom of association. That type of agreement denied workers the right to be freely represented by the trade union of their choice and to bargain collectively. Workers found themselves to be members of protection unions and covered by collective agreements without even being aware of it. However, protection contracts were not negotiated by democratically elected workers' representatives and therefore did not reflect their priorities. The situation was not showing any sign of improvement since 90 per cent of existing collective agreements were of the protection type. For many years and despite the recommendations of the ILO supervisory bodies, the Ministry of Labour had still not taken appropriate steps to remedy the situation. In December 2012, an important reform had been undertaken of the Federal Labour Act and it was regrettable that the opportunity to resolve the issue had not been taken. The conciliation and arbitration boards also caused serious problems regarding the exercise of freedom of association, as they were not independent and were subject to political influence and corruption. For these reasons, the Worker members urged the Government to comply with its legal obligations without delay by publishing the list of registered local trade unions in the 31 states, and not just in the Federal District, and by identifying, in consultation with the social partners and in accordance with the recommendations of the Committee on Freedom of Association, the legislative reforms needed to be made to the 2012 Federal Labour Act to bring it into line with the Convention. The reforms should in particular focus on the recommendations related to, inter alia, the prevention of the registration of trade unions that did not have electoral proof of the support of the majority of the workers that they claimed to represent, and the annulment of protection agreements concluded by trade unionists which had not been elected to represent the workers through a democratic process. It was also important to address the issue of potential conflicts of interest in the conciliation and arbitration boards. The Worker members invited the Government to ratify Convention No. 98. In conclusion, they recommended the ILO provide the Government with technical assistance, and wondered whether a direct contacts mission should be proposed in the present case. The worker members noted with interest that the Employer members of Mexico referred to the comments of the Committee of Experts on the modalities for the exercise of the right to strike.

Conclusions

The Committee took note of the oral statements made by the Under-Secretary for Labour and Social Provision and the discussion that followed.

The Committee took note of the fact that the issues raised by the Committee of Experts related, among other things, to: the murders of two *campesino* (peasant farmer) leaders; failure to publish trade union registrations and by-laws at

local level (a practice connected with protection unions and protection contracts) despite a legal obligation to that effect; legal provisions declared unconstitutional that ran counter to trade union pluralism in federal state agencies, the right of civil servants to join trade unions freely and the right of civil servants' organizations to affiliate with other organizations; and the ban on foreigners serving on trade union executive committees.

The Committee took note of the Government representative's statements to the effect that the two *campesino* leaders murdered had not been dependent workers but coffee producers, had not belonged to any union, and had submitted claims that concerned the havoc wrought by a hurricane, such that the events had no relation to the Convention. With regard to the alleged failure to publish trade union registrations and by-laws at local level, it noted that as a result of the reform of the Federal Labour Act in 2012, any worker was now entitled to view these registrations and there was also a legal obligation to publish them electronically, although the reform allowed three years for this to be finalized (in fact, two local conciliation and arbitration boards, for the Federal District and San Luis de Potosí, already had electronic methods in place; the rest were in the process of digitization). The provisions of the Federal Act on State Employees mentioned by the Committee of Experts had been superseded by jurisprudence of the Supreme Court and by usage and custom, such that in many departments there were several registered trade unions, workers were not dismissed when they moved from one union to another, and public service trade unions were in fact affiliated to other organizations (there were four federations). The administrative authorities did not check whether executive committee members were foreign or not, and the 2012 reform prohibited discrimination based on national origin in the exercise of collective rights. The complaints and data referred to by the trade union sector concerning protection contracts were based on studies from 2004 and did not take account of recent jurisprudence or the 2012 reform that had prohibited exclusion clauses in collective contracts that restricted access to employment to members of trade unions; furthermore, the 2012 reform imposed sanctions – and even penal sanctions – on conciliation and arbitration boards whose interference was considered excessive. The Government representative had offered to provide updated information and hoped to receive feedback from the ILO. He recalled the dialogue that had taken place with national and international trade unions, and reiterated that his Government was open to engage in dialogue and that it was committed to freedom of association and other fundamental rights at work. He considered that the Committee should confine itself to the case at hand and, so as to avoid confusion, not become involved in issues that had been dealt with by the Committee on Freedom of Association.

The Committee noted with satisfaction the judgment of the Supreme Court of Justice declaring inapplicable the standards which had impeded trade union pluralism in the institutions of the State and banned re-election in trade unions.

Taking into account the discussion, the Committee requested the Government to:

- fulfil without delay its obligation to publish the registration and by-laws of trade unions in the local boards in the 31 states in the country, not just in the Federal District and San Luis de Potosí, in a period of three years as established in the Federal Labour Law;
- identify, in consultation with the social partners, additional legislative reforms to the 2012 Labour Law necessary to comply with Convention No. 87. This should include reforms that would prevent the registration of trade unions that cannot demonstrate the support of the majority of the workers they intend to represent, by

means of a democratic election process – so-called protection unions; and

- provide a report on progress made to comply with these recommendations by the next session of the Committee of Experts.

The ILO should offer, and the Government of Mexico should accept, technical assistance to address the issues referred to in these recommendations.

The Government representative commended the work of the Committee and noted with interest its conclusions. He expressed the Government's commitment to provide all the information requested and was convinced that would attest to the progress made in labour matters in Mexico. The results had been achieved through social dialogue and the commitment to decent labour in conformity with the ILO's mandate.

SWAZILAND (ratification: 1978)

The Government provided the following written information.

There has been remarkable progress in dealing with the issues raised by the ILO in the 2015 report of the Committee of Experts. The progress on the issues is as set out below. Concerning the amendment of the Industrial Relations Act to allow for registration of federations, that amendment has been effected through the Industrial Relations (Amendment) Act No. 11 of 2014 and is now law. Following the enactment of the amendment, the Trade Union Congress of Swaziland (TUCOSWA), the Federation of Swaziland Employers and Chamber of Commerce (FSE-CC), and the Federation of the Swaziland Business Community (FESBC) are now duly registered. The ushering in of the amendment has created an interest from other labour market formations to form federations, hence some requested to attend the 104th Session of the Conference as observers. The Government is fully committed to ensuring the full operationalization of all tripartite structures. It is in this regard therefore that, immediately following their registration, we have held a tripartite consultation meeting with the federations where the agenda of the 104th Session of the ILC and other issues were discussed. The Ministry of Labour and Social Security has also invited the federations to nominate members to serve on all statutory boards.

Concerning the amendment of the Industrial Relations Act to ensure that criminal and civil liability penalties do not impair the right to freedom of association (sections 40(13) and 97), this issue has been dealt with in the Industrial Relations (Amendment) Act No. 11 of 2014 by amending the Act to ensure that civil and criminal penalties do not impair the right to freedom of association. In addition, in consultation with the ILO and following a review by the social partners and other stakeholders in July 2014, the Code of Good Practice was sent to the Attorney General for further review. At the meeting between the Government and the social partners, soon after their registration, the revised Code was circulated and now awaits comments from the social partners before the end of July 2015. The Ministry will be following up on the offer from the ILO to provide training to the police, workers, employers and other stakeholders on the application of the Code. Furthermore, following consultations between the Government and the ILO, a consultant has been selected to undertake a review of the Public Order Act, and we are working with the ILO to ensure that the consultant starts working in July 2015. The draft amendment to the Suppression of Terrorism Act has been referred back to Cabinet to ensure that the amendments will not compromise law and order. The revised bill will be presented to Parliament shortly. Moreover, following recommendations from the Essential Services Committee, sanitary services have been removed from the list of es-

sential services from the Industrial Relations Act, meaning that the Government has responded fully to the ILO request (Legal Notice No. 149 of 2014). With respect to the Public Service Bill, this Bill was finalized, presented and received Cabinet's approval and will be published and presented to Parliament for debate.

Concerning the Correctional Services (Prison) Bill to allow for the right to organize for correctional services staff, as submitted in the Government report in November, 2014, the Labour Advisory Board reviewed the draft bill. It has now been reviewed by Cabinet and referred back to the Minister for Justice and Constitutional Affairs for action. This is a substantial piece of legislation as it addresses other issues, beyond the right to organize of correctional services staff. Therefore, other consultative meetings are still ongoing. Lastly, as previously stated in reports to the ILO, the application for the registration of the Amalgamated Trade Union of Swaziland (ATUSWA) was defective. At the meeting with some of the founding members of ATUSWA, they conceded that their application was defective, and they have submitted a fresh application which is being reviewed.

In addition to the legislative amendments, the Government wishes to address other issues, which have been referred to the Government, through various structures of the ILO. The issues include the following: (a) Thulani Maseko: Mr Maseko was charged and convicted of contempt of court after publishing an article which constituted a scurrilous attack on the judiciary, calculated to undermine the rule of law in Swaziland. Mr Maseko elected to continue his attack on the judiciary throughout his trial, and this had a bearing on his sentence. The judgment in this case will be made available to the relevant ILO supervisory structures. (b) Respect for the law: The Government has faced a total disregard for the laws of our country, provocation and violent assaults against police officers and fellow employees by the workers' federation, its affiliates and their members. This has resulted in conflict between the police and the federation, its affiliates and their members.

In addition, the Government provided some examples of the acts of violence against the police, as well as other acts of violence and intimidation against fellow employees: (i) On 30 June 2014, two police officers, namely Constable Sihle Zwane and Hlengiwe Shabangu were assaulted with stones and had to be taken to hospital for treatment for injuries they sustained. This was during a strike action by the Swaziland Agricultural Plantations and Allied Workers Union. (ii) On 24 June 2014, during a strike action by the Swaziland Agricultural Plantations and Allied Workers Union, the Deputy National Commissioner of Police was held hostage by workers who would not let him out of his motor vehicle, while they also blocked police officers who intended to assist him. (iii) On 20 June 2014, fellow workers, who were exercising their right not to take part in a strike action, were poisoned (their tea was administered with poison). The employees are still under treatment. These and other allegations are set out more fully in our letter to the ILO dated 24 November 2014.

The Industrial Relations Act provides the unions and federations with the right to engage on issues of public policy and public administration. However, the extent to which they may engage in such issues does not cover issues which are of a purely political nature (including advocating for regime change through violent means). Increasingly, the activities of the workers' federation are being overwhelmed by a political agenda at the expense of its core and primary mandate, which is the advance of socio-economic interests of workers. To some extent, this has been responsible for the tension between the police and the workers' federation and its affiliates. We request

the ILO to pass the message that freedom of association does not translate into lawlessness. It carries with it certain obligations for the maintenance of an orderly society. Tangible progress has been made on the issues referred to the Government by the Committee of Experts. The Government thanks the Office of the ILO for the ongoing advice and assistance received, in particular from the Pretoria Office and requests its continued support to ensure that all parties exercise their rights with respect for the law. The Government thanks the federations for their cooperation (where they did), for making all the work mentioned above a reality and encourages the social partners to strive to ensure the spirit of tripartism, partnership and cooperation, which must forever prevail for the socio-economic development of the country. The Government also requests the trade and development partners of Swaziland to take note of the tangible progress made in addressing the issues raised by the ILO. Based on the positive progress, the year 2015 will be the year when trade relations with key development partners will be improved, thus improving economic development and employment.

In addition, before the Committee, a **Government representative** made reference to the written information provided by the Government and she informed the Committee of the measures that had been taken, including with respect to the amendment of the Industrial Relations Act, as well as steps that had been taken towards reviewing the Public Order Act, the Suppression of Terrorism Act, the Public Services Bill and the Correctional Services (Prison) Bill, and initiatives taken with a view to adopting a Code of Good Practice on protest and industrial actions. As reflected in the written information, tangible progress had been made on the issues referred to by the Committee of Experts. She requested that the ILO continue to provide support to ensure that all parties were able to exercise their rights within the limits of the law, and encouraged the social partners to act in the spirit of tripartism, partnership and cooperation.

The Employer members recalled that the case was serious and had been discussed by the Committee 12 times. The Government had previously indicated to the Committee, in June 2013, that it would address all outstanding legislation as a matter of urgency. The Employer members recalled the conclusions that had been adopted by the Committee in June 2013, as well as the statement of the Employer members during the Committee's discussion in 2014 that urgent action was required to address the outstanding issues. With respect to the issues raised by the Committee of Experts, the amendments to the Industrial Relations Act had been adopted in November 2014, and subsequently, the registration of federations of workers and employers had taken place in May 2015. The Employer members expressed concern regarding the length of time that the process had taken, and trusted that there would be no further interference with the registration of trade unions or employers' organizations, in violation of the Convention. They welcomed the developments that had led to the adoption of the amendments to the Industrial Relations Act, which now permitted the recognition of workers' and employers' organizations under the law, and urged the Government to ensure that the right of association of all such organizations was ensured in practice. Such organizations should be given autonomy and independence to fulfil their mandate and represent their members. Noting the Committee of Experts' indication that the lawyer of TUCOSWA, Mr Maseko, was still in prison, the Employer members expressed concern regarding any action to penalize legal counsel for representing their client's interests, which constituted a violation of freedom of association. Mr Maseko should be released from detention. The Employer members expressed concern regarding the Government's justification for that imprisonment

with explanations on the rule of law and for his alleged written attack on the judiciary through a published article. The Employer members expressed concern that the Government's explanation with regard to the status of the Public Service Bill and the Correctional Services (Prison) Bill were quite similar to the previous explanations provided. With respect to the review of the Public Order Act, the Employer members encouraged the Government to provide information to the Committee of Experts on progress made in that regard. With respect to the request of the Committee of Experts concerning the right to strike, the Employer members expressed the view that such requests fell outside the scope and mandate of that Committee in relation to the Convention, and that the terms and conditions of industrial action, including the issue of sympathy strikes, should be determined at the national level. The Employer members would continue to monitor adherence to the principle of freedom of association in the country. They were willing to support the Government to promote freedom of association, in both law and practice. They welcomed the registration of TUCOSWA and other federations, but noted with concern the stalling of progress with regard to the outstanding legislative issues. The Employer members expressed concern regarding issues relating to freedom of association in practice.

The Worker members expressed disappointment at the Government's statement that the repression of the trade unionists was in reaction to acts of violence perpetrated against the police when they had mounted an armed response to a dispute arising from collective action by the workers. Such an interpretation of a fundamental right, recognized by the social partners, was thoroughly shocking. It was the sixth consecutive year that the Committee found itself faced with the Government's total failure to apply the Convention, after having given it every possible opportunity to undertake the necessary reforms. Two high-level ILO missions had been sent to the country, the most recent of which, in 2014, had concluded that for the past ten years there had been no progress whatsoever in terms of the protection of the right to freedom of association. The ILO had also provided the country with technical assistance. Yet the Government still had full discretion over the approval of the registration of trade unions, a power it continued to use to restrict freedom of expression and trade union activities, thereby continuing its violation of the right to establish trade unions without prior authorization. The Government had thus revoked the registration of TUCOSWA when in March 2012 it had committed itself to backing multipartite democracy, on the grounds that there was a gap in the legislation regarding the registration of union federations. The Ministry of Labour had subsequently announced the suspension of activities of all union federations in October 2014, as well as of ATUSWA, one of the biggest sectoral unions in the country which was affiliated to TUCOSWA. The unions had been ordered to dissolve their various bodies and their financial structure, pending the amendment of the Industrial Relations Act. However, the revision of the Industrial Relations Act in 2014 had not reflected the tripartite consensus that had been reached in the Labour Advisory Board and did not comply with the Convention, specifically with respect to the right to establish trade unions without prior authorization, as the Act gave the labour commissioner discretionary power in the registration of trade unions. TUCOSWA had been registered by the labour commissioner, in accordance with the new legislation, six months after it had officially renewed its request, while ATUSWA had still not been registered 21 months after having presented its request and was not authorized to engage in union activities as it was considered an illegal entity by the police. Workers who engaged in peaceful, legal and legitimate union activities were constantly

exposed to police intimidation and violence. The police systematically attended union assemblies and conducted regular searches of union offices which, if they took place without a warrant, constituted grave and unjustifiable interference in trade union activities. TUCOSWA had been refused authorization in March 2015 to hold an internal assembly of fewer than 20 people, by virtue of the unjustified application of the Suppression of Terrorism Act, on the grounds that it had to have prior authorization. Additionally, the police had interrupted two TUCOSWA assemblies in February 2015 and had injured one of its leaders, while the President of the People's United Democratic Movement (PUDEMO) and the secretary-general of the Swaziland Youth Congress (SWAYOCO) had been arrested and charged under the Suppression of Terrorism Act following a speech at the 1 May 2014 celebrations organized by TUCOSWA. They were now facing 15 years' imprisonment with hard labour and had twice been refused bail; yet more than a year after their arrest they had still not been sentenced.

The Worker members also drew attention to the 2014 arrest of TUCOSWA's lawyer, Mr Maseko, and that of a journalist for criticizing the judicial system, to the placing in solitary confinement of the former and to their sentencing to two years' imprisonment for contempt of court. Those serious and systematic violations perpetrated against workers in the exercise of their rights were legitimized by the national legislation such as the Suppression of Terrorism Act, the Public Order Act and the King's Proclamation of 1973, all of which contravened the Convention. For many years, the Committee of Experts had urged the Government to modify its legislation and had recommended the revision of certain laws. Bill No. 18 of 2013, which had been approved by the tripartite Labour Advisory Board, would have given effect to those recommendations, but it had not been submitted to Parliament. With regard to freedom of association, the situation had greatly deteriorated during the previous year, when numerous trade unionists had been arrested or imprisoned or had suffered physical violence. The Government had failed to bring its law and practice into conformity with the Convention or to engage in a constructive dialogue with the social partners. The international community had grown weary. The Worker members recalled the resolutions condemning the situation which had been adopted by the African Commission on Human and Peoples' Rights, the trade sanctions imposed by the United States, the European Parliament Resolution of 21 May 2015 (2015/2712(RSP)) calling for the immediate release of the prisoners previously mentioned and full compliance with the Convention, failing which Swaziland risked having its trade preferences withdrawn by Europe. The Worker members made it clear that the workers could wait no longer for resolutions to the problems identified.

The Employer member of Swaziland recalled that the ILO high-level mission that had visited the country in January 2014 had highlighted that the Industrial Relations Act required revision in order to ensure full compliance with the Convention and enable recognition and registration of workers' and employers' federations. Those commitments had been achieved, which would stabilize industrial relations. The previous disagreement with workers concerning civil and criminal liability during strikes and protest action had been resolved. The Government had discussed with the social partners the revision of the Code of Good Practice on protest and industrial actions, and the employers were ready to give their input to ensure that the Code could be both finalized and implemented. The Government had stated that the Code would be finalized by July 2015, which, if implemented properly would ensure peaceful strikes and protest actions as well as provide full conformity with the Convention. ILO technical assistance

would once again be requested to address the outstanding legislative issues. The creation and implementation of legislation was the most important milestone. It was also important to create a legal framework which could be understood and, consequently, fully complied with. The promise to amend the Industrial Relations Act had been kept, and all workers' and employers' federations that were in compliance with that Act had been registered. Both civil and criminal liability had been reviewed and included in the Industrial Relations Act. He urged the Government to work on the two remaining pieces of legislation, the Public Order Act and the Suppression of Terrorism Act, and to seek, if necessary in the process of finalization, ILO technical assistance.

The Worker member of Swaziland stated that his federation, TUCOSWA, had recently been registered following a three-year delay. Despite that, it remained impossible to freely exercise the right of freedom of association and leaders of his organization were continuously harassed by police. TUCOSWA had held, in February 2015, a mass meeting and the participants had experienced police intimidation. In March 2015, the police had stormed the National Executive Committee meeting and some leaders of TUCOSWA had suffered serious injuries. In April 2015, the police had publicly warned the members of TUCOSWA not to participate in 1 May celebrations. Three days following the registration of TUCOSWA, the police had engaged in monitoring of the federation's office, and its secretary-general had been questioned. He expressed regret at the intimidation to which several leaders of the Swaziland Transport and Allied Workers Union (STAWU) had been subjected. The police had required that union to provide the minutes of all its meetings, which was a restriction on freedom of association and had to be stopped immediately. Several efforts had been made by the ILO and other institutions in order to ensure the respect of civil rights in the country, but there had been no concrete results. Far-reaching measures were therefore needed in order to elicit concrete action from the Government.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Albania, Norway, the Republic of Moldova and Armenia, expressed concern at the state of freedom of expression, opinion, assembly and association in the country. She recalled the commitment that had been made by the Government under the Cotonou Agreement – the framework for Swaziland's cooperation with the EU – to respect democracy, the rule of law and human rights principles, which included freedom of association. The European Parliament Resolution of 21 May 2015 (2015/2712(RSP)) had called on the Government to take concrete measures to respect and promote human rights in the country. In that respect, compliance with the Convention was essential. She welcomed the registration, in May 2015, of TUCOSWA and the other federations, whose recognition had been called for by the Committee. Those organizations were expected to be given the space and the autonomy they needed. She called on the Government to respect trade union rights at all times. She expressed concern at the arrest and sentencing of several human rights defenders, which appeared to be a direct contradiction of the right of freedom of expression and she joined the call of the Committee of Experts for their immediate and unconditional release. The Committee of Experts had highlighted several legal acts that were not in conformity with the Convention, and the Government should take the necessary measures to bring its legislation into compliance in that regard. She encouraged the Government to take further steps to ensure a credible, independent and effective judicial system that could protect the rule of law, workers'

rights and wider human rights in the country. She called on the Government to cooperate with the ILO and to respond to the requests of the Committee of Experts. She urged the Government to avail itself of ILO technical assistance with a view to addressing the outstanding issues.

The Employer member of Zambia commended the Government and the social partners for the successful amendment of the Industrial Relations Act, thus allowing the registration of federations in the country. The registration of employers' and workers' organizations was an achievement, as it had previously been requested by the Committee. That demonstrated the commitment of the Government towards achieving full compliance with the Convention, and was a milestone in the creation of peaceful industrial relations. The elaboration of the Code of Good Practice on protest and industrial actions was close to completion, and the Government should be encouraged to expedite that process. Finally, he urged the Government to continue to work with the social partners and to refrain from any violations of trade union or workers' rights. The ILO should monitor the progress achieved and provide any technical assistance required.

The Worker member of Nigeria, also speaking on behalf of Worker members from the member States of the Economic Community of Western Africa States, indicated that the accomplishments reported by the Government at the Committee remained hollow as the situation in practice suggested. He stated that participation in trade union activities remained a serious crime in Swaziland as exemplified by the arrest of Mario Masuko and Maxwell Dlamini for taking part in 1 May celebrations. They were detained under deplorable conditions in violation of the UN Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and, as a result, Mr Masuko's health had deteriorated. The speaker stressed the need for the implementation of the rule of law for the guarantee and enjoyment of human and trade union rights. Thulani Maseko and Bheki Makhubu, had been jailed for pointing out the deficiencies of Swaziland's judicial system. Recalling that these four persons were in solitary confinement, which in itself constituted torture, he denounced the situation in which human rights defenders were unjustly detained for speaking out on issues of justice. He stated that good conscience must resist, so that impunity would not be allowed to thrive.

The Government member of Angola congratulated the Government for the information provided and for its willingness to continue collaborating with the ILO. The Government had been asked to provide evidence of having complied with the recommendations made by the Committee related to the application of the Convention, which called for several amendments to the labour legislation. The amendment processes had taken time and he congratulated the Government on the progress made in addressing the recommendations, which showed its willingness and commitment to bridging the gaps that existed in the legislation. He urged the Government to continue with the ongoing process of reform so as to improve the labour legislation with a view to ensuring that it was in line with ILO standards.

The Worker member of South Africa indicated that the number of trade union, civil and political prisoners had grown tremendously over the years, including Thulani Maseko, Bheki Makhubu, Mario Masuko, Maxwell Dlamini, Zonkhe Dlamini, Amos Mbhedzi, Sonkhe Dube, Roland Rudd and Silolo Thandaza. Mario Masuko had been arrested simply for addressing workers and peacefully calling for democracy and still remained in jail. The persecution of trade unionists was disguised as fighting terrorism. Legislation in Swaziland was one of the most cruel and suppressive legislations that officially criminalized the defence of human and trade union rights, and

allowed the official persecution of trade union and civil rights activists. Moreover, the non-registration of unions under the pretext that they were engaged in politics symbolized the way in which the Government had been dealing with the matter. The speaker mentioned that, having failed to suppress TUCOSWA and unions in general, the Government had formed its own bogus union, called SEEIWU, allegiant only to the monarchy and not to workers. South African trade unionists who had been invited by TUCOSWA to visit their sister unions in Swaziland clearly concluded that there were many similarities between how the Swazi regime and the former apartheid regime in South Africa operated with regard to the persecution of workers and human rights activists. The speaker concluded by stating that there could be no free trade union activity without an enabling environment for the democratic expression of all rights of the people as citizens of the country, including workers.

The Government member of Namibia noted with satisfaction that the Government had made progress with respect to the legislative reform, including the registration of federations of employers and workers. She called for the intensification of ILO technical assistance to address the remaining issues and hoped that, given the progress already made, the case would be resolved soon.

The Worker member of the United Kingdom indicated that this case was gaining more condemnation. She recalled that in view of the situation in Swaziland, the European Parliament had recently questioned the advisability of the Economic Partnership agreement with a group of South African countries, including Swaziland. The European Parliament had also condemned the repression of trade union and human rights through the use of anti-terrorism legislation to intimidate activists, engage in political exclusion, and to restrict the rights to freedom of association and assembly. It had also called for the immediate release of prisoners of conscience, Thulani Maseko and Bheki Makhubu, jailed for publicly criticizing the Government. Most importantly, the European Parliament had passed a resolution providing that the institutions of the EU should require Swaziland to comply with its international obligations and to produce real progress, before signing any agreements with Swaziland. In concluding, she emphasized that those breaches of the Convention had been long-standing and that workers in Swaziland could not wait any longer for change.

The Government member of Zimbabwe observed that the Government had taken considerable steps to improve compliance with the Convention, and the results were encouraging. He particularly noted the amendment of the Industrial Relations Act, the Government's commitment to review the Public Order Act and to operationalize social dialogue and tripartite consultation, and the elaboration of a Code of Good Practice for protest and industrial actions in a tripartite manner. As these were substantial improvements since the last session of the Committee, he called upon the Government and the social partners to build on the progress already realized. He also urged the Office to provide technical assistance with respect to capacity building.

The Worker member of the United States expressed concern that the amendments made to the Industrial Relations Act did not bring the law into full compliance with the Convention and that, in practice, laws would continue to be used to suppress trade union rights. Furthermore, she noted that the Government had still not amended its other laws, including the Public Order Act and the Suppression of Terrorism Act. The Government's lack of a sense of urgency and concern in addressing those long-standing issues was unacceptable. She was concerned that, in May 2015, Swaziland had lost the benefit under the African Growth and Opportunity Act (AGO), giving preferential

market access to the United States under the condition that internationally recognized workers' rights, including the right of association and the right to organize and bargain collectively, would be protected. That revocation would be felt most deeply by the workers in the country. It was estimated that 17,000 jobs would be lost as a consequence. The points considered when the AGOA benefits had been revoked (known as the "benchmarks") were very similar to the considerations by the Committee of Experts. For example, both had asked the Government to amend the Public Order Act in order to allow the full recognition of freedom of assembly, speech and organization. She explained that AGOA eligibility could be restored if the Government would meet the benchmarks. Swazi trade unionists were attempting to mobilize the Government to address those outstanding issues with respect to the benchmarks. In that context, two activists had participated in the Africa Leaders' Summit held in Washington D.C. in August 2014. The Prime Minister had stated that these activists should be "strangled" upon their return to the country. She considered that when the Government openly spoke about killing trade unionists, there remained much work to be done.

The Government member of Botswana noted with satisfaction that tremendous progress had been made by the Government since last year to improve the industrial relations climate in the country. Since the implementation of those reforms might come with challenges, he called upon all parties concerned to genuinely work together to improve the lives of Swazi workers. He expressed support to the Government in that respect.

The Worker member of Argentina expressed his concern at the serious violations of freedom of association in Swaziland. The Articles of the Convention should be given effect simultaneously. The registration of TUCOSWA, following a three-year wait, was the result of pressure exerted by workers and complaints before the ILO supervisory bodies. The trade union organizations nevertheless faced many obstacles to the implementation of their programmes. Their meetings and mobilizations were frequently prevented by the security forces, in a context of violations of fundamental human rights. It was not sufficient to allow organizations to register if afterwards they could not carry out their programmes, if the law qualified nearly all their activities as terrorist activities or contravening public order, if workers were faced with the threat of being arrested for participating in trade union activities, or when the organizations had to give prior notice to the security forces for almost all their activities. For the workers of Argentina and Latin America, the situation evoked the saddest years of their history, during which the Committee had been a space of solidarity. That same solidarity should today be directed towards workers, trade unions and human rights defenders in Swaziland, so that democracy and human rights, including freedom of association, might become a reality throughout the world.

The Government member of the United States referred to the positive amendments introduced in 2014 to the Industrial Relations Act as regards the registration of employers' and workers' federations and the repeal of the civil and criminal liability of trade union leaders. She welcomed the registration in 2015 of TUCOSWA and the participation of its president in the International Labour Conference. Despite these encouraging developments, several concerns remained towards full compliance with the Convention, such as: the need to amend the Public Order Act and the Suppression of Terrorism Act for which the Government was encouraged to take full advantage of ILO technical assistance; the need to enact the Code of Good Practice and disseminate it to police forces; and to effectively guarantee the right to freedom of association in practice. The Government must end both the

practice and threat of police intimidation and interference with trade union activities as a means of suppressing the full enjoyment of the right to freedom of association and the right to collective bargaining. The arbitrary detention of trade unionists, such as that of Mr Thulani Maseko since 2013 for exercising the fundamental right to freedom of speech, must end and the Government needed to ensure their immediate and unconditional release. In 2015, in view of the above, the United States had withdrawn Swaziland's eligibility for trade preferences under AGOA and continued to monitor progress towards the realization of the protection and enjoyment of the right to freedom of association in conformity with the Convention. She urged the Government to accept all necessary ILO technical assistance to accomplish the requisite legislative reforms recommended by the Committee of Experts and to create an environment conducive to open social dialogue and full cooperation with the social partners.

The Worker member of Norway, speaking also on behalf of Worker members of the Nordic countries, deplored that, despite repeated promises from the Government to improve the situation, this Committee was once again discussing the case of Swaziland. The delaying in the registration of TUCOSWA, as well as the employers' organizations, had disrupted the normal trade union functions and had affected the status of social dialogue. After three years, the TUCOSWA had finally re-registered in May 2015, but the Ministry of Labour and Social Security had still been incapable of guaranteeing unions the freedom to operate without interference. Indeed, the authorities had continued to intimidate and disturb trade union activities by demanding to see the meeting agenda and by being present during meetings. Activists and TUCOSWA sympathizers were still being subjected to arrests and thus were being deprived of their most fundamental human rights. She urged the Government to avoid cosmetic reforms and to enter into genuine dialogue with the social partners, so that the case would not appear on the agenda of the Committee again.

The Government member of Zambia was pleased to note the progress made by the Government with respect to the case, including, among others, the amendments to the Industrial Relations Act and the finalization of the Code of Good Practice on protest and industrial actions, as well as the review of other pieces of legislation. In taking these measures, the Government had reached out to the social partners to find amicable solutions. He urged the Government to continue that effort, upholding tripartism. He also urged the Government to implement the new measures adopted in the past year with a view to addressing the emerging issues. He appealed all the stakeholders in the country to ensure the promotion of social dialogue so that solutions to outstanding problems would be found and implemented. He also appealed to the Office to continue providing technical assistance to Swaziland with respect to the matters raised in the case.

The Employer member of Malawi, speaking also on behalf of the South African Development Community Private Sector Forum, expressed the view that the Government and the social partners had begun to address the issues raised in the case, although the results might not be immediate. The labour legislation had been amended and further review was expected with respect to the Industrial Relations Act. He hoped that the ILO would encourage tripartite cooperation at the national level in implementing national policies. Such an environment was conducive to economic growth. He therefore encouraged the Government to continue to engage with the social partners. He also commended the employers in Swaziland for their commitment to the process.

An observer representing the International Trade Union Confederation (ITUC) had been running a small business,

but now had a new role to advocate for the release of her husband, Mr Thulani Maseko, who had been sentenced to a two-year prison term since March 2014 for having criticized the injustice a worker had faced through the judiciary. The court had indicated specifically that his case would be treated differently. She recalled that in 2009, Mr Maseko had been charged with sedition for his May Day speech, a charge that could have led to a 15 to 20-year sentence. She was of the view that the Government was clearly using him in order to intimidate citizens and prevent them from raising their voices against abuse. Despite imprisonment, Mr Maseko remained strong and had written a letter on the first anniversary of his imprisonment, which had resulted in solitary confinement for three weeks. While access to him in prison had been denied, she had been able to see him briefly and had assured him of the support from his colleagues in the trade union movement and in civil society. She hoped that she would be able to carry him the same message from the Committee.

The Government member of Cuba took note of the fact that, as a result of tripartite consensus and with immediate effect, the Industrial Relations Act had been amended and had changed the procedure for registering workers' and employers' organizations and the criminal and civil liability of trade unions. The Government was prepared to deal with registration requests in a manner that gave full effect to the right to freedom of association. The Committee of Experts had taken note with satisfaction of the deletion of sanitary services from the list of essential services and the Government had provided information on other legislative amendments made in line with the Committee's comments. The above demonstrated the Government's political will to comply with the Convention, and to respect the principles of freedom of association, which the Committee should take into account.

The Government member of Morocco thanked the Government for the information that it had provided, which had answered, in part, the Committee of Experts' comments concerning the registration of workers' and employers' federations and legislative matters. He noted with interest the clarifications provided on freedom of association and collective bargaining, the Public Service Bill, the amendments to the Industrial Relations Act and the entry into force of the Constitution which superseded the 1973 Proclamation and its implementing regulations. Underlining the Government's strong will to align the country's legislation and practices with the Convention and supporting the efforts being made, he suggested that the Government be provided with the technical assistance required to revise the Public Order Act. The Government should be given sufficient time to further reforms, particularly those involving the Correctional Services (Prison) Bill and the Code of Good Practice for protest and industrial actions.

The Government representative noted and welcomed all the interventions in the Committee. She explained that the Government was committed to implementing the recommendations put forward by the Committee of Experts in its observation, and hoped that the adoption of the Code of Good Practice, the amendment of the Public Order Act and the resuscitation of social dialogue would assist in maintaining a healthy relationship with the social partners. The Government representative requested the Committee to recognize the tangible progress made, and to encourage the social partners to work with the Government. She also asked for the ILO's technical assistance for the implementation of the measures mentioned, as well as workshops concerning the rights provided for in the Convention. The Government representative was aware of the concerns regarding the independence of the judiciary, and stated that these concerns would be addressed as a matter of urgency. Thanking the ILO for its

help, she was hopeful that the positive approach taken by the Government and the social partners would help diffuse the conflict and facilitate future dialogue.

The Employer members were pleased with the Government's constructive and positive attitude regarding the various interventions and recommendations made. They wished to recognize the following developments as improvements: the amendment of the Industrial Relations Act which allowed the registration of employers' and workers' organizations, which had led to the registration of TUCOSWA and employers' organizations in May 2015; the circulation of the draft Code of Good Practice, elaborated with the active participation of the social partners; and the consultations held with the ILO in respect of the Public Order Act, for which a consultant had been selected for its review. The Employer members encouraged the Government to continue those necessary legislative reforms, in consultation with the social partners as well as with the collaboration of the ILO, so as to generate a climate in which freedom of association of employers and workers would be respected in law and practice. The Employer members raised concern with respect to the Public Service Bill, the Public Order Act and the Correctional Services (Prison) Bill and requested the Government to ensure that criminal and civil liability arising from these instruments would not impact freedom of association. The Employer members were also pleased by the Government's request for ILO technical assistance and requested that this assistance focus on the outstanding issues. They highlighted that it was important to implement necessary reforms both in law and practice, thereby supporting economic growth, creating an environment for sustainable enterprises to thrive, and creating jobs. The Employer members urged the Government to complete the work that it had begun without further delay.

The Worker members stated that they would have liked to be positive but it proved to be difficult. It was now time for urgent action. They took note of the progress indicated by the Government; yet they were of the view that if one was to examine closely the situation, it was hardly possible to see any progress. With regard to the Industrial Relations Act, they noted that section 32 continued to give unlimited discretionary powers to the Labour Commissioner in respect of the registration of trade unions. The registration of TUCOSWA, which had taken more than three years, should not be considered as a governmental success. Moreover, ATUSWA, one of the largest sectoral unions in the country, had formally lodged its application more than 21 months previously and was still awaiting registration. They stated that it remained to be seen whether or not the amendments to the Industrial Relations Act would mean that trade union leaders would cease to be subjected to criminal and civil liability in practice. They recalled that the discussions on the Code of Good Practice for protest and industrial actions had finalized in July 2014, yet the Government had waited until 19 May 2015 to forward the document to workers for their comments. Regarding the technical assistance sought by the Government in order to amend the Public Order Act and bring it into line with the Convention, that technical assistance had been provided in 2011 by the ILO on that very issue. As a result, clear and specific recommendations had been given as to the manner in which the Act needed to be amended; but the Government had chosen to ignore these recommendations for over four years. The Government considered that the revision of the Correctional Services (Prison) Bill was a sign of progress, but they recalled that, for more than two decades, the Committee of Experts had been urging the Government to adopt that legislation. To date, prison staff were still not allowed to join or establish a trade union. Swaziland had not fully addressed any of the recommendations provided by the supervisory bodies

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bolivarian Republic of Venezuela
(ratification: 1982).

over several decades. Technical assistance, fact-finding and high-level missions by the ILO had not been seized as an opportunity to bring laws and practices into compliance with the Convention. Instead, the police had continued to attack and arrest trade unionists. The Worker members therefore called upon the Government to: immediately and unconditionally release all workers imprisoned for exercising their right to freedom of expression; register ATUSWA and amend section 32 of the Industrial Relations Act in order to ensure that trade unions could be registered without previous authorization; amend the Public Order Act and the Suppression of Terrorism Act in order to bring it into compliance with the Convention; adopt the Code of Good Practice without any further delay and ensure its effective application in practice; adopt the Correctional Services (Prison) Bill to allow prison staff to join and establish trade unions; and investigate arbitrary interferences by police in lawful, peaceful and legitimate trade union activities.

Conclusions

The Committee took note of the written and oral information provided by the Government and the discussion that followed.

The Committee noted that the report of the Committee of Experts referred to grave and persisting issues of non-compliance with the Convention in particular in relation to the de-registration of all federations in the country: the Trade Union Congress of Swaziland (TUCOSWA), the Federation of Swaziland Employers and Chambers of Commerce (FSE-CC) and the Federation of Swaziland Business Community (FSBC). The Committee of Experts called on the Government to register these organizations without delay and to ensure their right to engage in protest action and peaceful demonstrations in defence of their members' occupational interests and to prevent any interference or reprisal against their leaders and members. The Committee of Experts' comments also referred to the ongoing imprisonment of TUCOSWA's lawyer, Mr Maseko, and a number of laws that needed to be brought into conformity with the provisions of the Convention.

The Committee took note of the information provided by the Government representative relating to the amendment made to the Industrial Relations Act (IRA) by virtue of which TUCOSWA, the FSE-CC and the FSBC are now registered. She indicated the Government's full commitment to ensuring the full operationalization of all tripartite structures and stated that the federations have been invited to nominate their members on the various statutory bodies. She emphasized that this development would assist in maintaining a healthy social dialogue in Swaziland. Sections 40(13) and 97 of the IRA had also been amended to respond to the comments of the Committee of Experts. A revised Code of Good Practice on protest and industrial actions had been circulated and the Government was awaiting comments from the social partners, while the revised bill to amend the Suppression of Terrorism Act was referred back to Cabinet to ensure that the amendments would not compromise law and order. Similarly, the Correctional Services (Prison) Bill had been referred back to the Minister for Justice and Constitutional Affairs. As for Mr Maseko, she recalled that he was charged and convicted for contempt of court after publishing an article which constituted a scurrilous attack on the judiciary and was calculated to undermine the rule of law in Swaziland. The issue of the independence of the judiciary was being addressed as a matter of urgency. She concluded by reiterating her Government's request for ILO technical assistance to ensure the completion of the Code of Good Practice and amendments to the Public Order Act, and indicated her desire for training for all parties in this regard.

Taking into account the discussion, the Government is urged, without further delay, to:

- release unconditionally Thulani Maseko and all other workers imprisoned for having exercised their right to free speech and expression;
- ensure all workers' and employers' organizations in the country are fully assured their freedom of association rights in relation to the registration issue, in particular, register the Amalgamated Trade Union of Swaziland (ATUSWA) without any further delay;
- amend section 32 of the IRA to eliminate the discretion of the Commissioner of Labour to register trade unions;
- ensure organizations are given the autonomy and independence they need to fulfil their mandate and represent their constituents. The Government should refrain from all acts of interference in the activities of trade unions;
- investigate arbitrary interference by police in lawful, peaceful and legitimate trade union activities and hold accountable those responsible;
- amend the 1963 Public Order Act following the work of the consultant, and the Suppression of Terrorism Act, in consultation with the social partners, to bring them into compliance with the Convention;
- adopt the Code of Good Practice without any further delay and ensure its effective application in practice;
- address the outstanding issues in relation to the Public Services Bill and the Correctional Services Bill in consultation with the social partners; and
- accept technical assistance in order to complete the legislative reform outlined above so that Swaziland is in full compliance with the Convention.

The Committee decided to include its conclusions in a special paragraph of the report.

The Government representative thanked the Committee for its conclusions. Highlighting that the Government had made significant progress in respect to its legislation, she expressed surprise at the conclusions, in particular the last part. She reiterated the Government's commitment to address the issues raised by the Committee and to report periodically.

The Government member of South Sudan congratulated the Government for the commendable actions it had taken to address the concerns on labour issues. She noted in particular the amendment of the Industrial Relations Act and the registration of federations. With regard to the alleged violation of the right to freedom of association by the police, strikers should, when exercising their rights, understand the limits of their actions and conduct their activities in a manner respectful of the rule of law. In concluding, she called upon the ILO to continue providing technical assistance to Swaziland in order to achieve full compliance with ILO Conventions.

BOLIVARIAN REPUBLIC OF VENEZUELA
(ratification: 1982).

A Government representative recalled that in 1936 the ILO had played a key role in the drafting of the provisions of the first Labour Act relating to freedom of association and the right to organize and collective bargaining. For almost 80 years those standards had remained unchanged and had been incorporated with virtually no modifications into the Basic Labour Act of 1991, the 1997 reform on the Basic Act on labour and men and women workers (LOTTT) of 2012. However, the Committee of Experts was now indicating that those standards were contrary to freedom of association and was recommending the technical assistance of the Office. The Government had been obliged to appear before the Conference Committee over

a 15-year period, more for political reasons related to the arrival in power of a worker-led revolutionary government than in relation to technical or legal issues. He observed that the Bolivarian Revolution had been zealous in its protection of freedom of association, that the country's Constitution has incorporated the content of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and that in the last 15 years no persons had been detained for the exercise of trade union activities, a fact unprecedented in the last century. The chief accusation against the Government involved an assault of which an ex-president of the Federation of Chambers of Commerce and Production of Venezuela (FEDECAMARAS) had been a victim in 2010. It had been a criminal act that had been dealt with immediately by the police, but attempts had been made to present it as a government-backed attack. The 2014 ILO high-level mission, which had been conducted four years after the Government had agreed to it, had been provided with abundant written documentation and testimonies on the assault and the other seven specific accusations covered by Case No. 2254 of the Committee on Freedom of Association. Even though none of the elements supplied by the Government had been refuted, the mission had not made any pronouncement on any of the eight cases. Furthermore, even though the Bolivarian Republic of Venezuela had moved on from a "dialogue of the elite" to a comprehensive and inclusive social dialogue, attempts were being made to return to the past with an exclusive business round table for FEDECAMARAS, an organization which was continuing to conspire against the Government. The attempted coups d'état by FEDECAMARAS in 2002 and 2003 had not resulted in any pronouncement by the ILO. On the contrary, on both occasions, the need for dialogue with that organization had been highlighted, despite the hundreds of deaths resulting from the actions of FEDECAMARAS. He underlined the illegal nature of the compensation that it was being attempted to impose FEDECAMARAS leaders for the recovery of seven estates. Those recoveries were part of a campaign to recover 8,000 estates whose lands had been stolen from farmers. In that context, over 180 farmer leaders had been killed by assassins hired by parties closely connected to the business sector.

The report of the high-level mission pointed to the need for confidence to engage in dialogue, but FEDECAMARAS was conspiring in funding and directing economic warfare against the Government, as demonstrated by the recent identification of criminal acts organized by enterprises in the medical and pharmaceutical sectors. Those acts, backed by FEDECAMARAS, generated mistrust on the part of the Government, the people and their organizations. In the consultations held with the most representative workers' organizations on the report of the high-level mission, all had refused to participate in a dialogue round table with FEDECAMARAS. To make any rapprochement possible, the ILO needed first to urge FEDECAMARAS to desist from any conspiratorial actions against the Government. In the meantime, dialogue was continuing in the country with the workers' and employers' social organizations that wished to find a solution to the problems. Since 2014 there had been a Federal Government Council for the Working Class composed of 1,056 trade union leaders, who, in periodic meetings with the President, made proposals and took decisions concerning various topics of national policy. In addition, the President of FEDEINDUSTRIA, an employers' organization that grouped together the country's small and medium-sized enterprises, which represented 90 per cent of the country's economy, had been appointed to establish, in conjunction with the employers, a council for developing

the production plan for the nation. In 2014, a working meeting had been held in the presence of the Trade Union Confederation of the Americas (TUCA-CSA), in which over seven organizations had participated. In this meeting, various points mentioned in the observation of the Committee of Experts had been reviewed, some of which had been discarded for being baseless while others had been solved. He hoped that their inclusion in the observation of the Committee of Experts was merely due to problems of timing. Lastly, he declared that his Government was open to dialogue with the workers, regardless of their political views or position, on condition that the debate was constructive and aimed at finding solutions. With respect to FEDECAMARAS, there would be a comprehensive dialogue when there were guarantees that the organization had abandoned any conspiratorial attitude or action against the Government.

The Employer members emphasized that the case was being discussed by the Conference Committee not because of a whim on the part of the Employers' group, but because it had been given a double footnote by the Committee of Experts, which was an independent body. The case was not new for the Conference Committee and had also given rise to a high-level tripartite mission in 2014. Since the last meeting of the Committee of Experts, the ILO Director-General had sent a letter to the Government in February 2015 expressing his concern at the new events reported by the International Organisation of Employers (IOE) and FEDECAMARAS, and in March 2015 the Committee on Freedom of Association had re-examined Case No. 2254 and decided that it would be dealt with again at its May 2015 meeting. The case under examination by the Committee addressed a number of matters, including serious violence and intimidation against FEDECAMARAS, the criminalization of trade union activity, restrictions on the registration of trade union organizations, on the election of their leaders and the formulation of their programmes in full freedom. The Committee had hoped to receive substantive replies from the Government with regard to the numerous issues. However, the Government persisted in providing the same information as in the past. The Employer members recalled the importance of the resolution concerning trade union rights and their relation to civil liberties adopted by the International Labour Conference in 1970, which emphasized that respect for the Universal Declaration of Human Rights and the international Covenants on human rights constituted a prerequisite for the free exercise of freedom of association. In that regard, there was first of all a need for authentic democratic institutions and not just window dressing, which could be questioned in the case of the Bolivarian Republic of Venezuela. In addition, by virtue of those principles, the Government had the obligation to ensure observance of the right to life, to ensure that nobody was arrested or detained for the exercise of freedom of association, and to avoid using false accusations to harass the representatives of employers' and workers' organizations. Moreover, it was necessary to avoid any delay in the application of justice, which should be delivered by independent authorities. With regard to acts of violence and intimidation against the leaders and members of FEDECAMARAS, new developments had been denounced by the IOE and FEDECAMARAS. New attacks had occurred in a context in which the Government had stepped up its accusations against the private sector, which was allegedly engaging in economic warfare to destabilize the country. He emphasized that the argument of economic warfare against the Government had been dismissed the previous day by the United Nations Economic and Social Council (ECOSOC). He cordially invited the Government to comply with the recom-

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bolivarian Republic of Venezuela
(ratification: 1982).

recommendations of the high-level mission of 2014, as the plan of action had not been implemented and the offer of technical assistance had not been accepted. Furthermore, the conclusions of the mission report called for the development of bipartite and tripartite social dialogue, and in particular for a representative tripartite dialogue round table to be established, with an independent chairperson and ILO participation. He recalled that the ILO had said that FEDECAMARAS was highly representative of Venezuelan employers. The invitation to appear before the Committee on the Application of Standards was not a punishment, but a constructive action. The difficulties experienced by the country needed to be overcome in consultation with all the social partners.

The Worker members said that only policies based on social dialogue would allow a balanced solution to the country's problems identified in the observations of the Committee of Experts and to prevent them from getting worse. Following the ILO's high-level mission in January 2014, a trade union mission from the ITUC and the TUCA-CSA, subsequently joined by Public Services International (PSI), had taken place in August 2014. The mission had been able to discuss pressing issues facing Venezuelan trade unions, which corresponded to issues given particular attention by the ILO's supervisory bodies. Regarding the election of trade union representatives in full freedom, a number of electoral procedures and the renewal of trade union bodies had been blocked for some 20 years, without the National Electoral Council (CNE) certifying the results. The formalities imposed by the CNE were exceptionally burdensome, and the condition imposed by the Ministry of Labour that trade unions should be in possession of a document issued by the CNE certifying the outcome of the electoral process in order to be able to conclude collective agreements was a violation of Conventions Nos 87 and 98. In this regard, the Government had indicated to the trade union mission that it would look into the possibility, under the LOTTT, of unblocking the applications for electoral recognition that were currently in abeyance. Another problem related to the requirement that the list of members of trade unions be transmitted to the public authorities, when the country had no reliable means of guaranteeing the confidentiality of the contents of such lists. Although the Government's willingness to take action was appreciated, there had still been no significant progress in bringing the labour legislation into line with the ILO's Conventions, and the Government was urged to revise the provisions of the LOTTT, in consultation with the trade unions, in accordance with the recommendations of the ILO's supervisory bodies.

Regarding trade union rights and civil liberties, the persistence of repeated assassinations of workers, especially in the construction sector, was a source of profound and very serious concern. At the heart of the problem was the existence of fictitious unions intended to serve as intermediaries between workers and employers on work sites, but which in practice operated as criminal organizations. Impunity, the lack of any transparent system for hiring workers, the small number of investigations conducted and the fact that no official reports were published on violence had aggravated the situation described by the Committee of Experts. Nevertheless, it was encouraging that the Government had recognized the existence of criminal groups in the sector, and the Workers' group reiterated the hope that the Government would take action to follow up the tripartite round table that had been established to find a lasting solution to the prevailing violence and impunity, based on the active involvement of the social partners. Regarding the criminalization of trade union action, representatives of the Confederation of Workers of Venezuela (CTV), the National Union of Workers of

Venezuela (UNETE), the Confederation of Autonomous Trade Unions of Venezuela (CODESA), the General Confederation of Labour (CGT) and the Independent Trade Union Alliance (ASI) had, in the course of mutually respectful dialogue that had also been attended by representatives of the ITUC and the TUCA-CSA, drawn the attention of the Ministry of Labour to several instances of violations of the right to freedom of association. The union mission had taken particular note of several instances, as noted by the Committee of Experts, of repression of the exercise of the right to strike, even though it was recognized in Venezuelan law, as well as several cases of trade unionists being placed on parole for lengthy periods before their cases were examined by the courts. The Ministry of Labour and the Office of the Public Prosecutor had undertaken to identify the cases and resolve them. The Worker members would continue to pay great attention to those cases. Finally, they urged the Government to pursue its dialogue with trade unions with a view to developing a stable political and civil climate in which fundamental rights were guaranteed, including freedom of association, collective bargaining and other vital labour issues on the agenda in the country.

The Employer member of the Bolivarian Republic of Venezuela said that there had been repeated and increasingly serious violations of the Convention by the Government. The Government had so far failed to comply with any of the recommendations made in the report of the ILO high-level mission, especially the establishment of a round table with FEDECAMARAS to examine the complaints made, the call on the Government to desist from using intimidation and excessive language against FEDECAMARAS, and the restoration of dialogue with that organization. The Conference Committee had examined violations of the Convention on 13 previous occasions and the observation by the Committee of Experts this year was a double-footnoted case. The economic scenario was very critical, with rampant inflation, a price index that did not take account of the real costs of production, and an exchange control system that provided no regularity in currency flows so that enterprises could purchase the imported inputs needed for production. There were high levels of shortage and scarcity for certain foodstuffs and other essential products, such as medicines. Faced with this reality, the Government was conducting a media campaign of harassment and stigmatization aimed at holding FEDECAMARAS responsible for the ills afflicting the population. In recent months, the campaign had been accompanied by a series of repressive measures depriving various union and business leaders of their freedom based on accusations of conspiracy, boycotting and hoarding. Recently the Government had adopted a harsher tone in its public messages against FEDECAMARAS, accusing it not only of waging economic warfare against the Government, but also of acting against the people, inciting the latter to commit aggression against the employers' organization and its representatives, jeopardizing their exercise of freedom of association, affecting their freedom of expression and endangering their physical integrity. Minimum wage increases and legislation were also frequently imposed without consultation. The Government's failure to comply with the provisions of the present Convention, the Minimum Wage-Fixing Machinery Convention, 1928 (No. 26), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), was extremely serious and constituted an absolute lack of respect for the recommendations of the high-level mission, undermining the existence of FEDECAMARAS, the most representative employers' organization in the country. With a view to contributing to the search for solutions,

FEDECAMARAS had sent the Government a document entitled "Committed with Venezuela", which contained proposals made by each of the major economic sectors represented in the organization. However, the Government had not replied to that communication so far. FEDECAMARAS hoped for progress for all Venezuelans, and that necessitated the preservation of the role of private enterprises as the creators of jobs, facilitating conditions that were conducive to production, investment and sustainability. She called for the ILO to act as an intermediary to enable dialogue with the Government since dialogue was essential, now more than ever, in order to solve the country's economic crisis and ensure the well-being and progress of the Venezuelan people.

The Worker member of the Bolivarian Republic of Venezuela indicated that, since the Bolivarian Revolution in 1999, the Government had confronted and defeated, together with the workers, attempts to establish labour flexibility and to privatize public services, and to disregard the rights to strike, to organize and to collective bargaining. In this way, the neoliberal transformations which had caused so much harm to workers around the world had been avoided. Participatory and proactive democracy had been approved through 19 electoral processes over the past 15 years. Over that period, the workers had succeeded in the adoption of the Basic Labour Act, which was the outcome of a 24-month consultation process during which 19,000 proposals had been received from participating assemblies. As a result of that process, the country enjoyed full employment stability, the unions had been strengthened and protected and the right to strike had been protected, even in those cases where essential services were affected. In 2013 alone, over 500 collective agreements had been concluded in the private sector and 100 in the public sector, benefiting over 3 million workers. Furthermore, since the election of President Maduro, the highest level of participation of trade unions had been achieved in the conduct of the country's economic and political affairs, through the presidential councils for the working class, rural inhabitants, young persons, artists, women and indigenous persons. The President of FEDEINDUSTRIA had recently been requested to call on the most representative organizations to form a presidential employers' council.

Over 1,050 union leaders organized by productive sector were participating in the presidential council for the working class. The situation presented was in dramatic contrast with the attitude of FEDECAMARAS which had, from the outset, opposed all the progress made by workers, participated in coups d'état, in sabotage action against the oil industry and in employer stoppages. Moreover, it was currently maintaining a complicit silence when its members took over consumer products to trigger shortages and foster popular mistrust in the Government. The acts reported by FEDECAMARAS did not therefore amount to persecution of its employer members, but were rather a result of its involvement in criminal acts. FEDECAMARAS unashamedly demanded the repeal of the labour rights that had been won through the Basic Labour Act and over 80 laws which allowed the full enjoyment and fair distribution of wealth across all categories of the population. Moreover, these laws were in conformity with the fundamental Conventions. In addition, some employers of FEDECAMARAS had ordered the assassination of over 300 rural leaders who had been participating in the recovery of over 2 million hectares of agricultural land that had been seized from them. The Government had repeatedly invited the employers of FEDECAMARAS to join in round table dialogue and participate in the presidential employers' council. Nevertheless, FEDECAMARAS declined to take part in dia-

logue and supported the conspiracy against the Government. The high-level tripartite mission that had visited the country in January 2014 had been able to verify the dialogue and democratic consultation machinery operating in the country. In the face of escalating street violence and sabotage stirred up by outsiders, the Government had renewed its invitation to take part in social dialogue, directed particularly at FEDECAMARAS. As part of that dialogue, FEDECAMARAS had visited the presidential palace, and in February 2015 nine meetings had been held at its headquarters. The Bolivarian Socialist Workers' Confederation was opposed to setting up tripartite dialogue, as the country had gone beyond that system and set up a more in-depth form of social dialogue that took place within presidential councils. The workers supported inclusive social dialogue, provided that FEDECAMARAS changed its long-standing attitude of sabotaging and opposing the workers' achievements. In conclusion, he expressed full support for the efforts being made by the President to maintain dialogue, including with FEDECAMARAS.

The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), noted the information provided by the Government on the effect given to the Convention through the national Constitution, law and practice. The observation of the Committee of Experts noted the Government's arguments, such as the fact that the events reported were unconnected with trade union activities and the exercise of freedom of association; the completion of the legal action, police investigations and follow-up to judicial rulings in the specific cases referred to in the observation; the fact that the right to strike was enshrined in the Constitution, and was not prohibited in national legislation; and the existence of broad and inclusive social dialogue. GRULAC recalled the provisions of Article 8(1) of the Convention and was confident that the Government would continue complying with the provisions of the Convention.

The Employer member of Brazil said that any improvement in a country's social conditions presupposed the existence of effective tripartite social dialogue, along with respect for private initiative and employers who, together with workers, produced the country's wealth. In the Bolivarian Republic of Venezuela there was false dialogue, and the threats against employers and the detention of employers leaders was contributing to the deterioration in the economic situation of the country. He regretted that responsibility for the chaotic economic situation in the country was being blamed on enterprises and employers by the government-backed press, when in fact it due to very bad management by the country's autocratic governing regime.

The Government member of Saint Kitts and Nevis recalled that all member States, regardless of size, bore the solemn duty of ensuring compliance with ILO Conventions. The Government's presence before the Committee demonstrated its commitment to ILO values. He urged all parties to the dispute to hold negotiations in the hope of finding a mutually beneficial solution.

The Worker member of Cuba welcomed the Government's reply, which had been endorsed by the country's most representative trade union organization. The Government had the political will to maintain inclusive social dialogue in line with the country's constitutional and legal framework. This was demonstrated by the fact that, since April 2013, significant technical round tables on social dialogue had been held with the employer sector in which hundreds of enterprise representatives had taken part. In order to avoid the credibility and impartiality of the ILO's supervisory mechanisms being undermined, recommenda-

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bolivarian Republic of Venezuela
(ratification: 1982).

tions to promote social dialogue in the Bolivarian Republic of Venezuela should not be directed exclusively towards the Government. While the Government had certainly demonstrated its openness, another party had instead created a hostile environment and had excluded itself from the social dialogue process. Moreover, as the Government had indicated, the observation of the Committee of Experts covered issues that did not fall within the scope of tripartite dialogue in the country, but were a matter for other constitutional bodies. After 15 years of listening to comments that were largely rhetorical, the moment needed to come when the case would be dealt with constructively, evaluating in an objective rather than political manner the will of the Government and the country's most representative workers' organization to build a just society.

The Government member of the Plurinational State of Bolivia supported the statement made by GRULAC and welcomed the information provided by the delegation of the Bolivarian Republic of Venezuela concerning compliance with Convention No. 87. He noted with satisfaction all of the inclusive dialogue initiatives promoted by the Government, as acknowledged by the high-level tripartite mission. He emphasized the relevance of holding technical round tables with the various trade union organizations, chambers, federations, land committees, farming committees and communal councils, among others, in conformity with the constitutional and regulatory framework. He emphasized that those activities demonstrated that Venezuelan workers' and employers' organizations had the opportunity to participate constantly in broad social dialogue. The ILO and the Conference Committee were not the place to examine issues raised for political reasons, and such cases should not be accepted in future. Finally, he commended the willingness of the Government to continue complying with the Convention.

The Employer member of Panama agreed with the Employer's spokesperson that the call to appear before the Committee was not a whim on the part of the Employers, but a response to observations made by one of the ILO's supervisory bodies. The cornerstone of democratic government was respect for human rights, particularly the fundamental rights promoted by the ILO. He had repeatedly been involved in discussing this case, in which the Government was accused of violating the Convention through acts of harassment, persecution, repression and detention of members of the employer sector. The situation in the Bolivarian Republic of Venezuela was extremely serious, not only because the Government had disregarded the recommendations of the high-level mission, but also because cases of violations and the persecution of the social partners had intensified. The moment had come for the Committee to do more than express its profound concern at the serious and varied forms of stigmatization and intimidation faced by the social partners and to adopt a recommendation urging the Government to accept ILO technical assistance so that an effective forum for open and sincere tripartite dialogue could be established to smooth the path towards social peace.

The Government member of Myanmar commended the Venezuelan Government for its efforts to address the dispute by holding a broad dialogue that included many employers' organizations. The holding of this dialogue, as well as the efforts made to ensure respect for freedom of association more generally, should be duly recognized. Indeed, this case should not have been brought before the Committee.

The Worker member of Brazil stated that the repeated examination of cases involving the Bolivarian Republic of Venezuela bothered all those members of the Committee who were committed to the advancement of workers'

rights throughout the world. She praised the Government, which had assumed the presidency in 1999 and had escaped from the external influence of the United States and the administration of FEDECAMARAS. She regretted that FEDECAMARAS and the IOE continued to make defamatory actions in the Conference Committee against a Government which enjoyed the support of the majority of Latin American countries in opposition to the sanctions imposed by the United States. It was also to be regretted that the instigators of a coup d'état and the economic sabotage of the country came to the Committee to express concerns regarding the situation of workers and the lack of consultation. She called for any allegations proven to be false no longer to be discussed in the Committee.

The Government member of the Lao People's Democratic Republic said that the Venezuelan Government had made significant efforts to protect the right to freedom of association of workers and employers, including through the adoption and enforcement of its labour legislation. He hoped that this dispute would be resolved in a timely and peaceful manner.

The Employer member of Honduras noted that free enterprise was necessary in all countries for their development. However, that could only be achieved when employers' organizations were free from harassment and intimidation. The Government was in flagrant violation of the Convention and it had systematically and consistently hindered the freedom of action of entrepreneurial organizations (FEDECAMARAS, the National Commerce and Services Council (CONSECOMERCIO) and the Venezuelan-American Chamber of Commerce and Industry (VENANCHAM)) and workers, such as by levelling criminal charges against and arresting trade union leaders, launching a media campaign to generate and encourage hatred towards employers and workers, and promoting parallel organizations. Those violations had been reported by the ILO high-level tripartite mission. He called on the Conference Committee to take concrete action to prevent the continued violation of the Convention by the Government such as the cessation of the attacks on employers' organizations, and particularly on FEDECAMARAS, and the establishment of an immediate time frame for the creation of the tripartite dialogue round table.

The Government member of Namibia said that it was clear from the information submitted by FEDECAMARAS that the latter's dispute with the Government did not genuinely concern freedom of association, but rather was of a political nature. He commended the Government's efforts to hold inclusive dialogue, and maintained that this initiative deserved to be encouraged and facilitated by the ILO.

The Worker member of Colombia condemned double standards by defending the report of the Committee of Experts in relation to the right to strike, but criticizing it on other matters. The main concern of the General Confederation of Labour (CGT) of Colombia was that freedom of association should be fully respected in all ILO member States, whatever their system of government. The violations of freedom of association described in the observation of the Committee of Experts were unacceptable and were at odds with the revolutionary process proclaimed by the Government. Violations of the principle of the free election of trade union officials had worsened because of interference and arbitrary practices by the CNE, which could choose whether or not to grant registration and allow publication in the "electoral gazette", as required by the Government as a prerequisite for trade union organizations to exercise their activities, such as in the case of the Telephone Workers' Union of Caracas and the Union of Employees of the National Assembly. Many trade unions were defenceless, and particularly those

workers of Vargas laboratories, the plastics industries in Carabobo, cement enterprises of the State of Lara, SIDETUR and the National Federation of Electrical Workers. Under these conditions, the Committee needed to request the Government to respect the right of all trade union organizations, without any distinction, to pursue their activities freely.

The Government member of Malaysia welcomed the ongoing initiatives and efforts made by the Government to resolve disputes, and called for these initiatives be undertaken in a manner consistent with international human rights principles and ILO standards. There was a broad inclusive dialogue mechanism that allowed employers to participate, and this should be utilized as a platform for engagement with the tripartite partners with a view to bridging gaps and planning for the future. He encouraged the Government to continue its efforts to engage with the parties concerned and the ILO to achieve a common understanding which would ensure harmonious conditions for both workers and employers.

The Employer member of Mexico said it was surprising to have heard a conditional offer of dialogue from the Government, which confirmed what was stated in the report of the Committee of Experts that there was no social dialogue in the country. The ILO had taken multiple measures to help the country apply the Convention. When this fundamental Convention had been ratified, the Government had made comprehensive efforts for its application, but since then it had lost the will to do so. Despite persuasive efforts and the double footnote, no progress had been observed. The situation posed an enormous challenge to all countries within the ILO that were committed to protecting the fundamental principles for harmonious human development, which included the principles of freedom of association. A climate free from fear and violence was essential to achieving universal peace. Despite many efforts, there had been no progress in the application of the Convention. On the contrary, there were cases of unjustified detentions, harassment, and verbal and physical attacks which resulted in loss of life and impunity. The legislation restricted rights and had been drafted without tripartite consultation. The recommendations of the high-level tripartite mission included the creation of a round table for tripartite dialogue that respected and recognized the representativeness of workers' and employers' organizations. This round table would not be established if the conditions stipulated by the Government were not accepted. In these circumstances, the conclusions should not simply describe the situation, but should draw attention to the lack of willingness by the Government to make changes.

The Government member of Ecuador supported the statement made by GRULAC. He welcomed the information supplied by the Government, which had demonstrated its willingness to resolve its domestic political problems using peaceful and democratic channels and through dialogue. The provisions of international Conventions did not authorize or legitimize actions that ran counter to national legislation. On the contrary, they required the social partners to observe the rules of democratic relations. Article 8(1) of the Convention established that, in exercising the rights provided for in the Convention, the social partners were requested to respect national legislation. In the Bolivarian Republic of Venezuela, broad inclusive dialogue existed, which was an improvement compared with the situation that had prevailed previously, and ILO Conventions were not contested in the country. The social partners participated on a permanent basis in broad social dialogue organized by the Government. Within the framework of the Union of South American Nations (USAN), Ecuador had supported the Bolivarian

Republic of Venezuela regarding dialogue and had participated in several meetings with all social partners. The Government of Ecuador therefore recognized the efforts that the Venezuelan Government was making to develop inclusive, democratic and constructive dialogue with a view to finding an appropriate solution.

An observer representing the World Organization of Workers (WOW) indicated that the Committee should not be used as a political instrument. The Government had intensified its policy of criminalizing work-related protests. Workers were repressed, detained and imprisoned for exercising their right to freedom of association. Leaders and workers affiliated to the WOW had been murdered and many had lost hope for a different management model. The fight against anti-union discrimination had led to criminal charges, persecution, intimidation, dismissals, prison sentences and deterioration in the working conditions of hundreds of workers and union leaders. The recommendations formulated by the high-level tripartite mission on the need for social dialogue, and all the considerations of the various ILO supervisory bodies, had been rejected by the Government despite the efforts of the ITUC, TUC-USA and PSI. In the light of the critical labour situation, and the repeated violation of the Convention, she called for the establishment of a Commission of Inquiry.

The Government member of the Syrian Arab Republic said that the case under consideration was a political one and that it had been presented repeatedly against the Government. Article 8 of the Convention required, in exercising the rights provided for in the Convention, respect for the law of the land. The Government had invited FEDECAMARAS to participate in dialogue, but the organization had refused to do so. ILO Conventions concerning freedom of association, collective bargaining and social dialogue were respected in the country and workers' and employers' organizations were participating in broad social dialogue. In this regard, the Government was carrying out a consultation process for the purpose of establishing round tables. Concerning the allegations of acts of violence and threats against FEDECAMARAS and its leaders, he indicated that the freedom to elect trade union representatives was preserved. The CNE was independent from the executive authorities and its constitutional role was to guarantee the electoral rights of workers and of all citizens. The right to strike was enshrined in the Constitution and in national legislation. There were no penalties imposed on workers who had carried out a peaceful strike pursuant to the procedures laid down in the national labour legislation. Since the case was political, it should not be discussed by the Committee.

An observer representing Public Services International (PSI) voiced her concern at the persecution of public sector workers by means of the selective dismissal of trade union leaders, compulsory retirement, the sponsoring of parallel trade unions, the improper intervention of the CNE and the laborious and costly formalities involved in the registration of trade unions. These practices constituted a violation of the independence of trade unions provided for in the Convention. Moreover, they continued to occur despite the appeals made by the ILO supervisory bodies. Since there were two laws applying to public employees that ran counter to the exercise of freedom of association, the country's labour legislation should be unified and she called for the ratification of the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154). Those Conventions provided an international normative framework for the application and respect of freedom of association and collective bargaining rights of public sector workers. A process of inclusive bipartite

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bolivarian Republic of Venezuela
(ratification: 1982).

dialogue was needed for purposes of negotiation, to strengthen public employment and to ensure that the rights set out in the Convention were respected. A plan was also needed to follow up and implement the promises that the Ministry of Labour had made to the ILO high-level tripartite mission. Social dialogue was important for democracy and for guaranteeing decent working and living conditions. The Government's commitments should be clear and precise.

The Government member of India noted that the Venezuelan Government was promoting social dialogue by holding technical round tables with employers. Workers and the employers were also participating in broad social dialogue in the country. The Government had held, in February 2015, the first meeting between the representatives of FEDECAMARAS and the presidential commission on economic affairs. The Government had succeeded in determining those responsible for acts of violence towards the leaders of FEDECAMARAS. The Government had suggested, as indicated by the Committee of Experts, that the trade union organizations should submit information concerning the names of trade union victims and, in addition, full particulars, to the extent possible, on the circumstances of the murders, including any indication of their anti-union nature. The Government had explained that the participation of the CNE in the elections of trade union representatives was optional and occurred only if a union sought either the support or the technical assistance of that body. The CNE was independent from the executive authorities and its constitutional role was to guarantee the electoral rights of workers and of all citizens. He called on the Committee to take note of the efforts of the Government to promote social dialogue and to address the concerns of the social partners. He hoped that the Government would continue to expand this process.

The Government member of the Dominican Republic rejected the accusations made against the Venezuelan Government with regard to compliance with the Convention, as it had shown a willingness to resolve its domestic political problems in an exemplary manner through peaceful and democratic means and through elections. Furthermore, there was broad dialogue in the country, which had been recognized by the high-level tripartite mission, which undoubtedly represented important progress in relation to the dialogue between social partners that had prevailed previously. The application of, and compliance with, ILO Conventions on freedom of association, collective bargaining and social dialogue were uncontested in the Bolivarian Republic of Venezuela. The Government's readiness to continue engaging in dialogue should be noted with satisfaction and it should be encouraged to pursue this process further.

The Worker member of Nicaragua said that he rejected the way in which the case of the Bolivarian Republic of Venezuela was being treated as an alleged violation of the Convention, given that the Government had repeatedly shown that it was faithfully complying with ILO Conventions and national labour legislation. The Government had even accepted ILO missions to the country and had supplied them with all the necessary information. The labour policy developed and introduced by the Government had led to the negotiation of collective agreements. The minimum wage had been raised, access to free public education and health care was guaranteed, social housing construction programmes were being implemented and round tables for bilateral and tripartite dialogue were being promoted to seek solutions to the most serious problems faced by workers and the population in general. The Government supported the cause of the people of Latin America and the Caribbean and difficulties were being resolved through dialogue, the essential foundation of tripartism. It

was important to ensure that the ILO was a credible, strong, authoritative and prestigious organization so as to ensure the well-being of workers and the proper functioning of industrial relations. Claims should not be used for political purposes.

The Government member of Belarus acknowledged the complex approach that the Bolivarian Republic of Venezuela had adopted in order to encourage progress in social and labour issues. The ILO had recognized the progress made by the Government in social dialogue following the high-level tripartite mission in January 2014. In February 2015, FEDECAMARAS had noted the progress that the Government had made in renewing tripartite social dialogue. Article 8(1) of the Convention provided: "In exercising the rights provided for in this Convention workers and employers and their respective organizations, like other persons or organised collectivities, shall respect the law of the land". It was essential for the ILO supervisory mechanisms to interpret this Article in the correct manner. As there was no agreement between the member States that had ratified the Convention on the meaning of this Article, it was not appropriate to interpret it in a broad manner.

An observer representing the Confederation of Workers of Argentina (CTA) drew attention to the report provided by the Government at the request of the Committee of Experts, and to the position of the workers of the Bolivarian trade unions which had highlighted progress made regarding inclusion, social justice and increasing democracy. The statement of GRULAC was very positive, as was the willingness expressed by the Government to give effect to the Convention and to engage in social dialogue. He trusted that the Government would take note of the observations of the Committee of Experts, the ITUC and the TUCA-CSA, and continue tripartite collaboration together with the social partners. It was paradoxical that the organizations which claimed to defend democracy had participated in action to destabilize it in violation of the law. The Government, workers and the people could overcome the difficulties faced and support the process that was unfolding, whose objective was wealth distribution, the attainment of social justice and the inclusion of the population.

The Government member of the Russian Federation expressed his Government's appreciation to the Government representative for the detailed explanations provided to the Committee concerning the application of the Convention. The willingness of the Government to cooperate with the ILO to implement freedom of association, as set out in the Convention, had been confirmed by the high-level tripartite mission in January 2014. In addition, the Government had regularly provided detailed replies to the comments of the Committee of Experts, and had reported the implementation of measures in consultation with all the social partners, including FEDECAMARAS. Following the meeting that had been held in February 2015, the situation in the country was positive. He noted the isolated cases of tragic crimes against trade unionists. Each crime should be thoroughly investigated and the perpetrators sentenced, which was being done by the Government. In numerous cases, such crimes were not linked to trade union activity. It was therefore important to not politicize such issues. In conclusion, he acknowledged the cooperation between the Government and the ILO for the implementation of the Convention, and hoped that such cooperation would continue.

An observer representing the Inter-Union Assembly of Workers – Workers' National Convention (PIT-CNT) indicated that the trade union movement in Uruguay was aware of, and acknowledged, the existence of inclusive social dialogue in the Bolivarian Republic of Venezuela

and that efforts had been made to intensify it. The Government had convened a meeting at FEDECAMARAS' own headquarters, but the Organization had not taken part. It was a double footnoted case, but it should be recognized that in the country the right to strike, one of the pillars of freedom of association, was recognized by the Constitution. Fundamental rights in the country were therefore not being questioned. There was no problem with discussing politics, but there should be no misuse of the Committee. It was unacceptable that those who were participating in dialogue forums established by the ITUC and the TUCA–CSA subsequently denounced a situation that was contrary to reality. In the country there was also a register of trade union organizations and the representativeness of the federations was not in question. With regard to representativeness, the way in which the representatives of FEDECAMARAS were elected was not transparent. Nobody could tell the workers the manner in which they should defend democracy. Whenever the rule of law was not respected, workers were the first to pay the price, including with their lives. For that reason, the trade union movement of Uruguay, together with that of Latin America as a whole, would always defend democratic systems, such as that of the Bolivarian Republic of Venezuela.

The Government member of Viet Nam noted the efforts that had been made by the Government, as well as the constructive cooperation and further engagement with the ILO in addressing the issues that had arisen in Case No. 2254 of the Committee on Freedom of Association. The Government should continue on this path, as some unresolved challenges remained. There was a need to strengthen ILO technical assistance for the purpose of obtaining further achievements.

The Government member of Uzbekistan congratulated the Venezuelan Government for its commitment to providing explanations within the context of constructive cooperation with the ILO, and for its commitment to resolving the difficulties in the country in a peaceful manner. He noted that the current consultative procedure, which included all the parties concerned, was in conformity with the national legislation. He also underlined that a constructive dialogue was taking place, which had been confirmed by the high-level tripartite mission in January 2014. It was useful to encourage the Government to pursue its efforts, and to provide the necessary support so that it could continue on this path.

The Government member of Switzerland said that the observance of the Convention by the Bolivarian Republic of Venezuela had been discussed repeatedly, and the latest decision on the subject had been taken at the 320th Session (March 2014) of the Governing Body. He emphasized the importance of implementing this decision and encouraged the Government to establish a tripartite social dialogue round table. The Government needed to give effect to the recommendations of the Governing Body of 2014 and to ensure true social dialogue, and particularly to ensure the safety of the social partners. He urged the Government to take the necessary measures to stop the violence against both trade unionists and employers. The current environment and the serious forms of stigmatization and intimidation did not allow social partners to fully contribute to the country's economic development. He called on the Government, with the assistance of the ILO, to better integrate the social partners in the amendment and establishment of legislation.

The Government member of Nicaragua said that his Government associated itself with the statement made by GRULAC. He expressed support for the Venezuelan Government, which had been called before the Committee on spurious grounds to discuss a case that had become

politicized. Dialogue and cooperation were the foundation for moving forward in resolving conflicts. In that regard, the progress made by the Government to solve its internal problems democratically was positive. The high-level tripartite mission that had visited the country had acknowledged the Government's political will to pursue inclusive dialogue with all social partners and had noted the significant progress that the Government had made in meeting its international labour obligations. In this spirit of dialogue, the President of the Bolivarian Republic of Venezuela had convened a dialogue with all social partners in February 2015, and FEDECAMARAS had declared publicly that the meeting had been productive. It was time to turn the page and move forward for the benefit of the country.

The Government member of Algeria said that the case of the Bolivarian Republic of Venezuela was repeatedly brought before the Committee, despite the fact that the high-level tripartite mission had noted significant progress in terms of social dialogue. Steps either had been taken or proposed by the Government which aimed at enabling all leaders to participate in the promotion of social dialogue, as referred to by the high-level tripartite mission. The Government's positive initiatives and actions should be supported and encouraged, as should the achievement of social dialogue.

The Government member of Cuba said that her Government supported the statement made by GRULAC. The Venezuelan Government had amply demonstrated its willingness to cooperate with the Committee by supplying the pertinent information. It had found inclusive and democratic solutions to the domestic political situation in full exercise of its rights. Moreover, the high-level tripartite mission had recognized the broad and inclusive dialogue that was ongoing in the country. The Government had reported on numerous initiatives with the social partners and had shown its willingness and commitment regarding tripartite social dialogue. It was carrying out a consultation process with trade unions to develop an action plan for the establishment of round table dialogue. The Government had provided a detailed response to the observation made by the Committee of Experts.

The Government member of Egypt recalled that the right of freedom of association also came with responsibility. International labour standards on freedom of association provided a general framework for the exercise of that right. This framework allowed member States to set out the procedures governing its exercise, in accordance with national conditions, provided that such practices were not in conflict with international labour standards. The Government had responded to the requests of the ILO by providing proposals on the issues raised. Fostering social dialogue and cooperation between the Government and the social partners was a positive initiative. He agreed with the view of the Government representative on the right to strike, that this right was guaranteed in international labour standards, provided it was exercised in a lawful and peaceful manner.

The Government member of China expressed support for the statement of GRULAC. The Government was cooperating with the ILO and had made efforts to improve legislation respecting the right to strike and social legislation. The countries that had ratified ILO Conventions should implement the provisions of those Conventions. In that regard, the ILO was available to assist countries in overcoming their difficulties regarding the implementation of Conventions and countries could ask for technical assistance.

The Government member of the Islamic Republic of Iran noted that due consideration should be given to the measures taken by the Government, which demonstrated

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Bolivarian Republic of Venezuela

(ratification: 1982).

its commitment and willingness to resolve the existing problems. The Government had engaged in inclusive dialogue with employers' and workers' organizations in the country, as recognized by the high-level tripartite mission in 2014. It had also promoted the holding of technical round tables with employers to address specific issues. Further technical assistance should be provided to the Government.

The Government member of Pakistan recalled that the ILO supervisory system was geared towards monitoring progress in the implementation of ILO Conventions. It was important for all the social partners to respect the non-political nature of tripartite mechanisms. The politicization of cases was counter-productive. The Convention did not authorize unlawful action, and it was important for the social partners to respect the rule of law. He noted the Government's commitment to social dialogue and its willingness to enhance this further, and encouraged the social partners to work with the Government for that purpose.

The Government member of Jamaica expressed support for the statement of GRULAC. She was encouraged by the approach of the Government to work with the Committee, and recognized its efforts to address the matters raised. She was confident that the Government would continue to foster dialogue and engage with all the stakeholders concerned, in line with the Convention.

An observer representing the International Organisation of Employers (IOE) emphasized the importance that this case held for the business community. For a long time, the IOE had been expressing its deep concern at the harassment and intimidation to which independent and representative business organizations of the country were subjected, particularly FEDECAMARAS and its member organizations. The recommendations of the ILO supervisory bodies and the conclusions of the Committee had clearly reflected that concern in detail and with explanations based on fact. It was not a question of politics, but of the application of the Convention and of principles and fundamental rights. It had been hoped that, following the high-level tripartite mission, the Government would open channels for dialogue and would make a special effort to prevent acts of coercion against business leaders. The conclusions of the mission contained proposals and identified action that had been systematically rejected by the Government. FEDECAMARAS had tried to demonstrate a constructive approach in an attempt to avoid confrontation. The Government, however, continued with its action. The climate of criminalization of protests had intensified to the detriment of employers' organizations, as well as the independent trade union organizations. The lack of consideration and respect for the proposals of the ILO supervisory bodies was evident. The efforts carried out by the ILO to improve the situation, which seriously affected workers and employers, were greatly appreciated. The business community as a whole had demonstrated a high level of solidarity and commitment to this case. The Worker members had also expressed concern, and the clarity and influence of the ILO should not be prejudiced in the present case. The Committee's conclusions should be coherent with the need for effective and immediate action in a very serious situation for freedom of association and the right to organize.

The Government member of Kuwait, also speaking on behalf of the Government members of Bahrain, Oman, Qatar and the United Arab Emirates, noted the efforts that were being made by the Government to improve social dialogue in order to improve compliance with the Convention. It was necessary to give the Government time to meet its obligations under the Convention. He hoped that the ILO would give full support to the Government and

that this would be taken into account in the Committee's conclusions.

The Government representative replied to the allegations made by Worker and Employer members. With regard to the statements made by Worker members, the issue raised was part of the agreements and had been resolved. The list of requirements for trade unions had been drawn up by the ILO and had been applied ever since. Concerning the alleged detentions and attacks, the Government was waiting for a list to be supplied. In the construction sector, while it was true that there had been problems with violence, such situations mainly concerned workers, not trade unionists. With regard to the CNE, it only intervened at the request of the trade union organization. The issue was one of the agreements in force, and it was impossible for trade union elections to have been paralysed for some 20 years because of the CNE, as had been said, given that it had only been in existence for 15 years. Elections could be held if so wished. If elections were not held, it was not the fault of the Government, and in fact there were trade union organizations that did not want to hold elections because their membership numbers had fallen. With regard to the statements made by the Employer members, the Government representative said that the country enjoyed full democracy, as demonstrated by the past 19 electoral processes. While it was true that the country was taking part in the process of examining the application of the International Covenant on Economic, Social and Cultural Rights, it was not true that the Economic and Social Council of the United Nations (ECOSOC) reached conclusions, as indicated by the Employer members. With regard to the allegations of harassment, it was FEDECAMARAS that had taken part in criminal activity, such as kidnapping the President, sabotaging petrol supplies and blocking the distribution of medicines so as to cause shortages, and yet not a single member of FEDECAMARAS had been punished. FEDECAMARAS was conducting an economic war but, despite reductions in the country's income, the Government had maintained all its social programmes. That was what exasperated FEDECAMARAS, and that was why it had attempted a coup d'état. If FEDECAMARAS demonstrated its political will and abandoned its conspiratorial stance, it would be possible to sit down and talk. He emphasized that the country was sovereign, but that the Government stood ready to discuss any issue.

The Worker members said that they would confine themselves to addressing the factual elements of the case, that is the issues that had been raised by the Committee of Experts relating to the non-conformity of the legislation with the Convention, and the information reported by employers' and workers' organizations. This had been supplemented by the elements mentioned by the Government in reply and the invitations made by the members of the Committee to pursue cooperation. It should be remembered, however, that cooperation with the ILO could only be fruitful if it was based on, or led to, real and sincere tripartite social dialogue based on respect for freedom of association and the commitment of all the parties concerned. The conformity of the national legislation with the Convention had been a matter of concern to the Worker members for several years. Overcoming the challenges involved would necessarily require political will and assurances of commitment to social dialogue with the objective of seeking solutions, rather than making an already very conflictual situation worse. The Government needed to adopt the legislative amendments deemed necessary by the Committee of Experts, especially to end the interference by the CNE in trade union elections and to review the procedure for transmitting lists of trade union members to the public authorities. Measures also needed

to be taken to bring an end to impunity for crimes committed against workers in the construction industry and to establish an effective recruitment system for construction workers without delay. The Worker members welcomed the Government's offer to strengthen the ITUC's social dialogue initiative, with the participation of all Venezuelan trade unions, as well as the positive developments on the matters raised by the Committee of Experts and Venezuelan trade unions. They called on the Government to submit a full report, before the next session, on the issues raised by the Committee of Experts and the Committee on the Application of Standards and requested the ILO to support tripartite activities in the Bolivarian Republic of Venezuela, with the participation of regional employers' and workers' organizations.

The Employer members noted the many interventions on the present double-footnoted case. They observed that, while some interventions had been political in nature, others had been based on factual evidence, and not on speculation. The report of the Committee of Experts was clear and the report of the high-level tripartite mission had recommended an action plan, which included bipartite and tripartite dialogue. Although the Government claimed that broad dialogue existed, none of the action points of the mission had been implemented almost a year and a half after it had visited the country. The matter had been examined by the Governing Body of the ILO and the Committee on Freedom of Association. At its recent meeting in March 2015, the Committee on Freedom of Association had reaffirmed many of the issues raised, such as those relating to acts of intimidation, prosecutions, the occupation of ranches and bipartite and tripartite dialogue, while also noting new allegations that had been made today by the representative of FEDECAMARAS, including the detention of a leader of CONINDUSTRIA, the harassment of the President of FEDECAMARAS, the resurgence of verbal attacks on the organization and the adoption of over 50 legislative decrees without any type of consultation. The IOE and FEDECAMARAS were also making new observations and even the Government representative had confirmed that action had been taken against enterprises the previous week. Government action was continuing to undermine the most representative employers' organization, by removing the support of its membership and limiting the activities of private enterprises. Free enterprise and the possibility to operate sustainable enterprises were increasingly at risk and specific action was required. The terms used by the Government representative were intimidatory and reference should be made to article 40 of the Constitution of the ILO, which established the immunities necessary so that all opinions could be expressed and freedom of expression protected, including for the employers and workers of the Bolivarian Republic of Venezuela. The Employer members were not afraid and were acting in accordance with the values of freedom of expression and free enterprise as the highest values in a full democracy. With reference to consultation, they added that dialogue needed to be undertaken, as well as consultations on matters of common interest, including legislative issues. It was not a complete democracy when major powers were delegated by the legislature to the President without the requirement of consultations, and the fact that new extraordinary powers had been granted to the President to issue laws should be examined by the ILO. All of the aspects raised led to the belief by the Employer members that not only should the points raised be noted in the conclusions, but the case should be included in a special paragraph of the report.

Conclusions

The Committee took note of the oral statements made by the Government representative and the discussion that followed.

The Committee observed that the issues raised in the report of the Committee of Experts related to the murder, detention and criminal prosecution of trade unionists, acts of violence and intimidation against FEDECAMARAS and its leaders, refusal to register trade union organizations, legislative provisions that were incompatible with the Convention, including provisions on the intervention of the National Electoral Council in trade union elections, and serious shortcomings in social dialogue with representative workers' and employers' organizations, despite the conclusions of the high-level tripartite mission (January 2014) and the plan of action approved by the Governing Body.

The Committee took note of the information provided by the Government representative to the effect that discussion of the case was clearly politically motivated and lacked any technical or legal footing to support the Committee of Experts' observations, as Venezuelan legislation had been the subject of a range of technical assistance from the ILO over several decades. He had added that the Constitution recognized trade union rights, including the right to strike; that there was no imprisonment for engaging in trade union activities; and that the last 15 years had seen greater trade union activity and freedom than any other period in the country's history. Allegations of trade union leaders being harassed were based on press reports, set-ups and lies. He had said that in the Bolivarian Republic of Venezuela there was comprehensive and inclusive social dialogue, but that FEDECAMARAS was pursuing a criminal economic war and conspiring against the legitimately constituted Government; the most representative trade union organizations refused to participate in round table dialogue with FEDECAMARAS as a result. He had said that a Federal Government Council for the Working Class currently existed, made up of 1,056 union officials; moreover, the President of the employers' organization FEDEINDUSTRIA had been appointed to form an employers' council to prepare a national production plan and had held meetings with employers' organizations representing 90 per cent of the country's enterprises. He had also underlined that dialogue had also taken place with organizations such as the Trade Union Confederation of the Americas (TUCA-CSA), the Confederation of Workers of Venezuela (CTV) and the Independent Trade Union Alliance (ASI) to seek solutions to the problems that had arisen. He had added that the Government had tackled the issue of violence in the construction sector and still hoped that the four confederations would confirm the meeting to which the Government had invited them in order to draw up codes of conduct. Finally, he had denied that CTV elections had been obstructed and that the National Electoral Council was interfering in trade union elections.

Taking into account the discussion in this case, the Committee urged the Government to:

- comply without further delay with the conclusions of the tripartite high-level mission which had visited the Bolivarian Republic of Venezuela in January 2014 and the proposed plan of action;
- immediately cease acts of interference, aggression and stigmatization against FEDECAMARAS, its affiliated organizations and their leaders perpetrated by the Government;
- end impunity for crimes committed, especially against workers in the construction sector, including by adopting a clear and efficient recruitment system;
- review the practice of providing lists of trade union members to the public authorities;

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

Mauritius (ratification: 1969)

- end the intervention of the National Electoral Council (CNE) in trade union elections;
- establish social dialogue without further delay through the establishment of a tripartite dialogue round table, under the auspices of the ILO, that is presided over by an independent chairperson who has the trust of all sectors, that duly respects the representativeness of employers' and workers' organizations in its composition, that meets periodically to deal with all matters relating to industrial relations decided upon by the parties, and that includes the holding of consultations on new legislation to be adopted concerning labour, social or economic matters (including within the framework of the Enabling Act) among its main objectives; and
- report in detail to the Committee of Experts at its next session in November–December 2015.

The Government representative did not agree with the conclusions which had not taken into account the information provided by the Government or the discussions that had taken place in the Conference Committee, including in particular the favourable interventions by over three-quarters of participants.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

MAURITIUS (ratification: 1969)

A Government representative provided the Conference Committee with an overview on the application of the Convention. He recalled that the Government had ratified the Convention shortly after independence in 1969. At that time, the provisions of the Convention had been implemented through Section 13 of the Constitution, which provided for the protection of freedom of assembly and association, while disputes concerning industrial relations were left to the parties. The Industrial Relations Act (IRA), enacted in 1973, had institutionalized the regime of industrial relations and brought about fundamental changes by providing new mechanisms and procedures for recognizing trade unions and enabling collective bargaining and industrial action, establishing institutional mechanisms for dispute resolution and arbitration, and introducing the right to strike although subject to some specific procedures. The Employment Relations Act (ERA) had been introduced in 2008 in order to comply with the provisions of the Convention and to remedy the shortcomings of the IRA in the promotion of collective bargaining. The ERA set out the conditions for the development of collective bargaining in a structured manner and aimed to protect and enhance the democratic rights of workers, including migrant workers, and trade unions rights, as well as to boost collective bargaining, while the focus had shifted towards the principle of voluntary settlement and peaceful resolution of disputes. The ERA had been amended in 2013 in order to further consolidate the process of collective bargaining. In particular, the procedure for recognizing trade unions' bargaining power had been reviewed; the reporting of labour disputes concerning wages and conditions of employment had been limited in the event that a collective agreement was in force; and a conciliation service was now provided by the Minister upon the request of parties to a labour dispute at any time before a lawful strike took place. Any agreement reached following such conciliation would have the effect of a collective agreement.

Turning to the observations of the Committee of Experts, he noted that, in the absence of complaints made by any trade union to the Ministry of Labour, it was impossible for the Government to carry out an investigation into alleged anti-union discrimination. He added that it would be useful, in that regard, to receive additional information

on the workers' organization that had transmitted the complaint to the International Trade Union Confederation (ITUC), alleging that the contracts of 37 female workers at the "la Colombe centre" had been amended after they joined a union. Concerning the allegations of refusal to bargain in good faith by the Mauritius Sugar Producers' Association (MSPA) he noted that, following intervention by the Ministry of Labour, an agreement had been reached that satisfied both parties. He recalled that the Federation of Civil Service and Other Unions (FCSOU) had brought a complaint to the ILO on 10 December 2013 concerning the suspension of the President of the Mauritius Institute for Training and Development Employees Union (MITDEU). The ILO had been informed on 4 July 2014 that the case had been settled amicably by the parties and he welcomed the positive result achieved. He also referred to several cases of the Committee on Freedom of Association involving the Government, in several of which the Committee had noted with satisfaction that the parties concerned had reached an agreement on the dispute. He regretted that, despite the agreement reached, the International Organisation of Employers (IOE) and the Mauritius Employer's Federation (MEF) had again submitted observations on the application of the Convention in September 2014. On the promotion of collective bargaining in export processing zones (EPZs), the textile sector and for migrant workers, he said that the Government encouraged the full development of voluntary negotiation concerning terms and conditions of employment between employers' and workers' organizations. He emphasized that there was no legal impediment in the ERA preventing EPZ workers or migrant workers from joining unions or engaging in collective bargaining. The Government intended to organize an awareness-raising campaign for the workers concerned, and he encouraged the increasing number of trade unions in the sector to take full advantage of the constructive legal framework to engage in and promote collective bargaining. He concluded by saying that the Government firmly believed that the provisions of its labour legislation were fully in line with its vision of providing a legal framework in which the rights, interests and welfare of workers were fully safeguarded, without jeopardizing a sound business environment.

The Employer members said that this was an ongoing case involving interference in collective bargaining. The country had an extensive system for collective bargaining and minimum employment standards. The National Remuneration Board promulgated orders on minimum wages and terms of employment in 30 sectors and periodically reviewed those orders to ensure that their terms remained appropriate. The Board was not a mediation or arbitration mechanism. Remuneration orders established a floor, and employers and workers subsequently bargained for better terms. If the parties bargained in good faith but could not agree, they could voluntarily agree to a dispute resolution procedure. While this framework was not in violation of the Convention, its practical implementation had been quite problematic. In 2010, the social partners in the sugar industry had negotiated a collective agreement, but there had been 21 areas of disagreement where the parties had defaulted to the terms set out in the remuneration order. Several weeks later, the National Remuneration Board had partially reviewed the remuneration orders that applied to the sugar industry, focusing on the 21 areas in which no agreement could be reached during collective bargaining. In 2012, the Committee on Freedom of Association had reminded the Government that recourse to public authorities like the National Remuneration Board should be voluntary. The Government had subsequently withdrawn the referral of the 21 issues to the National Remuneration Board in August 2012. However, once again in 2014, the same problems had arisen. Following

the expiration of the collective agreement in the sugar industry, and after months of negotiations, the union had taken strike action. The employers and the union had subsequently concluded a collective agreement. The Government had then referred the unresolved issues to the National Remuneration Board, as it had done in 2010. The Government had also imposed arbitration on the social partners, which it was not permitted to do under national legislation. The Government's interference in collective bargaining was wrong. The Employer members hoped that the Committee would reiterate that point.

The Worker members pointed out that EPZs were of great concern to trade unions, as they benefited from special incentives in order to attract investors. That said, the special status of EPZs could not justify limiting the right to bargain collectively. Recognition of that right applied to everybody, in the private and public sector alike. As in other such zones, there was no respect for freedom of association or the right to bargain collectively in the Port Louis EPZ. Between 2002 and 2012 the Committee of Experts had noted the total absence of trade unions, the very limited practice of collective bargaining, widespread anti-union discrimination, especially in the textile sector, the difficulty for workers and trade unions to meet and a decline in the number of collective agreements signed. Quite apart from harassment and intimidation of workers, employers had often established substitute unions in contravention of Convention No. 98 and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). If the right to bargain collectively was not respected, then it was up to the Government to take concrete steps to promote it. The Worker members emphasized that an EPZ did not mean a zone without rights, and endorsed the request made by the Committee of Experts in that regard. The Committee of Experts had drawn attention to the Government's interference in the bargaining process to set wages in the sugar cane sector, which it justified on the grounds of an imminent threat of strike action which had to be avoided if it was to honour its commitments to the European market. Negotiations had therefore been held under Government auspices, and those provisions on which no agreement had been reached had been passed on to a compulsory arbitration board. According to the principles of the Committee on Freedom of Association, compulsory arbitration was permitted only in specific instances, namely, in the event of an acute national emergency, in the case of disputes in the public service involving public servants exercising authority in the name of the State, or in essential services in the strict sense of the term. In the present instance, the Government's interference did not meet these criteria and was therefore unacceptable. Unfortunately, in the belief that their national circumstances called for economic stabilization policies, increasing numbers of governments had adopted measures to restrict or prevent wages from being freely determined by collective bargaining. In this regard, the Conference Committee had already stressed that if, within the context of a stabilization policy, wage rates could not be fixed freely by collective bargaining, restrictions could be imposed as an exceptional measure and only to the extent necessary, without exceeding a reasonable period, and should be accompanied by adequate safeguards to protect workers' living standards. The Worker members stressed that such measures could only be adopted if they were rendered necessary by compelling reasons of national economic interest. Inasmuch as the sugar cane sector made up only 6 per cent of the country's economic activity, the Government's interference in the collective bargaining was unjustifiable.

The Employer member of Mauritius indicated that the reality in the country was not conducive to the practice of collective bargaining. While the Government had estab-

lished legislation on collective bargaining, there remained some significant deficits. The legislation failed to meet its objective of providing a framework for collective bargaining and was not accompanied by appropriate policies and properly functioning institutions. The ERA stipulated that collective bargaining was mandatory and conditional on trade union membership only, which was not in conformity with the Convention. In the private sector, 88 per cent of workers had decided not to join a trade union, and an employer could not therefore freely negotiate with duly chosen workers' representatives. The Government's interference in fixing of private sector wages and its annual raising of salaries under the Additional Remuneration Act were problematic and limited the scope of collective bargaining. In 2010, employers in the sugar industry had been forced to sign a collective agreement, and issues not resolved during negotiations had been referred to the National Remuneration Board. Despite assurances that such interference would be discontinued, it had re-occurred in December 2014. In the context of negotiating a collective agreement, workers had organized a strike, and employers had respected their right to do so. However, the Government had intervened, requiring the signature of a collective agreement that did not take into account the concerns of employers. The trade union demands that had not been accepted during collective bargaining had again been referred to the National Remuneration Board or to arbitration. The Government's interference in voluntary collective bargaining was unacceptable, and dispute resolution machinery was not effective in resolving industrial disputes. Allegations relating to a decrease in the number of collective agreements in EPZs were unfounded. Labour laws were applicable to that sector, and workers' fundamental rights were protected.

Social dialogue structures existed in Mauritius, and the country's employers had had the opportunity to exchange views with the new Minister of Labour. The new Government had set out its priorities and had taken a decision to engage in consultation with the social partners with the aim of revising labour legislation. He reiterated the call for a revision of those labour laws that were currently holding back growth and job creation. Mauritius had ambitions to become a high-income country; in order to do so, it must have effective and appropriate means of revising labour legislation. The Committee was invited to formulate clear recommendations that urged the Government to cease violations of Article 4 of the Convention, to conduct a regulatory impact assessment of national labour legislation, to cease undue interference in private sector wage fixing, to engage in dialogue with the social partners, and to request technical assistance from the ILO with a view to adapting national legislation to bring it into conformity with ILO Conventions.

The Worker member of Mauritius said that, despite current labour legislation, in practice the rights of workers were not respected. Trade unions had been calling for the Government to revise its legislation. New revisions of legislation should not be perfunctory, and the Ministry of Labour needed to pay attention to protecting workers, particularly as the existing protection for trade unions and trade union leaders was contained in a code of practice that was not binding. Anti-union discrimination still existed in the country, despite legal protection, and contract workers feared dismissal for engaging in trade union activity. While collective bargaining existed in law, it did not exist in practice. There was also a lack of social dialogue in the country. In the public sector, terms and conditions of service and salary were being imposed. Some workers in that sector were paid low wages, including below the minimum wage. That needed to be addressed by the Government, including through collective bargaining. There was no voluntary negotiation in the public sec-

tor. Trade unions could express their views to the body that regulated terms and conditions, but that body then took its own decisions. There was also difficulty with regard to the organization of migrant workers in EPZs. Such workers were not free to join unions as they could feel threatened and could face deportation. He called for firm measures to be taken to ensure that the Convention was applied in Mauritius.

The Employer member of South Africa said that the Government should respect the right to collective bargaining. It was perplexing that the application of the Convention still merited discussion more than 45 years after its ratification. He urged the Government to implement the provisions of the Convention fully.

The Worker member of Norway, speaking on behalf of the Worker members of the Nordic countries and Estonia, said that trade unions in Mauritius were only entitled to recognition as bargaining agents for bargaining units in an enterprise or in an industry, where they must have the support of not less than 30 per cent of the workers in the unit concerned. Recognition by an employer of the main unions represented at an enterprise, or the most representative of those unions, formed the very basis for any procedure concerning collective bargaining. That legal provision had a serious impact on the right of minority unions to bargain on behalf of their members. He considered that, if no single union met the representativity criteria established in law, collective bargaining rights should be granted to the individual unions in that unit, at least on behalf of their own members. The Government should therefore amend its legislation in order to allow minority unions to bargain on behalf of their members. He urged the Government to promote the full development and utilization of collective bargaining mechanisms and laws so as to increase the number of workers who could be covered by effective collective bargaining agreements. That was particularly important for vulnerable workers employed in the country, including women workers in the textile sector and migrant workers.

The Worker member of Mali said that his statement was supported by the Worker members of Liberia, Nigeria and Sierra Leone. Maintaining the country's annual growth rate at more than 3 per cent had been possible thanks to solid contributions from the workforce and the country's EPZs, which were treated as enclaves with their own sovereignty, shielded from the obligations and requirements arising from the need to respect human and trade union rights. Despite the existence of legislation, the tendency in practice was that workers could not rely on the Government to support them in claiming their trade union rights in such zones. The authorities and employers prevented workers from organizing to bargain collectively, and levels of collective bargaining had fallen by 70 per cent since 2009. Trade union organizations were being refused access to industrial sites by employers in the majority of cases, which explained why the rate of unionization in EPZs was less than 12 per cent. It was not reasonable to welcome investors and their enterprises enthusiastically unless the rights of workers, including the migrant workforce, were promoted. Without such rights, the country's workers and their families would not have benefited from investments by the time the investors left. He welcomed the first steps taken by the Government with a view to introducing a mechanism to fix a minimum wage and took note of amendments made to labour legislation to strengthen penalties for anti-union discrimination. The Government must lift all barriers to collective bargaining and establish a strong collective bargaining culture with respect for social dialogue, especially in the EPZs. That would be the only way to share the fruits of economic growth equitably so as to improve the living standards of the population.

The Worker member of the United Kingdom noted that there were problems of anti-union hostility in EPZs. In the case of reprisals for union activity, the law provided little protection. National legislation did not allow for individuals to be reinstated if they had been dismissed on account of union activity. Furthermore, anyone who was involved in a strike that did not meet the requirements of the legal framework would face dismissal, with limited rights to seek a legal remedy if the dismissal had not been considered justifiable. There had been several examples of anti-union discrimination affecting not only workers in the EPZs and women workers, but also workers in the sugar industry. In the context of the negotiations between the Mauritius Sugar Producers' Association and the trade unions' joint negotiating panel, an agreement had been reached relating to requests for a pay increase following recourse to strike action. However, the workers had lost pay for the duration of their strike action, and union members had not received their end-of-year bonus as a result of the strike. The Government had committed itself to increasing fines and penalties for anti-union discrimination but it must take further steps to ensure that its legislation properly reflected its international obligations.

The Government representative recalled the measures that had been taken, over a number of years, by the Government to give effect to the Convention and to respond to the requests of the Committee of Experts, including amendments to the ERA, measures to protect against acts of interference in workers' and employers' organizations, and the replacement of the Export Processing Zone Act. He emphasized that there was no impediment in the ERA, as amended, preventing workers in EPZs or migrant workers from joining unions or engaging in collective bargaining. It was therefore up to trade unions to use the available legal framework to engage in and promote collective bargaining in all sectors. The Government had not intended to undermine collective bargaining. The referral of issues to the National Remuneration Board had taken place in a very specific context, as a strike in the sugar industry at that time would have had a negative impact on the country's economic situation. It was not the policy of the Government to request the National Remuneration Board to intervene in cases where a final collective agreement had been concluded. Concerning the referral of the dispute between the joint negotiating panel and the Mauritius Sugar Producers' Association to arbitration, he indicated that, following negotiations, no collective agreement had been reached, and both parties had referred the dispute to the Commission for Conciliation and Mediation. No agreement had been reached at the level of that Commission, and the panel had opted to take strike action, which would have had negative economic effects. Accordingly, the Minister of Labour, acting under section 79a of the ERA, had brought the two parties to the negotiating table and an interim collective agreement had been reached. The dispute had then been referred to an arbitrator appointed by the Government, in the absence of agreement between the parties. With respect to compulsory arbitration, section 53 of the ERA contained only the duty to begin negotiations when served with notice, but legislation did not require the parties to conclude a collective agreement. Requiring the social partners to engage in collective bargaining did not contravene the Convention. He referred in this regard to Report No. 68 of the CFA, Case No. 2149, (328th Report) indicating that it was not contrary to Article 4 of the Convention to oblige the social partners, in the context of encouraging and promoting the full development and utilization of collective bargaining machinery, to enter into negotiations on terms and conditions of employment. The Government would listen to the views of the social partners; the discussion had been a democratic exercise in tripartite dialogue. The

Government would continue to take a transparent approach with respect to the application of the Convention and stood ready to consider any recommendation made by the Committee, with the support of technical expertise from the ILO. Any recommendations would be considered within the context of the ongoing review of labour legislation to which the Government had committed itself. In that regard, a technical committee had been set up and all stakeholders had been invited to make proposals to it with respect to the legislative review.

The Employer members noted the Government's willingness to engage in discussion with the Committee. One example of how the National Remuneration Board had interfered in the collective bargaining process was the issue of motorcycle allowances in the sugar sector. Agreement had not been reached on that issue in the negotiation of the collective agreement, and subsequently it had been referred to the National Remuneration Board. It could be agreed that interference in collective bargaining was not a positive thing. While the legislation appeared to be adequate, the manner in which it was interpreted and applied in practice was not. The Employer members referred to Report No. 364 of the Committee on Freedom of Association, paragraph 697, in which that Committee had emphasized that the overall aim of Article 4 of the Convention was the promotion of good faith collective bargaining with a view to reaching an agreement on terms and conditions of employment. The Committee on Freedom of Association had indicated that such agreements must be respected and that public authorities should refrain from any interference which would restrict the right to bargain freely or impede the lawful exercise thereof. Collective bargaining, if it were to be effective, must assume a voluntary character and not entail recourse to measures of compulsion which would alter the voluntary nature of such bargaining. Not enough information was available on the situation in EPZs, and the Employer members expressed the hope that collective bargaining was being promoted in that sector. The Committee of Experts had requested additional information on the situation in that sector, and hopefully such information would be provided. The Employer members urged the Government to take steps to follow its own legislation, to stop interfering in the collective bargaining process and to stop referring issues on which the parties had not been able to reach agreement following collective bargaining to the National Remuneration Board.

While taking note of the information provided by the Government of Mauritius, the Worker members said that the case concerned not only the relevance of legislation, but also problems with its application in practice. They stressed the importance of respecting Convention No. 98, particularly its general principles, both in relation to EPZs and in terms of collective bargaining in the sugar cane industry. EPZ workers should be able to enjoy the right to bargain collectively, and the Government must take concrete steps to that end. That would send an important signal to EPZs around the world that they were not outside the law, despite the violations of workers' rights that had too often occurred therein. The Government could only intervene in collective bargaining under certain specific circumstances that had been identified by the Committee. The way in which the Government had interfered in collective bargaining in the sugar industry had been clumsy. The Worker members invited the Government to give the social partners the full autonomy needed to negotiate collective agreements and to respect that autonomy. They also requested the Government to report to the Committee of Experts in 2015 on collective bargaining in EPZs and in the sugar industry.

Conclusions

The Committee took note of the statements made by the Government representative and of the discussion that ensued.

The Committee observed that the matters raised by the Committee of Experts concerned comments made by the International Trade Union Confederation (ITUC) relating to allegations of anti-union discrimination and the practical obstacles to collective bargaining in export processing zones, as well as the observations from the International Organization of Employers (IOE) and the Mauritius Employers' Federation (MEF) related to alleged interference by the Government in the voluntary nature of collective bargaining, especially with respect to the sugar industry.

The Committee noted the Government representative's indication that the 2008 Employment Relations Act was adopted with a view to establishing an industrial relations system to promote social progress and economic growth, protecting and enhancing the democratic rights of workers and trade unions, boosting collective bargaining and promoting the voluntary settlement and peaceful resolution of disputes. This Act was amended in 2013 to introduce the notion of a sole and exclusive bargaining agent and a conciliation service at the joint request of the parties. As regards the ITUC allegations of anti-union discrimination, the Government indicated that the information provided was insufficient for it to carry out an investigation and requested further particulars.

The Government had also provided information on the manner in which the dispute concerning the Mauritius Sugar Producers' Association (MSPA) was handled, with outstanding matters being referred to the National Remuneration Board (NRB) but that subsequently, the Minister of Labour withdrew this referral, pursuant to an agreement reached by the parties. He added that it was not his Government's intention to undermine collective bargaining, but rather that the referral was made in a very specific context with a view to avoiding a strike in the sugar industry. He further referred to the case before the Committee on Freedom of Association which had welcomed the agreement and, while observing that additional observations had been submitted by the IOE and the MEF in September 2014, had indicated that his Government was awaiting supporting evidence.

Finally, as regards to export processing zones (EPZs), the Government representative indicated that there was no legal impediment to collective bargaining for EPZ workers and that they would do everything to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers' and workers' organizations in this sector, including increasing awareness-raising campaigns to sensitize workers on their rights.

Taking into account the discussion, the Committee urged the Government to:

- refrain from violating Article 4 of the Convention and avoid such violations in the future;
- cease undue interference in private sector collective bargaining by selectively reviewing the Remuneration Orders in response to the outcome of collective bargaining;
- engage in social dialogue with the social partners regarding collective bargaining and the Remuneration Orders; and
- take concrete measures to promote collective bargaining in the EPZs and provide information to the Committee of Experts on the state of collective bargaining in the Zones.

The Government representative took note of the conclusions and assured the Committee that consideration would be given in the course of the ongoing reform of the labour

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Republic of Korea (ratification: 1998)

legislation undertaken in consultation with the employers' and workers' organizations.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

REPUBLIC OF KOREA (ratification: 1998)

The Government provided the following written information.

With regard to the protection of migrant workers, the Korean Government has implemented various policies to support migrant workers at every stage of employment from "entry", during the employment relationship and to "departure". A fair and transparent workforce selection system is in place to help prevent workers under the Employment Permit System (EPS) from being taken advantage of by brokers from the moment when the workers are selected as EPS workers in their home countries until they sign employment agreements and arrive in the Republic of Korea. After entering the Republic of Korea, EPS workers are provided with employment training services (and the education costs are fully borne by employers), are provided with instruction in Korean language and culture, and their rights under labour laws, including the Labour Standards Act. They are also provided with occupational health and safety education and detailed instructions on the means and procedures for filing complaints when their rights have been infringed. Under the EPS, labour laws are also applied to both migrant workers and Korean nationals. The 47 local labour offices across the country are responsible for dealing with complaints of the violation of rights under labour laws. Every year, the Korean Government inspects roughly 3,000 to 4,000 workplaces which employ migrant workers, and issues correction orders and imposes sanctions against businesses which have violated laws. After conducting inspections of 3,052 workplaces in 2014, the Government recorded a total of 5,579 cases of violations (in about 2,011 workplaces), and issued correction orders, imposed fines and notified relevant agencies, including the Ministry of Justice, of the violations. Most cases involved violations of administrative duties or procedures, such as migrant workers or employers not joining insurance and changes of employment not being reported. Across the country, 65 job centres under the Ministry of Employment and Labour are in operation to support employment activities. They deal with various employment-related affairs for migrant workers, including the extension of employment periods, and provide counselling services regarding legal matters. A total of 37 support centres and one call centre for migrant workers are in operation in the Republic of Korea. They provide various services free of charge, such as counselling services on all kinds of difficulties migrant workers have on labour law issues, in addition to free lectures on Korean language and culture, free medical check-ups and shelters. At these centres, free interpretation services in 15 languages are provided. Approximately 250 interpreters are in service at any given time and 500 interpreters remain available.

Migrant workers are provided with vocational training services, which are fully funded by the Government. In 2014, 2,653 migrant workers completed vocational training in various areas, such as computer literacy, operation of heavy construction equipment and car repair. An insurance system designed exclusively for EPS workers is in operation. The Government requires employers to join the "guarantee insurance" for overdue wages and the "departure guarantee insurance" to protect migrant workers from the risk of overdue wages or severance pay. Under the returnee support programme, information sessions are held to inform workers of ways to prepare for the return

to their home countries. For instance, instruction is provided on how to collect unpaid wages and receive insurance benefits. The Korean Government supports EPS workers, after their departure, to build returnee community networks in their home countries. The Government also provides job placement services for returnees, including job fairs to connect jobseeking returnees with Korean companies in their home countries. In 2014, 157 meetings were held between returnees and Korean companies in the respective countries to increase the employability of returnees. The Government offers returnees an employment support package which covers free customized vocational training and job placement to help them find work with Korean companies in their home countries. In 2014, 942 workers received vocational training and 411 of them obtained a job. The returnees can obtain a certificate of employment in the Republic of Korea through the online system. For migrant workers who have left the Republic of Korea without receiving the insurance compensation of the departure guarantee insurance (subscribed by employers) or the return cost insurance (subscribed by migrant workers), the Government ensures that such insurance compensation is received by the workers in their home countries. In 2014, 24,900 million South Korean Won (KRW) (approximately US\$22,493,224) was paid for 20,962 cases under the departure guarantee insurance, and KRW3,400 million (approximately \$3,071,364) was paid for 8,189 cases under the return cost insurance. If returnees decide to come back to the Republic of Korea and find work in the Republic of Korea, they are provided with an opportunity for re-entry and employment.

With reference to measures to address discrimination on the grounds of gender and employment type; in 2014, the Government inspected workplaces which employ a large number of fixed-term or dispatched workers, and issued correction orders in discrimination cases. Inspections were carried out in 343 workplaces with a large number of fixed-term workers, and 48 workplaces were found to be in violation. Orders were issued to pay a total of KRW658,798,000 (approximately \$595,120) for 49 discrimination cases relating to wages, bonuses and other benefits; correction orders were issued in 11 discrimination cases relating to welfare. In addition, 449 inspections were carried out in workplaces with dispatched workers. Of these 18 workplaces were found to be in violation. Orders were issued to pay a total of KRW145,578,000 (approximately \$131,586) for 16 discrimination cases (683 people) relating to wages, bonuses and other benefits; correction orders were issued for five discrimination cases relating to welfare. In 2014, the Government carried out labour inspections of businesses employing dispatched workers or in-house subcontracted workers, and ordered direct employment with the businesses involved in the illegal dispatch of workers. In workplaces sending or employing dispatched workers, 358 worker dispatch agencies and 449 workplaces employing dispatched workers were inspected. Key measures taken included: judicial action for nine cases; fines for two cases; administrative action for 149 cases; and direct employment for 1,058 people. In workplaces employing in-house subcontracted workers, 68 contractors and 140 subcontractors were inspected. Key measures included: judicial action for seven cases; a fine for one case; administrative action for 17 cases; and direct employment for 1,095 people. Following the revision of the Act on the Protection, etc. of Fixed-term and Part-time Workers and the Act on the Protection, etc. of Dispatched Workers (on 18 March 2014), the discrimination correction system has strengthened since 19 September 2014. For instance, punitive damage orders have been introduced and once a discrimination case is confirmed and correction orders are made, the Government may initiate an investigation or make a

correction order for those workers who are undertaking the same kind of work within the same workplace, as they may face the same kind of discrimination.

With regard to equality of opportunity and treatment of women and men, the labour force participation rate and employment rate of women in the Republic of Korea have continued to rise from 53.9 per cent in 2009 to 57.0 per cent in 2014. The employment rate rose from 52.2 per cent in 2009 to 54.9 per cent in 2014; the percentage of women workers has risen in workplaces which are subject to the Korean Government's affirmative action scheme from 34.01 per cent in 2009 to 37.09 per cent in 2014, while the percentage of women managers has risen from 14.13 per cent to 18.37 per cent in the same period. The use of childcare leave (for those with a child under the age of 6) and the reduced working hours system during the childcare period has increased. The number of recipients of childcare leave benefits rose from 58,134 in 2011 to 76,833 in 2014 (73,412 women and 3,421 men). The number of workers using the reduced working-hours system during the childcare period has also steadily increased, from 39 in 2009 to 1,116 in 2014. Starting from October 2014, the basic pay for those using the reduced working hours system during the childcare period has increased from 40 per cent to 60 per cent of the ordinary wage; and the period of reduced working hours may be extended by the period of childcare leave not taken (up to two years). In 2015, the Government introduced part-time childcare services at day-care centres across the country to support part-time working parents, and implemented a programme designed to ensure that working mothers benefit from childcare services. The Government plans to increase gradually the target of childcare services provided by elementary schools.

In addition, before the Committee, a **Government representative** reiterated that migrant workers entering the country under the EPS received the same protection as nationals under the national labour legislation. Under the system, foreign workers could only change employment for certain reasons allowed by the law, as the worker was under a specific employment contract with the employer and the visa was based on that contract. However, workers were allowed to change workplaces up to three times during the first employment period of three years and up to twice during an extended employment period of 22 months. There was no limit on workplace changes when the change was not attributable to the workers themselves, such as closure of the business and unfair treatment or discrimination by employers. When a worker under the EPS visited a job centre and applied for a workplace change, the centre made its judgement on the basis of evidence submitted by the worker or its own fact-finding efforts. Unreasonable discrimination by the employer based on nationality, religion, gender or physical disability constituted one of the justifiable circumstances for workplace changes. In 2014, a total of 7,501 migrant workers, or 13.2 per cent of total workplace changes, had been approved for reasons not attributable to the worker, including unfair treatment by the employer. In September 2011, the Government had introduced comprehensive policy measures for the protection of non-regular workers to address unreasonable discrimination against them and reinforce the social safety net for workers in precarious situations. In 2015, the Government had initiated a project to financially support partial labour costs of small and medium-sized enterprises that had regularized their non-regular workers. The Government was preparing a guideline for employment security of non-regular workers, which provided that there should be no unreasonable discrimination in terms of welfare benefits. Since the adoption of the measures for non-regular workers in the public sector in November 2011, a total of 31,782 non-regular

workers engaged in permanent and continuous work in that sector had become workers with open-ended contracts in 2013, and 18,650 such workers had done so in the first six months of 2014. The Government had been initiating policies to support work-family balance and maternity protection, and was also carrying out affirmative action policies. By inspecting approximately 20,000 companies annually, the Government had been correcting gender discrimination in wages and promotion, as well as violations related to maternity protection. The Government was also providing women with interrupted careers with comprehensive employment services, such as career counselling, job placement services and vocational training. In December 2013, the Enforcement Decree of the Act on Equal Employment and Support for Work-Family Reconciliation had been amended and the minimum proportion of women employees and managers, which was the criteria for the obligation to take affirmative action, had been raised from 60 per cent of the average number of women workers in the particular industry to 70 per cent. With the revision of the Act on Equal Employment and Support for Work-Family Reconciliation, a system had been implemented from 2015 to publicize a list of businesses that had failed to meet the women employment target three consecutive times and had not complied with obligations to take affirmative action after having received correction orders. The women's employment rate had increased by 20 per cent and the percentage of women managers had risen by 80 per cent from 2006 to 2014. In conclusion, the Government was making efforts to eliminate discrimination in employment and occupation, and these efforts would have an impact.

The Worker members recalled that the Government was becoming a fixture before the Committee which, like the Committee of Experts, had addressed the various forms of discrimination that persisted in the country on numerous occasions. With regard to migrant workers, the EPS, despite recent changes, did not allow workers to change workplace freely in practice, as it imposed a limit of three changes within a three-year period. In addition, employers had to give their agreement, but were in general very reluctant, and in some cases only consented in exchange for a significant payment. Migrant workers who left their jobs without the written agreement of their employer lost their status as immigrant workers and risked being arrested, imprisoned or deported. Even with written consent, they had to find a job in the same sector within three months, or risk deportation. They were obliged to use official job centres during their search for work. The only exception to that was if they could prove that they had been victims of abuse. Throughout the procedure, workers had to continue to work for the same employer and were often actively discouraged from filing for prosecution and were expected to present their apologies to their employer or request a written end-of-contract agreement. Migrant agricultural workers were particularly exposed to practices that left them dependent on the goodwill of their employer, owing to the seasonal nature and location of agricultural work, and the fact that the agricultural sector was not covered by the Labour Code. The Government had not really taken action to identify and follow up discrimination against migrant workers. This was confirmed by its persistent refusal since 2005 to approve the Migrants' Trade Union (MTU). In the Republic of Korea, the term "non-regular worker" referred to part-time, dispatched and temporary workers, as well as those who had fixed-term contracts. Non-regular workers accounted for 45 per cent of the workforce, resulting in a dual job market and dual society with very little opportunity for mobility. The Government had communicated all the measures that it had taken to improve the situation for non-regular workers, which mostly entailed implementing guidelines rather

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Republic of Korea (ratification: 1998)

than bending laws. The measures did not provide for the conversion of non-regular workers into regular workers, but instead into workers with open-ended contracts, without the associated protections. Furthermore, non-observance of these measures was seldom penalized, and they were not therefore very effective and did not comply with the requirements of the Convention. New proposals had simply resulted in extending non-regular work.

Concerning discrimination against women workers, the women's labour force participation rate was the lowest among Organisation for Economic Co-operation and Development (OECD) countries. The majority of women had a non-regular status. The gender wage gap was the broadest of OECD countries, with women earning barely 60 per cent of the wages of men. The average wage of non-regular male workers was half that of regular male workers, and the average wage for non-regular women workers was barely a third that of regular male workers. With regard to political discrimination, labour legislation prohibited officials and certain teachers from expressing political views and forbade workers who had been dismissed or who had retired from keeping their union membership. In October 2013, the Ministry of Employment and Labour had declared the Korean Teachers and Education Workers' Union (KTU) illegal because it had refused to change its by-laws and had maintained the membership of nine teachers who had been dismissed. In November 2013, the Government had searched the premises and servers of the KTU and the Korean Government Employees' Union (KGEU). In June 2014, the administrative court of Seoul had ruled on appeal in favour of the Government, stripping the KTU of its trade union status. In June 2015, the Constitutional Court had rejected the KTU's appeal and upheld the Government's decision, ruling that applying the ban on political activities only to teachers at the elementary and middle-school levels did not amount to unreasonable discrimination. After some teachers had attended demonstrations against the ministerial decision to suspend the KTU and against the Government's poor handling of the Sewol Ferry tragedy, the Government had reacted: the General Secretary of the Korean Confederation of Trade Unions (KCTU) had been arrested and 391 teachers had been accused of violating the law and threatened with disciplinary and criminal proceedings. In conclusion, the Worker members recalled that in 2012 the Office had requested the Government to repeal the provisions prohibiting dismissed workers from keeping their union membership. The most recent report of the Committee of Experts recalled that protection against discrimination based on political opinion applies to opinions which are either expressed or demonstrated, and that exclusionary measures based on political opinion should be objectively examined to determine whether the requirements of a political nature are actually justified by the inherent requirements of the particular job. As the Committee of Experts had indicated, concrete and objective criteria to determine such cases had not yet been established.

The Employer members said that the observation of the Committee of Experts did not contain evidence of the allegations received concerning non-compliance with the Convention, nor did it explain how the Convention had not been complied with. The Committee of Experts had asked the Government for further information or called upon the Government to do things that it was already doing. There was no justification for making a comment in the form of an observation. Referring to the explanations of the Committee of Experts concerning the distinction between an observation and a direct request, as set out in paragraph 53 of its General Report, the Employer members noted that the case demonstrated that the Government had made great efforts to comply with the requests

made, and that it continued to be cooperative in its engagement with the Committee of Experts, despite a lack of clear direction as to how the national legislation failed to be in compliance with the Convention. The Employer members therefore considered that the Government had demonstrated commitment to achieving compliance with the Convention, and it should be commended for providing timely and comprehensive information in response to the comments made. The Committee of Experts had welcomed the changes to the EPS allowing workers to change employers in the case of unfair treatment, and had noted that foreign workers could submit complaints in that regard. The Committee of Experts had not provided any specific evidence that the Government was not doing enough to prevent discrimination in that regard in law and practice, and it had only requested the Government to continue its efforts to ensure that migrant workers were able in practice to change workplaces when subject to violations of anti-discrimination legislation and to provide information on that subject. This would have justified a direct request to the Government, and not an observation. As had been emphasized in previous years, the right of foreign workers to stay in the country arose from the labour contract signed between the worker and his or her employer, and in principle the worker should continue to work in that workplace. Therefore, the limitation on the number of workplace changes permitted was not a violation of foreign workers' rights. In addition, frequent mobility would undermine the ability of employers to manage their workforce, and there had been a 152 per cent increase in applications to change jobs between 2006 and 2011. Foreign workers should receive pre-employment training in their country of origin and should be made aware of the labour legislation in the Republic of Korea and the system of grievances. Training, education and information sessions were provided by the Government to migrant workers upon arrival in the country and programmes of technical and vocational training were also provided, funded by the Government. The Government should continue to review the impact of the new regulations in relation to providing appropriate flexibility to foreign workers based on the national context and to monitoring the impact of new initiatives by collecting data, reviewing, and where appropriate making adjustments to programmes to ensure appropriate protection and management of its foreign worker labour force, in consultation with workers' and employers' organizations.

The Employer members indicated that the statement in the observation of the Committee of Experts that many non-regular workers were women should be further explained to clarify how that situation was related to discrimination. It would have to be shown that non-regular forms of work were considered to be less acceptable or that workers in those jobs were at a disadvantage. Labour markets required diverse forms of employment, including part-time work and fixed-term work, as well as seasonal workers. Those forms of work should not be stigmatized as undesirable or underprivileged. The rates of labour market participation of men or women should not necessarily be considered to be discrimination without an appropriate evaluation of the country and the social context. It was also necessary to determine to what extent women who were employed in those forms of employment would prefer other forms of employment over non-regular employment. As some women might prefer part-time work at certain stages, labour market policies aimed at supporting such part-time work included increasing the remuneration for such work. Even if discrimination was present, the Government had taken the necessary measures, which had achieved results. It was therefore not proportional for the Committee of Experts to urge the Government to review the effectiveness of the measures taken. With respect to

equality of opportunity and treatment of men and women, labour force participation rates were not necessarily a reflection of discrimination, and the Government had taken various measures to raise the participation of women. The Government might have gone too far with the introduction of a system of denouncing companies that failed to comply with affirmative action requirements, as policies should not create a negative impact on the competitiveness and sustainability of business. With respect to the issue of discrimination on the basis of political opinion, the Employer members considered that the constitutional values invoked by the Government, in particular the political neutrality of education, should be acknowledged and respected. In determining possible discrimination, the Committee of Experts should have balanced the right of students to education without the risk of being politically influenced with the rights of teachers to engage in political activities. If insufficient information was available in that regard, the Committee of Experts should have requested further information in a direct request. In conclusion, there appeared to be little evidence of discrimination or of any serious non-compliance with the Convention, and a direct request would have been more appropriate. The efforts of the Government should be recognized, and the impact of the reforms and changes in legislation should be monitored to ensure that it remained flexible and responsive.

A Worker member of the Republic of Korea recalled that the case had been discussed by the Committee several times before and that no progress had been made with respect to the conclusion of the Conference Committee. The Government had not changed the discrimination remedy system to authorize trade unions to make complaints on behalf of non-regular workers. It had not provided appropriate flexibility for migrant workers to change their employers, as required by the EPS. And it had not taken any steps to ensure that teachers were granted effective protection against discrimination based on political opinion. In that regard, the State Public Officials Act still prohibited teachers from expressing their political opinion, and approximately 220 teachers had been prosecuted since 2014 on account of the fact that they had criticized the Government's mismanagement of the Sewol Ferry sinking. She expressed grave concern at the fact that it was legally impossible for the teachers' trade union to protect or represent teachers when they were convicted or dismissed. The KTU, which represented approximately 60,000 teachers, including nine teachers who had been dismissed for their political activity, had been deprived of its legal status once again on 3 June 2015. Regarding discrimination against migrant workers, the Government had introduced, in addition to the restriction on job mobility under the EPS, another discriminatory system by revising in June 2014 the law that regulated the retirement benefit of migrant workers. Under that system, migrant workers could not receive that benefit while remaining in the country. The protections contained in the Labour Standards Act did not apply to workers engaged in the agricultural and livestock industry, many of whom were migrant workers. The measures taken by the Government to reduce the number of non-regular workers and to alleviate discrimination against them had not produced results. While the Government had ordered that 3,800 workers, who had previously been indirectly employed, be directly employed by their current employers, companies were not complying with such orders, but no action had been taken. The Government was taking no concrete action to eliminate discrimination based on employment status, but was also facilitating the increase in the proliferation of non-regular jobs. Finally, she called on the ILO to keep making efforts to help the Government bring the labour law and the institutions of the country into conformity with

international labour standards for the purpose of protecting the rights of the workers.

The Employer member of the Republic of Korea said that under the EPS workers were supposed to work at the specific workplace at which they had signed a contract. Migrant workers were allowed to change workplace up to three times, but there was no limit in cases where the change was not attributable to the worker. Discrimination against migrant workers was prohibited in law and complaints regarding discrimination could be filed with the National Human Rights Commission. If persons were treated differently based on reasonable factors such as lack of skills or communication abilities, such distinctions did not constitute discrimination. There was legislation to prohibit discrimination based on gender and employment status, and persons who believed that they had been discriminated against could apply for corrective measures. An employment status disclosure system had been introduced in March 2014, which constituted too great a burden for businesses. Affirmative action policies were implemented in the country. Related measures had been continually strengthened to prevent breaks in the careers of women, including the extension of childcare leave. While women's participation in the labour market was low compared to men, this was due to many factors, including culture, tradition and stereotyping against women. Civil servants and teachers in the country were asked to remain politically neutral, which meant that they were asked not to show their political preferences while engaged in their profession. Laws and systems had already been put in place to prevent discrimination, and the effectiveness of the measures needed to be monitored. Much progress had been made and efforts were ongoing, which should be acknowledged by the Committee of Experts.

Another Worker member of the Republic of Korea focused on discrimination based on employment status, since women and migrant workers constituted the majority of precarious workers. The most serious problem was the extension of the term "non-regular workers". Under the current legislation, a worker, after working more than two years as a fixed-term worker, had to be considered by the employer as a non-fixed-term worker. Extending that to four years, a measure favouring employers, would increase the number of non-regular workers and further aggravate job insecurity. Turning to the problem of the increase in temporary agency workers, she emphasized that the Government's attempt to expand the range of dispatched work for workers aged 55 or more and high-income professionals would result in four out of ten workers falling into the category of dispatched work and facing downward pressure on working conditions and wages. Furthermore, the information provided by the Government did not correspond to the reality and no tangible improvements had been made since the conclusions adopted by the Conference Committee in 2009 and 2013. As of August 2014, precarious workers accounted for nearly 50 per cent of the total workforce, with women workers representing an increasing share of 56 per cent, and the average monthly wage of women non-regular workers being only 36 per cent of that of male regular workers. In order for victims of discrimination to file a complaint against employers, the person who paid the wages and the person who committed discrimination needed to be the same. This was made difficult by the fact that employers were resorting to outsourcing or subcontracting to avoid direct employment. Additionally, a majority of non-regular workers did not have recourse to remedies out of fear of retaliation by employers, such as termination of employment. Strongly calling upon the Government to take the necessary steps to bring the relevant legislation into line with the Convention, she called for the principle of direct employment in consistent and

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Republic of Korea (ratification: 1998)

continuous jobs be set out in the Labour Standards Act. Fixed-term work should be strictly confined to temporary vacancies resulting from exceptional circumstances. When illegal temporary agency work was found, the dispatched worker should be treated as a non-fixed term employee of the user-employer. Indirectly employed workers should be allowed to apply for discrimination remedies against their end-user companies, and all workers should be entitled to a social insurance scheme irrespective of their employment status. Labour market reforms would never be successful if the Government continued to promote anti-labour policies.

The Government member of the Philippines indicated that the experience of the EPS in the Republic of Korea was that it helped to regulate skilled Filipino workers in the Republic of Korea. She encouraged the Government to take steps to promote and strengthen equality and remove any obstacles. She was of the view that the measures taken by the Government would lead to concrete and positive results.

An observer representing Public Services International (PSI) explained that the Korean labour market consisted of protected workers and precarious workers. The latter were mostly women and earned roughly 40 per cent less than regular workers for the same or similar work. The situation of discrimination faced by precarious workers in the public sector, which the PSI had mentioned the previous year in the Committee, had only worsened due to the Government's public sector policies emphasizing the creation of part-time and precarious jobs, deregulation, outsourcing, cost-cutting, including curtailing pensions and benefits, the maximization of efficiency, such as the introduction of performance-based pay, and the privatization of public services. These measures were in stark contrast with the promises made by President Park before her election to eliminate precarious work in the public sector by 2015. In this connection, she referred to the Sewol Ferry tragedy as an example of a consequence of the implementation of those policies. In this case, the Government had not conducted a fair investigation and had not taken the necessary measures. The same attitude could be observed in the Government's response to the outbreak of the Middle East Respiratory Syndrome (MERS), which put precarious public workers at particular risk. Deaths in the public services were also rising due to suicides committed for reasons of stress and heavy workload. The Government, however, was continuing its anti-union policy, denying the detrimental impact of the lack of negotiation on working conditions. Emphasizing that trade unions in all public sectors must be recognized in order to solve the issues referred to above, she urged the Government to recognize the KGEU, normalize labour relations and reinstate all dismissed workers. She emphasized that in order to reduce the existing discrimination faced by precarious public workers in wages and working conditions, the Government needed to identify the number of workers in precarious employment, adopt the necessary legislation and allocate the required funding. Subcontracted workers performing permanent work must be directly employed in a gradual manner in accordance with an established plan. Finally, she called for an ILO direct contacts mission to promote the implementation of Conventions Nos 87, 98 and 111.

The Worker member of Nepal referred to the problems faced by migrant workers employed under the EPS. Migrant workers were asked to work long hours, more than ten hours a day and even 28 days a month, without being paid for the overtime worked. They were not paid for work performed on their weekly rest or holidays. Such a situation caused physical and mental problems, leading to suicide in many cases. He added that under the EPS, migrant workers could not change their jobs more than three

times and each change would require permission from their previous employer. If such permission was not obtained, the worker would work for the same employer under conditions similar to forced labour. Even if permission was granted, the workers would be deported back to the country of origin if a new job was not found within three months. The Government was urged to remove the restriction on the number of job changes. He added that section 63 of the Labour Standards Act excluded from its scope the agricultural sector, in which many migrant workers were engaged. In this sector, the workers were forced to work long hours and faced ill-treatment from their employers, such as non-payment of wages. He was of the view that the fact that the Labour Standards Act did not apply to this sector meant that the Government was not willing to stop indirect discrimination against migrant workers. He therefore called for the repeal of section 63 of the Labour Standards Act. He also referred to the issue of discrimination against migrant workers with respect to the establishment of trade unions. The Government did not yet recognize the trade unions for migrant workers, depriving them of their right to collective bargaining, which was granted to Korean workers. He added that, while international law provided that employment contracts for foreign workers must be written in a language that could be understood by them, contracts for migrant workers were written only in Korean. Such a situation might allow employers to escape their responsibilities because migrant workers could not understand the contents of their contract. Korean workers would not face such a situation.

The Worker member of the United Kingdom, also speaking on behalf of Education International, indicated that the discrimination faced by Korean schoolteachers on the grounds of their political opinion and activities constituted a long-standing breach of the Convention. In its 2015 observation, the Committee of Experts had requested the Government to provide any justification concerning their prohibition from political activity. She was of the view that this wide-ranging ban was not justifiable and went beyond the scope of the exception provided for in the Convention. Despite this issue not being new, the Government had yet to provide any justification. The Committee of Experts was also seeking information from the Government on the impact of this discrimination. She indicated in this regard that nine teachers had recently been dismissed for their political opinions or activities and that, during the previous administration, around 60 teachers had been made redundant, some of whom might face criminal proceedings. A teacher who was dismissed could not remain a member of a trade union, effectively creating double penalties for teachers. The Constitutional Court had upheld the ban on political activities by teachers, and the Supreme Court had revoked the legal status of the KTU. The Government had thus chosen to compound its breach of the Convention. The KTU had the right to implement its own membership rules and its members had a right to join a body of their own choosing. By deregistering the KTU, over 60,000 members were being punished for their refusal to submit to the Government's breach of the Convention. To put an end to this issue affecting not only teachers, but also other public servants in the Republic of Korea, urgent intervention was required.

The Worker member of Italy, focusing on discrimination against women, referred to the 2011 concluding observations of the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) concerning the Republic of Korea, which had raised concerns about the disadvantages faced by women in the employment sector, including the concentration of women in certain low-wage sectors, the lack of job security and benefits, particularly for non-regular workers, and the wage gap between men and women. Although the Government's

policy to promote part-time jobs and the “decent flexible work hours system” intended to boost the employment rate were welcome, without enough measures to guarantee equal pay and treatment of women non-regular workers, the policy was deepening the flexibilization of women’s labour at the expense of the less competitive women workers in the labour market. Women’s employment in the Republic of Korea was still lower than the average percentage for OECD countries and the share of women part-time workers had grown rapidly to 17.7 per cent of women workers in the country. In addition, the flexibilization policy had discriminatory effects, as employers preferred to employ women without spouses or children. As married women and mothers were deemed less competitive in the labour market, they were the most vulnerable to labour rights abuses, including sexual harassment. She expressed concern at the impoverishment trend affecting women part-time workers and questioned the enforcement of the Equal Employment Act that protected equal pay for equal work with respect to women part-time workers in non-regular employment and in small enterprises. The policy was not supported by effective measures and legal enforcement to combat discrimination against women workers, and failed to ensure protection and equal benefits, such as maternity leave, for non-regular part-time women workers. She considered that the Government’s promotion of part-time employment and the flexibilization of labour was creating more indecent jobs and discrimination against women workers.

The Government representative clarified that, with respect to the issue of migrant workers changing workplace, the exemption from the application of provisions on working hours, rest and weekly rest provided for in section 63 of the Labour Standards Act was applicable to all workers in the agriculture and livestock industry, not just migrant workers employed under the EPS. However, the Government was trying to improve the existing standard labour contract to specify working conditions for EPS workers. The Government had defined conditions under which an unlimited number of workplace changes could be authorized. The number of such conditions had been continuously increased with a view to alleviating limitations on EPS workers who wished to change their workplace. He expressed the view that it would not be appropriate to compare severance pay for Korean nationals directly with the departure guarantee insurance for EPS workers, since the purposes of the entitlements were different with respect to the issue of non-regular workers. The Government wished to stress that the policy goal was to reduce the number of non-regular workers by preventing employers from depending on non-regular workers to save labour costs, and to narrow the gap between regular workers and non-regular workers in terms of wages and working conditions by prohibiting unfair discrimination against non-regular workers. To this end, the Government was encouraging the conversion of non-regular workers with continuous and regular work into regular workers by providing financial support to small and medium-sized enterprises. Concerning the question of freedom of expression of schoolteachers, he indicated that the Convention did not contain a specific reference to the right to establish trade unions. He did not therefore wish to elaborate on the KGEU, the KTU or the MTU. He however emphasized that the measures taken by the Government with respect to these entities had been lawful and legitimate. He hoped that the ILO and the Committee of Experts would continue to facilitate the effective implementation of the Convention through the supervisory mechanisms. The Government fully recognized that everyone should be given equal opportunities and be treated equally with respect in their employment and occupation. The

Government was firmly committed to the elimination of all forms of discrimination in this regard.

The Worker members indicated that this case concerned discrimination on the basis of migratory status, political opinion, gender and contract type. The Government should, as a matter of urgency, take a certain number of measures. It should permit migrant workers to change jobs without having to obtain authorization from their employer and provide those workers who were trying to change jobs with a list of employers. The Government should also: repeal section 63 of the Labour Standards Act and ensure that all labour rights applied to all workers, including migrant workers, in all economic sectors; ensure that the rights of migrant workers were enforced, including through workplace inspections; and extend the scope of the labour legislation to the agricultural sector. The Government should also allow all teachers to exercise their civil and political rights, reinstate teachers dismissed for exercising freedom of expression, allow dismissed and retired workers to join a union and take the necessary measures to register the KTU without delay and to facilitate the registration of the KGEU. Urgent measures should also be taken to eliminate discrimination against workers on fixed-term contracts, part-time workers and dispatched workers, especially given its particular impact on women workers. The Worker members called on the Government to ratify the four fundamental Conventions which the Republic of Korea had yet to ratify: the Forced Labour Convention, 1930 (No. 29), 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), and the Abolition of Forced Labour Convention, 1957 (No. 105). The Worker members said that each of these issues had already been raised over the previous two years, and that the Government had not availed itself of the ILO technical assistance that had been suggested, nor had it accepted the direct contacts mission proposed. The Government had made no progress, and had even regressed in certain areas. As in 2014, the Worker members once again urged the Government to accept a direct contacts mission.

The Employer members acknowledged that, while there were instances of discrimination and that improvements could still be made in practice, there was no concrete evidence that the national laws were in breach of the Convention. Regarding the issue of migrant workers, the Employer members recommended the Committee of Experts to continue to request the Government to: review the impact of its regulations and ensure that there was appropriate flexibility for workers, taking into account the national context; monitor the new initiatives undertaken by the Government through data collection; and make appropriate adjustments through social dialogue. Concerning the issue of discrimination, more particularly non-regular workers, who mainly consisted of women workers, the Employer members emphasized that a functioning labour market required various types of employment, such as part-time or seasonal work, which could not be stigmatized as discriminatory. They considered that the regulations adopted by the Government to increase women’s participation in the workforce were too rigid and that they needed to be reviewed based on data collection. Equality in labour force participation should be evaluated taking into account the social context. Finally, referring to the issue of discrimination on the grounds of political opinion, the Employer members recommended that the Government provide the necessary information to the Committee of Experts to enable it to assess the situation. They generally agreed with the Committee of Experts that information should be collected through appropriate mechanisms involving the social partners.

Conclusions

The Committee took note of the oral and written information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to: the effective protection of migrant workers, in particular with regard to workplace movements, the protection of non-regular workers, particularly women working part time and short term; the measures taken to promote equality of opportunity and treatment of women and men in employment, and possible discrimination, including dismissals, against elementary, primary and secondary schoolteachers on the basis of political opinion.

The Committee noted the information provided by the Government describing the range of services and training provided to migrant workers, the measures to remove limitations for migrant workers under the Employment Permit System to change workplace, and to improve their conditions of work. The Government also provided information on the application since September 2014, of the punitive monetary compensation system to address repeated and wilful discrimination against fixed-term, part-time and dispatched workers, and the support provided, as of 2015, to companies to convert non-regular workers into regular workers. The Government further highlighted measures to enhance the employability of women through comprehensive employment services and the introduction of childcare services to support part-time working parents. The Government provided statistical information: showing a marked increase in the employment rate of women, on the results achieved through affirmative action measures, and on the use of childcare leave and the reduced working hours system. The Government also provided recent statistics on the number of non-regular workers in the public sector who became workers with open-ended contracts in 2013 and 2014, and the inspections carried out in 2014 in workplaces employing migrant workers and a large number of fixed-term and dispatched workers, including violations recorded, correction orders issued in discrimination cases, and direct employment ordered.

The Committee noted that the Government has taken various measures to review, update and enact new legislation to address labour market inequalities, as well as to reduce challenges relating to discrimination. The Government is requested to continue to report to the Committee of Experts at its next session so that the Experts can analyse the situation.

The Committee notes that long-standing concerns in relation to the application of the Convention still remain regarding migrant workers, gender-based discrimination and discrimination relating to freedom of expression, and need to be addressed.

Taking into account the discussion, the Committee urges the Government, in particular:

- concerning workplace flexibility for migrant workers, to review, in consultation with workers' and employers'

organizations, the impact of the new regulations and, if necessary, make adjustments to programmes to ensure appropriate protection of the foreign worker labour force;

- to ensure that the rights of migrant workers are properly enforced regarding workplace changes and working hours, including through regular workplace inspections and the publication of annual reports;
- concerning the protection against discrimination based on the grounds of gender and employment status, in particular with respect to non-regular workers, including women working part time and short term, to review, in consultation with workers' and employers' organizations, the impact of reforms and continue to submit relevant data and information to enable the Committee of Experts to evaluate if the protection is adequate in practice;
- with respect to the promotion of equality of opportunity and treatment of men and women in employment, to continue to monitor the participation of women in the labour market and provide the Committee of Experts with relevant data and information before its next session; and
- concerning possible discrimination against teachers on the basis of political opinion, to provide more detailed information on this issue to allow the Committee of Experts to make a solid assessment of the compliance of the related laws and practice with the Convention.

The Committee invited the ILO to offer, and the Government of the Republic of Korea to accept, technical assistance to accomplish the recommendations.

Employment Policy Convention, 1964 (No. 122)

ITALY (ratification: 1971)

The Government provided the following written information.

According to the latest National Institute of Statistics (ISTAT) data (June 2015), there was an increase in the employment rate between April and March 2015. In April, the numbers in employment increased by 0.7 per cent (159,000 more employees than the previous month), with the level of employment returning to the levels of 2012 and the employment rate rising to 56.1 per cent. The unemployment rate has fallen to 12.4 per cent. According to ISTAT, the rate of unemployed young people aged 15–24 who are actively seeking work has fallen to 40.9 per cent. The Organisation for Economic Co-operation and Development (OECD) has also provided estimates for employment in Italy, has welcomed the Jobs Act and expects a fall in unemployment in 2016.

Main labour market indicators, per gender, geographical area and age (2012–14)

		2012			2013			2014		
		Employment rate	Unemployment rate	Activity rate	Employment rate	Unemployment rate	Activity rate	Employment rate	Unemployment rate	Activity rate
Gender	Male	53.4	9.8	59.2	51.9	11.5	58.6	51.7	11.9	58.7
	Female	35.0	11.8	39.7	34.5	13.1	39.7	34.6	13.8	40.1
Area	NW	48.7	8.0	52.9	48.3	8.9	53.0	48.2	9.3	53.1
	NE	50.7	6.6	54.3	49.6	7.7	53.7	49.7	7.7	53.9
	Central	46.6	9.4	51.4	45.9	10.7	51.4	46.4	11.4	52.3
	South	34.7	17.1	41.9	33.2	19.7	41.3	32.8	20.7	41.3
Age	15–24	18.5	35.3	28.6	16.3	40.0	27.1	15.6	42.7	27.1
	25–29	57.3	18.1	69.9	52.7	22.2	67.7	51.7	23.6	67.6
	15–29	32.3	25.4	43.3	29.1	9.8	41.5	28.3	31.6	41.5
	30–44	72.5	9.7	52.9	70.8	11.1	79.6	70.2	11.7	79.5
	45–54	72.0	6.7	77.1	70.9	8.0	77.0	70.3	8.4	76.7
	55 and above	17.3	4.9	18.2	18.2	5.3	19.2	19.5	5.0	20.5
	15–64	56.6	10.8	63.5	55.5	12.3	63.4	55.7	12.9	63.9
Total		43.9	10.7	49.1	42.9	12.1	48.8	42.8	12.7	49.1

Source: ISTAT, RCFL *media annuale*.

Unemployment rate per geographical area and age (2012 and 2014)

	2012				2014			
	15–24	25–29	15–29	15 and above	15–26	25–31	15–31	15 and above
Piemonte	32.1	12.6	20.9	9.2	42.2	19.8	29.3	11.3
Valle d'Aosta	25.6	6.0	14.2	7.1	34.9	14.4	22.7	8.9
Lombardia	26.5	10.9	17.2	7.4	31.2	12.8	20.3	8.2
Liguria	30.2	13.5	20.7	8.1	45.0	24.8	32.9	10.8
Total North West	28.4	11.5	18.5	8.0	35.5	15.7	23.8	9.3
Trentino alto Adige	15.1	7.3	11.1	5.1	18.4	8.9	13.4	5.7
Veneto	23.3	8.8	15.0	6.4	27.6	10.9	18.0	7.5
Friuli Venezia Giulia	29.7	11.1	18.1	6.7	27.1	19.2	22.4	8.0
Emilia Romagna	26.7	11.2	17.5	7.0	34.9	15.7	23.7	8.3
Total North East	24.0	9.8	15.8	6.6	29.0	13.2	19.9	7.7
Tuscany	29.4	13.1	19.9	7.8	35.7	18.8	25.9	10.1
Umbria	34.6	15.9	23.8	9.5	42.5	21.6	30.0	11.3
Marche	28.6	16.5	21.4	9.1	36.4	15.0	23.4	10.1
Lazio	40.0	20.9	28.4	10.6	49.0	25.4	34.2	12.5
Total Central	34.7	17.6	24.5	9.4	42.4	21.8	29.9	11.4
Abruzzo	34.0	17.7	24.9	10.8	47.4	22.0	31.6	12.6
Molise	41.5	27.8	33.5	12.0	49.3	35.3	40.9	15.2
Campania	48.4	33.1	40.3	19.2	56.0	38.2	46.4	21.7
Puglia	41.6	25.3	32.6	15.7	58.1	34.1	44.9	21.5
Basilicata	49.9	27.4	36.9	14.5	46.6	31.3	37.5	14.7
Calabria	53.9	30.9	40.8	19.4	59.7	45.8	51.9	23.4
Sicily	51.2	33.3	41.7	18.4	57.0	42.5	49.2	22.2
Sardinia	47.5	28.0	36.5	15.4	50.0	39.8	44.3	18.6
Total South and islands	47.1	29.5	37.5	17.1	55.9	37.8	45.9	20.7
Total Italy	35.3	18.1	25.4	10.7	42.7	23.6	31.6	12.7

Source: ISTAT, RCFL *media annuale*.

Employment Policy Convention, 1964 (No. 122)

Italy (ratification: 1971)

In recent years, Italy has adopted important labour market reforms (the so-called Fornero Reform in 2012, the Youth Plan Reform in 2013 and the Jobs Act in 2014). All of these reforms are aimed at reducing the high unemployment rate and, in particular, the youth unemployment rate, through a structural revision of public employment services and a simplification of the types of labour contracts. The Fornero Reform (Act No. 92/2012) established several protection measures for the working conditions of women and young workers and relaunched apprenticeships and vocational training. The Youth Plan (Decree No. 34/2013, converted into Act No. 99/2013) is a follow-up to an earlier reform, in accordance with the Europe 2020 Strategy. It introduced measures aimed at reducing the mismatch between labour demand and supply and at tackling youth unemployment through the implementation of the European Youth Guarantee Programme and economic incentives for employers who hire workers. Act No. 147/2013 also established the Fund for Active Policies to enhance the employability and reintegration of workers into the labour market. The latest measure has been the Jobs Act Reform (Acts Nos 78/2014 and 183/2014) which, through subsequent legislation, will include: the reform of the public employment service system and the establishment of a National Employment Agency; the revision of the system of social shock absorbers and provisions on the dismissal of workers; the simplification of types of contracts (see below, the reform of the apprenticeship contract); and the creation of opportunities to improve the balance between life and work, particularly for women. Two of these reforms have been implemented through the recent Legislative Decrees Nos 22/2015 and 23/2015, and the others will be adopted shortly, in accordance with the legislative schedule. Emphasis should be placed on the “replacement contract” (section 17 of Legislative Decree No. 22/2015), which allows unemployed persons, after a “profiling” procedure in the public employment services, to receive a bonus related to their specific conditions of employability, by signing a replacement contract with private or public employment services. Under this agreement, the unemployed receive stronger and more intensive services to enhance their labour market integration. The contract is financed by the Fund for Active Labour Policies, in accordance with section 17 of Legislative Decree No. 22/2015. With regard to the establishment of a National Employment Agency, the aim of the reform is to improve coordination of labour market services throughout the national territory, implement active labour market policies (ALMPs) and create a stronger network of all bodies with competence in the labour market field. Act No. 183/2014 provides for the involvement of the social partners in defining the broad policies of the Agency. Italy has also adopted several measures (Act No. 92/2012, section 4(11)) to enhance the employability of women through the introduction of incentives to hire unemployed women (particularly the long-term unemployed or women living in areas with a high unemployment rate). Recently, a ministerial decree adopted in December 2014 identified a list of economic sectors and professions for 2015, based on ISTAT data, in which there is a high rate of employment disparities between men and women (over 25 per cent), with a view to the provision of incentives (in the private sector), in accordance with Act No. 92/2012. The main employment disparities are in industry (particularly construction, mining, waste management, energy and manufacturing), services (transport and warehousing, IT), as well as in the following occupations: the army, artisanal work, farming, the technical professions, engineers and entrepreneurs. The Stability Act of 2015 (Act No. 190/2014) also established a so-called “baby bonus” (€80 a month) for families on low incomes for each baby under 3 years of age.

Finally, with a view to addressing regional disparities, a more rational use is being made of structural funds (the Action and Cohesion Plan).

With regard to youth employment, Legislative Decree No. 104/2013 introduces new instruments to strengthen career guidance in secondary schools and a pilot programme (through apprenticeship contracts) for students in the last two years of secondary school. The Youth Guarantee Programme was launched last year (1 May 2014) and, at the moment (4 June 2015), young people who join the Youth Guarantee Programme are 604,854, with a funding of €1.5 billion. The gender composition of the registered people is: 51 per cent male and 49 per cent female. Some 8 per cent of those registered are in the 15–18 age group, 53 per cent are in the 19–24 age group and 39 per cent are over 25. Among these registered young people, 329,656 have subscribed to the “service pact” and have been profiled (168,009 males and 161,647 females). This Programme has represented, for us, a new way to coordinate and manage the labour market services, to create a competitive–cooperative system between private and public employment services, taking into account the structural reforms we are dealing with in these fields, with the delegation law No. 183/2014 (Jobs Act). The Ministry of Labour and Social Policy has developed several measures and approaches to address youth unemployment, together with the regions. A website has been established for the Youth Guarantee Programme (www.garanziagiovani.it). A “profiling methodology” has been developed for young people to place them in a specific cluster and to direct them to specific and tailored measures (such as vocational training, traineeship, apprenticeship, civil service, self-employment or job incentives for employers). The regional activation plans contain specific programming of financial resources and active strategies for young people, including ongoing and future measures financed by the European Social Fund or from national/regional resources. Another important tool to enhance youth employment is the European Employment Services (EURES) Network, designed to facilitate the free movement of workers within the European Economic Area. Partners in the network include public employment services, trade unions and employers’ organizations. The main objectives of EURES are to inform, guide and provide advice to potentially mobile workers on job opportunities, as well as living and working conditions in the European Economic Area, and to assist employers wishing to recruit workers from other countries. In the context of the Employment and Social Innovation (EaSI) Programme, reference should be made to the “Your first EURES job” project, which supports work experience abroad for young people aged 18–35 (including apprenticeships, traineeships and job interviews). In line with the EU 2020 Strategy, the “Welfare to work” action system was implemented in 2012–14, including ALMP plans for the employment of young people, workers aged over 50, women and the unemployed, which are managed by the regions and provinces.

With reference to education and training policies, it should be noted that the general outline of the National System for the Certification of Skills was established by Legislative Decree No. 13/2013. As a precondition for access to the European Social Fund for the period 2014–20, and in compliance with the country-specific recommendation of 8 July 2014 (point 6), Italy has undertaken to continue the implementation of the National Directory, with the aim of developing a single reference for the recognition and standardization at the national level of regional qualifications. This commitment led to the adoption of an Agreement in the State–Regions Conference in January 2015, envisaging a system of operational references for the certification of regional vocational qualifications, by issuing the National Reference Framework of

regional qualifications and establishing minimum standards for the validation and certification of skills. This agreement has been reflected in an Inter-Ministerial Decree issued by the Ministries of Labour and of Education. The cornerstone of the system is the establishment of the National Framework of Regional Qualifications, which serves to organize, aggregate and accord nationwide recognition to over 2,600 regional vocational qualifications. This system is based on the expansion of statistical classifications (economic activity and job classifications) involving a mapping of the labour market and of occupations. The descriptive approach adopted by the system will allow progressive extensions (vocational training, the education system, university degrees, vocational qualifications and apprenticeship profiles), as well as dynamic updates. The Directory is also a valuable tool for employment information systems, as it will lead to a more targeted and timely matching of labour market services. It also helps in the development of individualized active policy measures and the strengthening of lifelong training and geographical and sectoral mobility. The extensive use of statistical classifications provides a basis for enhancing the full and systematic interoperability of all of these measures with the employment information systems of other Member States of the European Union, OECD countries and the EURES network. Moreover, within the Youth Guarantee Programme, an inter-institutional working group has been established within the Ministry of Labour on the validation and certification of skills acquired in non-formal contexts, such as national civic service. With a view to increasing youth employment, through the Jobs Act Reform, the Government also intends to focus on measures related to work-

based learning, particularly through apprenticeship contracts. More generally, the aim is to foster the use of such contracts by redefining: training provided both within and outside enterprises; training content and employers' obligations; and the general criteria of apprenticeship in technical and vocational schools, with particular reference to the number of hours of schooling during apprenticeship. A specific legislative decree will be adopted to rationalize employment incentives, including apprenticeship. A reform was also introduced in 2013 in the field of adult education to reorganize adult education centres, which are now part of the Italian education system and can issue certificates and qualifications (Regulation No. 263/2012). In the field of education and vocational training, national standards have been defined for 22 qualifications (three years) and 21 diplomas (four years), described in terms of competences, in line with the provisions of the European Qualifications Framework. In recent years, the emphasis has been on improving tertiary education and higher technical education and training with a view to creating training supply that is more closely matched to the changing requirements of the labour market.

With regard to cooperatives, the Ministry of Economic Development in 2014 adopted several measures to promote employment through cooperatives. In particular, the Ministerial Decree of 4 December 2014 established a new incentive/fund to promote the creation and development of small and medium-sized cooperatives. The fund can be used to finance cooperatives established by workers from companies in crisis, cooperatives to manage companies confiscated from organized criminal organizations or the renovation of cooperatives in southern Italy.

No. of cooperatives

Category	No. of cooperatives
Other types of cooperatives	8 960
Cooperative credit banks	394
Agricultural consortia	57
Cooperative consortia/federations	304
Credit unions and cooperative insurances	478
Fishing cooperatives	1 326
Agricultural and breeding production cooperatives	5 568
Consumers' cooperatives	1 381
Retailers' cooperatives	156
Farmers' cooperatives	3 875
Worker-producer cooperatives	51 108
Transportation cooperatives	2 155
Housing cooperatives	10 585
Social cooperatives	21 650
Mutual aid societies	222
No category	1 539
Total amount	109 758
With "prevalent mutuality"	101 739
No "prevalent mutuality"	5 313

Last update: 26 May 2015

Cooperative by region

Region	No. of cooperatives
Abruzzo	2 195
Basilicata	1 775
Calabria	3 849
Campania	11 612
Emilia Romagna	8 877
Friuli-Venezia Giulia	1 145
Lazio	16 226
Liguria	2 049
Lombardia	13 370
Marche	2 784
Molise	628
Piemonte	4 810
Puglia	9 138
Sardinia	4 119
Sicily	14 504
Tuscany	4 227
Trentino-Alto Adige	1 984
Umbria	1 225
Valle d'Aosta	299
Veneto	4 942
Total	109 758

The total amount of cooperatives has been significantly increasing for the past 15 years. In 2013, for instance, Italy had 106,970 cooperatives. Also the cooperatives with a positive impact on employment increased (worker-producer cooperatives, farmers' cooperatives, transportation cooperatives, fishing cooperatives, 70 per cent of social cooperatives) 45 per cent in 2008, more than 65 per cent in 2015.

In addition, before the Committee, a **Government representative** referred to the written information and added that over the last five years Italy had faced a severe economic crisis, which had led to an increase in the unemployment rate up to 12.7 per cent in 2014. Young workers were the most affected by the crisis: in 2014 the unemployment rate of workers aged between 15 and 24 years was 42.7 per cent and the number of young people who were neither employed nor in education or training was 22.1 per cent. The Government further referred to the Fornero labour market reform which included the reform of the employment protection legislation, with the aim of reducing the segmentation in the labour market; the reform of the unemployment benefit system, whose coverage and coherence had been increased; the introduction of instruments for easing the transition between school and work; incentives for the employment of older workers and of women in areas with a high female unemployment rate or in sectors characterized by high gender gaps. Furthermore, the Fornero reform introduced a permanent system of monitoring, with the participation of the social partners and of all the institutions involved both in the implementation of the reform or in the collection and treatment of statistical data. The youth employment strategy provided for a package of interventions aimed at fostering the employment of young people, including an employment incentive, financial support for work experiences and incen-

tives for self-employment and entrepreneurship; the youth guarantee programme represented a very important challenge and an opportunity to test a new approach to the provision of public employment services and active labour market policies, through the creation of a competitive and cooperative system between public employment services and private agencies, the development of a national "profiling methodology" in order to provide young people with more focused and tailored paths of placement, the introduction of standard costs at the national level and the results-oriented payment for labour market operators. The 2014 Jobs Act was the most ambitious of the three reforms giving the Government the power to reform many aspects of the labour market legislation, including the establishment of a national employment agency. In this respect, subsequent Acts had already been approved or would be adopted in the following weeks. A three-year contribution relief was established by Law No. 190 of 2014 for new open ended contracts, aimed at encouraging an employment intensive economic recovery with more stable jobs. Statistical data showed some improvement of the main employment indicators following the implementation of these reforms. The number of employed people increased by 0.7 per cent in April compared to March 2015. The employment rate reached 56.1 per cent while the unemployment rate fell to 12.4 per cent. During the first three months of 2015, the number of new employment contracts increased by 3.8 percentage points: the number of new open-ended contracts increased by 24.6 per cent with respect to the same period in 2014. With respect to youth employment, the latest figures showed an increase of 5.7 per cent in the number of employed people aged between 15 and 24 by March 2015. Their unemployment rate was currently 40.9 per cent, which was 2.4 percentage points lower than in April

2014. Concerning education and training policies, the Government representative indicated that, according to the National System of Certification of Skills, a national directory of qualifications was being implemented and that the Jobs Act reform focused on work-based learning, particularly through the reform of the apprenticeship contract. With regard to the data related to cooperatives, there had been an improvement in the number of cooperatives over the last 15 years, including cooperatives which had a positive impact on employment. Finally, the Government representative noted the importance given to the issue of monitoring, which would also be applied to the reform of active labour market policies. Great attention would be paid to the monitoring system and to the capacity of the public administration to learn from experience, through the continuous adjustment of measures and services.

The Employer members observed that the Committee of Experts had formulated since 1990, 16 observations on the implementation of the Convention. This was the first time that the Committee was able to discuss the case on the grounds of significant progress shown by the Government. Quoting Article 1 of the Convention, which required each member State to declare and pursue an active policy designed to promote full, productive and freely chosen employment, they recalled that the main problems regarding the Italian employment situation were related to regional and gender disparities, excessively high youth unemployment, as well as the high level of undeclared employment. These problems were rooted in structural causes and persisted irrespective of the prevailing economic situation, which was also reflected by the Committee of Experts' comments over the past 25 years. The profound economic crisis of 2008, which had affected all European countries, posed particularly tough challenges to the Italian economy and the employment situation. Although the labour market institutions were not the cause of the crisis, their shortcomings and inefficiencies, including excessive bureaucracy, contributed to the aggravation of the crisis and hence hampered both employment generation and economic recovery. In addition, the inefficient labour court system, where legal disputes were decided only after several years, discouraged employers to offer open-ended contracts to workers. The same deficiencies were observed in public employment services which therefore were not able to fulfil their role in active labour market policy. Likewise, the vocational education and guidance system was not able to fully integrate young people in the labour market. In order to tackle these problems, the Government had undertaken comprehensive structural reforms of the institutions which were relevant to the employment and labour market, in order to make them more efficient and conducive to employment creation. The 2012 Forneo labour market reform, the 2013 Youth Plan and the 2014 Jobs Act followed exactly the comprehensive approach required. The 2014 Jobs Act, in particular, made the labour market regulations more employment-friendly, which led to the creation of a new form of open-ended employment contracts with better protection rights. This measure was accompanied by a reform of the work-based vocational education and apprenticeship system, which was crucial for increasing youth employment. The public employment system had also been reformed and measures aiming to reconcile work and family life had been introduced to promote the integration of women in the labour market. The Employer members stressed that structural reforms always needed time until positive effects became visible. Already, the first positive effects had been noted, such as the significant increase of employment, including youth employment. Also, the employment of women was growing faster than the employment of men. Most importantly, the number of open-ended employment contracts had in-

creased significantly since the adoption of the Jobs Act. Turning to the provision of Article 3 of the Convention which provided for consultations on employment policies with the representatives of the persons affected by the measures and in particular representatives of employers and workers, they observed that the Government had been discussing the measures proposed with the social partners for a number of years. However, at a moment when the employment situation deteriorated severely, the Government had rightly assumed its responsibility and had proposed a draft legislation which was in line with the recommendations of the European Council within the framework of the European Semester. The social partners were consulted during the deliberations in Parliament and gave their views on the reform package which was subsequently adopted by Parliament. The implementation measures of the reform were under preparation and subject to broad consultations with the social partners. In this regard, the Employer members hoped that the opponents of the modernization of the labour market would give up their negative attitude and that both social partners would participate in a proactive manner in the consultations. In conclusion, the Employer members praised the Government's comprehensive structural reforms, since they contributed to the goals of the Convention and reflected the spirit of the 2008 Oslo Declaration which called for decent work and job creation to be fostered through an enabling environment for enterprises and appropriate strategies to enhance competitiveness and sustainable development. The employment gaps regarding regions, gender and youth could require a long time to be resolved. However, they reiterated that the comprehensive approach was showing its first positive effects and the Government should hence continue on this path of reforms.

The Worker members recalled the objective of full, productive and freely chosen employment, based on consultations with social partners and the importance of other key documents on which consensus had been reached, such as: the Decent Work Agenda; the 2008 Declaration on Social Justice for a Fair Globalization; the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144); the 2009 Global Jobs Pact; the 2010 ILC Resolution concerning the recurrent discussion on employment; and the 2008 Oslo Declaration. Beyond the existence of a framework, the Employment Policy Convention, 1964 (No. 122), required initiatives on the part of the Government. The Committee of Experts was empowered to assess whether the measures taken would affect employment in a way that was compatible with the objectives of the Convention. Recalling the conclusions adopted in 2013 during the previous examination of this case, as well as the ensuing comments by the Committee of Experts, the Worker members considered that the problem of the present case lay elsewhere, as most of the data had changed since the Italian Government had passed a series of new laws and decree laws in order to reduce unemployment. The Jobs Act, which had been adopted in 2014, without proper consultation of the social partners, in order to increase the employment rate, was the third reform of the labour market in three years, even though the impact of the previous reforms had not necessarily been evaluated. The provision of information was not the equivalent, however, of holding consultations within the meaning of the Convention, which required timely consultations, thus allowing for exchanges to take place, compromises to be reached and amendments to be discussed. Labour law was not there to serve the market, as underlined by the Declaration of Philadelphia. Yet, the latest reform had provided for complete liberalization regarding fixed-term contracts, as they could be extended to 36 months; had introduced the concept of downgrading, which allowed for workers to be assigned tasks at a lower grade than the one at which

they had been hired; and had authorized the use of contracts for part-time employment with greater flexibility regarding working hours and casual work for all task types. In the case of apprenticeships, the reform had ended payment for training hours. Finally, it introduced “contracts with increasing protection”, which was a source of concern for the trade unions. In the absence of consultations, which would have clarified any doubts and would have allowed for adjustments to be made, the workers were faced with a fait accompli whereby labour law had been undermined. The Government was considering work, wages and social protection in the broad sense, as nothing more than another factor in its budgetary orthodoxy, thereby going against the Declaration of Philadelphia on which the Convention was based. The latest data submitted were not surprising, as many jobs in the country were seasonal, which was reflected in the extensive use of fixed-term contracts. A correlation should be made between this data and the fact that enterprises received subsidies for three years. Questions should be raised regarding the sustainability of that temporary assistance with regard to employment. There was a high risk of damaging the cohesion of a country that was already experiencing economic and social imbalances among its different regions and a high unemployment rate for women. Although the Government had high hopes for the Youth Guarantee of the European Commission, the scheme had limited resources and would not be enough to resolve the problem faced by all young people, who also needed to be guaranteed a quality transition between school and work. In conclusion, the Worker members said that they shared the concerns of Italian workers, who feared a resurgence in precarious employment and growing poverty even within the world of work. The way out of the crisis lay in the creation of more quality jobs and in greater efforts to train workers.

The Employer member of Italy indicated that the environment was different from that of 1964 when the Convention had been adopted. Globalized economies, technological and demographic change and different ways of production as well as new requirements for workers and enterprises had transformed the labour market. However, the objectives of the Convention remained valid and needed to be pursued, as active labour market policies to promote growth, employment, social development and cohesion were more necessary than ever. Governments and social partners had to be committed to adopt reforms to adapt the labour market to the situation. In this regard, it was encouraging to examine countries that were now positively addressing the challenge, in particular Italy, where structural reforms of the labour market had lagged behind for years. The alarming figures concerning employment, in particular women and youth employment, could be explained by the delay in addressing the structural weaknesses of the economy and of the labour market which had been exacerbated by the crisis. Now some improvement in latest figures must be highlighted, particularly with regard to the creation of permanent employment. In any case, it had to be recalled that Italy remained behind other EU countries in the use of fixed-term contracts, and was the country where temporary agency work benefited from full equal treatment in comparison with permanent employment. The Jobs Act implemented by the Government contained a package of reforms that simplified and modernized the employment relationship and reinforced active labour market policies, overcoming rigidities that discouraged job creation. A regulatory framework that fostered employment together with policies that encouraged investment could contribute to recovery. Social partners had an active role to play in this strategy and they had the opportunity to channel their views through the existing institutions, including the Par-

liament. They could also contribute to the modernization of the labour market through collective bargaining which, even during the crisis, had contributed to finding balanced solutions to protect employment and support competitiveness. The results already achieved should encourage the Government to adopt further reforms within the framework of the Convention.

The Worker member of Italy said that the Jobs Act, which was designed to help increase the rate of employment, was the third labour market reform in as many years whose impact had not been assessed and whose global vision was inadequate. The increase in precarious work stemmed from the 2003 labour market reform, and from the process, which since 1993 had been proclaimed as “the modernization of the labour market”, and job creation. Yet the Jobs Act was geared more towards job flexibility than job security; it looked upon open-ended contracts as providing “increasing protection”, but in practice it replaced the current system under which workers were protected against illegal dismissal. In future, even in the case of unjustified dismissal, workers would only be entitled to financial compensation, but not to reinstatement. The amount of compensation for dismissal increased only with the number of years of service. As a result, the balanced system of professional relations that had existed before was being replaced by the monetization of labour and of its value, in breach of Article 24 of the European Social Charter and of the Termination of Employment Convention, 1982 (No. 158), which stated that all terminations must be justified. In the past, reinstatement in a job following an illegal dismissal was a policy choice that protected workers’ dignity and enabled them to lay claim to other fundamental rights. The concern was that the new measures might put undue pressure on workers and lead to employment blackmail. Recruitment that took place in 2015 would exempt employers from social security contributions for up to 36 months, after which the maximum would be €8,060 a year, regardless of whether the enterprise had invested in training, innovation or research. The reform had been designed to benefit enterprises. The long-term sustainability of that kind of recruitment was doubtful, because it did not result from structural change, and there was therefore a risk that precarious work would become institutionalized. According to the OECD, Italy’s 49 per cent youth unemployment rate was the highest in Europe after that of Greece, and there was still a long way to go before Italy might find a sustainable answer to the crisis. The increased productivity that the reform aimed to achieve was largely dependent on employers being able to dismiss workers more easily. That was all to the employers’ advantage, because they could then hire new workers more cheaply and benefit from tax and social security concessions. Meanwhile, nothing was being done to re-train workers by means of sustainable measures for improving their employability. None of the teaching and training measures that should have been introduced since 2013 had been implemented, and the permanent territorial centres in provincial adult education institutions had never been set up. The system was under-financed and the Government had done little to implement the measures. A job without rights was no job at all. Yet that was exactly what was happening; inevitably, then, the world of work would go into economic and social decline. In southern Italy some 800,000 jobs had been lost between 2004 and 2014 and more and more workers (700,000 between 2011 and 2013) were migrating to northern Italy. Surely Italy needed, instead, an ambitious public and private investment programme that might give the country a real chance of economic growth based on quality jobs. The very first words of the country’s Constitution stated that Italy was a democratic republic founded on work, which was the foundation of life and the principle means of so-

cial inclusion – a concept that must be translated into respect for the dignity of all.

The Government member of France, also speaking on behalf of the Government members of Croatia, Cyprus, Germany, Greece, Luxembourg, Portugal, Romania, Slovenia and Spain, said that, like Italy, the Governments of all the aforementioned countries had embarked on a coordinated approach at EU level designed to combat unemployment in a difficult context for public finances, with a view to reducing an unprecedented unemployment rate, ensure strong and lasting growth and strengthen social cohesion. The Europe 2020 strategy for smart, sustainable and inclusive growth, which defined the macroeconomic direction of the EU, was based on the same objectives and aimed for a 75 per cent employment rate for the 20–64 age group and the possibility for every person to seize opportunities, develop skills in order to be able to find a job, be educated and trained, and enjoy social protection corresponding to the various risks encountered throughout life. Poverty at work remained an issue to be faced by the member States, and developing access to employment remained a significant challenge, particularly for women and vulnerable groups. The search for the right balance between macroeconomic objectives, on the one hand, and those of inclusive growth, on the other, and also the creation of an environment conducive to the development of investment merited closer attention, as recommended by the European Commission's recent investment programme. Better use of human capital through more inclusive labour markets should contribute to growth and social progress. In view of their representativeness within social Europe, trade union and occupational organizations at the European level had a particular role to play, especially in the social and employment spheres. Italy was pursuing active policies to achieve full, productive and freely chosen employment and the Government should be trusted to continue its efforts in that direction, in accordance with the values and principles of the ILO. Furthermore, without social dialogue there could be no lasting solution to the problems of the labour market in Europe. The ILO had to play its full part in integrating the social dimensions of international labour standards in the multilateral system through increased collaboration with other international bodies, particularly those in the economic and financial spheres.

The Worker member of Canada indicated that in the framework of the proposed trade agreement between Canada and the EU, under the guise of promoting full employment, both countries were promoting a labour market flexibility agenda characterized by deregulation or reregulation to lower or keep wages low, stimulating private investment and promoting export demand. Even if it was sometimes said that approaches like the Jobs Act had resulted in reducing unemployment, a closer look at the statistics revealed a picture that was characterized by more short-term work, precarious work, more inequality, less social stability, higher job insecurity and lower social protection – a scenario that went contrary to the principles of the ILO Decent Work Agenda. In both countries, there was no consultation or meaningful involvement of the social partners with regard to key employment plans. While Italy was breaking with a long tradition of consulting social partners about employment, Canada had now launched frontal attacks to freedom of association and collective bargaining. It appeared that the purpose of the Convention had been sidelined without regard for a meaningful employment policy and without dialogue with the social partners.

The Employer member of Spain stated that, like his country, Italy had suffered the economic repercussions of the 2008 crisis, resulting in a slowdown in economic growth and the loss of employment, along with an in-

crease in structural inequalities that had existed before the crisis. Within the framework of the Stability and Growth Pact, the Italian Government had taken significant steps to overcome those difficulties. Although labour reform alone could not solve employment problems, together with other reforms it represented a key piece in building a vigorous recovery in the job market during the next ascending economic cycle. The Spanish employers supported the reform and advocated the adoption of additional measures to remove the unnecessary rigidity from the job market and create a favourable environment for enterprises to create high-quality jobs. The Jobs Act, among other measures taken by the Government, reflected its firm commitment to reactivating employment creation.

The Worker member of France recalled the particularly worrying rate of 42 per cent youth unemployment in Italy, the particularly dramatic employment situation in the south of the country, the fact that most young people were liable to end up in precarious jobs in new forms of semi-contractual employment, and the lack of career prospects even for those with qualifications; and that was despite the measures taken by the Government with respect to apprenticeships, which the social partners and the Government saw as the best way of getting workers back into the labour market. However, the new labour market reform, which had introduced “assisted” contracts that offered enterprises tax concessions for three years, meant that employers no longer hired workers on apprenticeship contracts and thereby denied young people access to training programmes. Moreover, the number of young people benefiting from such contracts was already declining, and nobody knew what would happen after the three-year exemption period. Only 20 per cent of jobseekers had found their way back into the world of work. The youth unemployment problem was not just a question of resources, since the EU had given Italy substantial financial assistance; it was more a matter of priorities in the distribution of available resources. The Workers were therefore calling for a genuinely active job-creation policy which favoured enterprises that invested in training, and which strengthened employment services. It was also necessary to familiarize young people with the world of work and enterprises through the promotion of civilian service and training.

The Employer member of France indicated that, owing to the severe economic recession, Italy had had to introduce major labour market reforms, such as the Jobs Act, in order to address the high rate of unemployment. In particular, the country had adopted the Fornero Reform establishing a range of measures to protect the working conditions for women and young people, boosted apprenticeships and vocational training and implemented the youth plan, which had been converted into a law in accordance with the 2020 Strategy, and measures to address the mismatch between labour supply and demand which aimed, for example, to improve the employability of older unemployed persons and their reintegration into the labour market – with specific measures for women. In 2014, the employment services had been reformed and the National Employment Agency had been established. Emphasis had also been placed on training with the reorganization of adult training centres, which were now part of the national education system, and on improving the quality of higher and technical education so as to adapt it to the changing labour market. Also in 2014 the Ministry of Economic Development had adopted measures to promote employment through cooperatives and the development of small and medium-sized cooperatives. In conclusion, she said that Italy should be encouraged to continue the efforts it had already undertaken, in accordance with the Convention, to reduce unemployment with a view to full employment.

The Worker member of Brazil recalled the importance of the Convention, the main objective of which was to give expression to the principles set forth in the Declaration of Philadelphia relating to full employment and social justice. The Convention promoted the creation of employment through the adoption of growth and economic development policies and obliged States to implement policies that tackled the problem of unemployment and underemployment. The application of the Convention in Italy had been hampered by the restrictive economic and social policies promoted by the European Commission. In that context, the Jobs Act had been adopted at the end of 2014 creating new forms of employment contracts and making it easier to dismiss workers. The measures recommended by the European Commission, known as specific recommendations for each country, showed that the ills of low productivity and competitiveness of Italian enterprises were regarded as stemming from excessive social protection of the employment relationship. However, reality showed that enterprises were not hiring more workers just because it was easier to dismiss them but also because there was an economic policy geared to economic growth and with it the expansion of business. Even though initial data showed a slight reduction in unemployment, it was important to be aware of the effects that flexibility policies had had in Latin America where they had been extensively applied. In the long term, making dismissals more flexible, creating incentives for part-time contracts and making use of outsourcing resulted in the creation of precarious jobs or underemployment, in complete contradiction with the Convention. It was certain that workers' lives could not be improved in the long term if no macroeconomic policies were adopted aimed at economic growth based on investment technological innovation wage increase or state investment.

The Employer member of Turkey indicated that the comments of the Committee of Experts gave a misleading picture of the situation in Italy and that the evaluation of the situation should not be based solely on quantitative analysis. The profound economic crisis had greatly damaged the Italian economy and labour market, and the response of Italy had been bold and responsive. The structural reforms in areas such as vocational training, apprenticeship, public employment services, employment contracts and flexibility had been undertaken in a consistent way. These measures showed a clear commitment to overcome the crisis through policies for employment creation. Positive effects could already partially be seen, but more time was needed to achieve success. The Turkish employers welcomed the progress made by the Italian Government and its commitment to comply with the Convention.

The Worker member of Belgium referred to the impact of the crisis and the austerity measures on women's jobs and lives in Italy. Young women, even those who were highly qualified, were limited to precarious and unstable work and women over 40 years had difficulty situating themselves satisfactorily on the labour market. According to the 2014 European Commission annual report on equal opportunities, if Italy did not radically change its employment policy, it would only achieve its objective of a female employment rate of 75 per cent in 30 years' time, equality of treatment between men and women would only become a reality in 70 years' time, and parity representation in national Parliament would not be possible before 20 years. The rate of male employment was 22 per cent higher than the employment rate for women, while the average for this gap in the EU was 12 per cent. Women left the employment market because certain types of contracts did not offer them adequate maternity protection. In addition, the practice of "white resignations" was common, under the terms of which, at the time of her re-

cruitment, the woman worker signed a resignation letter which the employer would use if the worker was pregnant or on maternity leave.

The Employer member of Belgium highlighted that, in the financial and economic crisis that had swept Europe since 2008, there was one common objective: restoring economic growth so as to create sustainable employment; and that necessarily entailed the structural reform of the labour market. The reforms, which had sometimes been trying, were at last beginning to bear fruit. Governments had tackled the countries' structural shortcomings with determination and had regularly, if not constantly, consulted the social partners before adopting and implementing new measures. There were of course differences of opinion among the social partners on the proper steps to take, especially when they were unpopular; and in the absence of consensus the Government was obliged to take the final decision. The requirement in Article 3 of the Convention that the Government consult the social partners on its employment policies was not intended to undermine the sovereignty of States, and governments had to pursue whatever structural reforms were necessary to protect the competitiveness of enterprises and to sustain employment and, therefore, the social security system. He concluded by asserting that government practice in Italy was in keeping with the Convention.

The Worker member of Poland, observing that the Italian labour law reform had resulted in a reduction of workers' rights, focused on the situation of the most disadvantaged children. Child labour could become a reality within the EU as a result of the austerity measures which had a great impact on vulnerable groups through the reduction of family incomes and cuts in state expenditures dedicated to health care, education and social services. Italy had one of the highest rates of school drop-outs in Europe. A 2013 survey from Save the Children pointed out that, at least one out of 20 children was exploited. In October 2011, the UN Committee on the Rights of the Child urged Italy to develop effective mechanisms capable of ensuring children's education, health and social assistance, and called for a comprehensive analysis on resource allocation for this purpose. In this context, the Government should have considered the implementation of free universal education as a priority for the creation of new quality jobs and public investments for development and growth of the country. Those considerations should be central in the international community and EU policy debate in order to finally break the chain of decent work deficits, poverty and inequality.

The Worker member of Germany observed with concern that the recent labour market reforms of the Government were socially imbalanced, and that they had fatal consequences for the economy and society. While the Government faced challenges to overcome the economic crisis that had resulted in the loss of thousands of jobs, there was real doubt as to whether the Jobs Act would achieve economic growth and development, increase living standards and reduce the unemployment rate. The Jobs Act had introduced a new contract with additional safeguards replacing the previous open-ended standard employment contracts. Consequently, judicial procedures against employment termination for economic reasons would now become more difficult. Where employment contracts had recently been concluded or where enterprises employed more than 15 employees, there was no right of reinstatement, except where the courts considered the dismissal to be discriminatory. Furthermore, the amount of compensation for unfair dismissal had been significantly reduced, including in the event of collective dismissals. Section 18 of the Italian workers' statute which previously provided for the protection of workers organized in trade unions against unfair dismissal had been undermined, which was

tantamount to interference in freedom of association. The introduction of the new contract with additional safeguards meant that enterprises could simply realize unfair or collective dismissals by paying a meagre compensation. There were concerns that other regulations under the Jobs Act would provide for further precarization and the widening of the gulf between different categories of workers. While it had appeared from some of the statements made during the discussions that the regulations on the protection against dismissal were the main cause for the labour market crisis in Italy, there was very little evidence to support this belief. In fact, countries with the highest protection against unfair dismissal were more economically successful and had higher employment rates than others. He concluded by stating that the Government should have consulted workers in the early stages of the reform process, and that it should also take into account social objectives in its efforts to promote employment.

The Worker member of Japan, referring to the Director-General's Report to the Conference, indicated that work should contribute to overcoming social problems through connecting people and making a link between workplaces and society. However, such linkage was becoming weaker and weaker because of the increase in precarious work and the deterioration of the quality of employment. Although the crisis represented a chance to recognize the importance of stronger coherence between growth strategies and employment policies, few lessons had been learnt from it as the policies being implemented all over the world had demonstrated, including in Italy. The Jobs Act instilled more flexibility in the labour market, removing constraints faced by employers in hiring and firing workers through a redefinition of company sizes, the establishment of new rules on fixed-term contracts and a revision of section 18 of the Italian workers' statute that prevented companies from downsizing during a crisis. Such measures would be surely creating more jobs but most of them would be precarious leading to a vicious cycle of, among others, insecure and lower waged jobs; decrease of savings; even lower consumption; no investment and stagnant growth. In order to stop such a deflation spiral, investments should be made to create decent jobs and employment policies should aim at the strengthening of workers' protection and the raising of wages. Finally, despite the provision in Article 3 of the Convention, in many countries, consultation with enterprises was often given priority over that with trade unions. Without proper consultation of workers' representatives, measures would not be effective or beneficial to those at whom they were targeted.

The Worker member of Argentina stated that Italy's labour reform had ushered in a process that had been described as a "labour counter-reform" because of its regressive nature in terms of protection for a considerable number of the rights and guarantees that Italian workers had acquired during the 1950s. The "counter-reform" was the fruit of the employers' and Government's mistaken belief that restricting rights and increasing the power of employers would raise employment levels. However, reality showed a different picture: unemployment in Italy had reached extremely high levels, especially in the south of the country, and affected women most acutely and young people to an alarming degree. In addition to seriously affecting the stability of labour relations by abolishing reinstatement following "unlawful economic dismissal", the reform had undermined the worker protection system through the revision of section 2103 of the Civil Code, which made it impossible for an employer to assign a worker to lower-level functions than that at which the worker had originally joined the enterprise. Since the reform, the opportunities for potential abuse by employers had increased dramatically, as not only could they now

assign workers to inferior duties, but there were also restrictions on the judicial power to redress the balance in cases where it was alleged that the assignment of hierarchically inferior tasks was excessive in view of the enterprise's actual economic position. Moreover, all reference to the employer's duty to assign equivalent functions to subordinates had been removed, with the result that determining which services a worker performed was now left to the completely arbitrary choice of the employer, regardless of the worker's particular skills and abilities. The consequences of this for the dignity of workers were incompatible with the Convention and the 1944 Declaration of Philadelphia.

An observer representing Public Services International (PSI) stated that the reform of the public employment system via the establishment of the National Employment Agency had resulted in the abolishment of more than 550 centres for employment. This had led to employment uncertainty for more than 8,000 workers and to a vacuum in employment services. A flood of cuts in public spending was hitting public services severely. She recalled that spending cuts involved the abolition of the State Forestry Corps, whose function would be assigned to other police corps, which were already dramatically understaffed and underfunded. The health sector represented 14 per cent of total public spending; in 2015, 2,069 hospitals and 8,718 first-aid services were closed along with several centres for emergency services. Such spending cuts would lead to fewer jobs, more overtime and less safety for patients. Furthermore, 3 million public service workers had had their last wage increase in 2008. Since then, wages had been frozen, collective bargaining suspended until 2018 and no mechanism to compensate the increase in the cost of living had been foreseen. The Constitutional Court was expected to decide whether the practice of freezing wages during a time frame of ten years was compatible with the Constitution and a verdict of incompatibility would lead to a payment to all public employees of €35 billion, corresponding to the past seven years. Finally, recalling that employers were on the one hand supporting flexibility and flexicurity and, on the other, questioning the role of the Committee of Experts and ignoring trade union arguments, she warned that workers were tired of being exploited and that, in a world embroiled in social and political conflicts, such a discontent could lead to very dangerous consequences.

The Government representative addressed some of the questions raised during the discussions. In relation to social dialogue, he reiterated that the social partners had been permanently involved: they had been heard by Parliament in relation to the various aspects of the Jobs Act; they had been involved in the relevant contractual arrangements which had been left to collective bargaining; they had been consulted in relation to labour market policies through their involvement in the governance of institutions, including the new national agency for active labour market policies and the Italian National Security Institute. Moreover, the social partners had been involved in the management of labour market policies, through the management of the newly introduced solidarity funds in the event of the reduction or suspension of labour activity. Finally, the social partners had also been in charge of international bilateral funds for the training of employees. However, it was the Government that had to bear the responsibility for the functioning of the labour market and the economic recovery, and therefore had to adopt the reforms that it deemed necessary. He then addressed the issues concerning the Youth Guarantee. This strategic plan was not an extraordinary programme that had been intended for just a couple of years, but was indeed intended as a pilot project to introduce a new approach for public employment policies and active labour market policies.

This programme had been co-financed by the European Social Fund, and it was expected that a more permanent and stable source of financing would be provided by the EU. Referring to the need for community service in order to maintain the competencies of workers that was raised during the discussion, he indicated that traineeships, training and employment were part of the strategic plans relating to the Youth Guarantee. He emphasized that the public employment services had not been abolished, even though in view of the administrative reform, employment services were no longer represented at the provincial level. In fact, the support of the regions was crucial to address youth unemployment, in the framework of the Youth Guarantee programme. In relation to the issue of fixed versus open-ended contracts, he indicated that the success of the Government strategy lay in the numbers. There had been an increase of about 24 per cent in the number of new open-ended contracts in the first three months of 2015 in relation to previous years. It was better to provide for economic incentives than for strict legislation that was difficult to implement. The Government was committed to fostering open-ended contracts with a long-term perspective. In relation to the protection of workers, he recalled some of the numbers from the OECD employment protection legislation indicators. A calculation in relation to employment protection legislation had been made after the adoption of the Fornero policy reform. In 2013, Italy had an index of 2.79 for the protection of permanent workers against collective dismissal, which was higher than the OECD average index, which was 2.29. Concerning the regulation on temporary employment, Italy had an index of 2.71, whereas the OECD provided for an average index of 2.08. Concerning female employment, while there had been a decrease in the total employment during the crisis, when breaking down this number, it had become clear that the female employment rate had risen.

The Employer members indicated that it was important to recall that employment could not be created by Decree, but that it depended on economic conditions. Therefore, the Government was to be commended on addressing the regulatory barriers for entry into employment, where these barriers had been found to be excessive or to have long-lasting negative effects on employment. They were surprised to hear the criticism concerning the new employment contract introduced under the Jobs Act that removed the possibility for reinstatement in case of dismissal, but enhanced compensation rights. In fact, most EU Member States provided for similar regulatory frameworks, and it could not be seriously claimed that workers in all these countries were exploited and pushed into precariousness and badly paid jobs. The Government had demonstrated significant progress in complying with the objectives of the Convention by adopting and currently progressively implementing a comprehensive package of measures addressing structural weaknesses concerning employment. The Government should continue its comprehensive approach to structural reform in order to improve the employment situation and foster job-rich inclusive growth. Given that the Jobs Act, which was the key component of the reform package had only recently been adopted and considering that structural reforms always took time to reveal their results in terms of the employment situation, they considered that the Committee should continue to evaluate the implementation of that Act based on updated labour market data. Therefore, the Government should provide a detailed report to the Committee of Experts on the application of the Convention in 2015.

The Worker members expressed their satisfaction that the Employer members had emphasized the relevance of the Convention in the current crisis, the importance of the Committee examining its implementation and the need to

assess employment policies from the qualitative as well as the quantitative standpoint. As to the soundness and necessity of the structural reforms, obliging the workers to make all the efforts and sacrifices amounted to making them carry the cost of a crisis for which they were not to blame. It was also surprising that some speakers were all for leaving the problem to the State and abdicating their own role as social partners in the context of social dialogue. Given the risk of a return to precarious employment and increasing poverty, the best solution to the crisis was to create more quality jobs and improve the level of training. However, since the measures taken thus far by the Government were likely to offer only short-term solutions, it was essential that, for the Committee of Experts' next session, the Government continued to provide relevant data on: the outcome of the reforms undertaken to combat high unemployment, long-term unemployment and youth unemployment, especially through the creation of sustainable quality jobs; the simplification of types of contract and the number of permanent contracts benefiting from public funding; the development in women's employment and the fight against the disparities in employment from one region to another; the review of policies and measures to attain the objectives of full, productive and freely chosen employment; the promotion of productive employment through cooperatives. The Government should also make every effort to revive and strengthen social dialogue.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative and the discussion that followed in relation to the issues raised by the Committee of Experts related to employment policy measures to alleviate the impact of the crisis adopted in 2012–13 and which included: the monitoring of the measures implemented with the participation of the social partners; the high unemployment rate which reached 12.6 per cent in May 2014 and affected young people by a greater proportion; the continued differences in employment rates between northern and southern regions of the country, as well as the measures taken to promote productive employment through cooperatives.

The Committee noted the information provided by the Government representative indicating that the unemployment rate had been reduced to 12.4 per cent in April 2015 and the rate of unemployed young people aged 15–24 who were actively seeking employment had fallen to 40.9 per cent. The Committee also noted the information provided on the 2015 Jobs Act which included the establishment of a National Employment Agency, the revision of unemployment benefits as well as new provisions on the dismissal and reinstatement of workers, leading to an increase in the number of new open-ended contracts by 24.6 per cent with respect to the same period in 2014. More than 600,000 young people had joined the Youth Guarantee Programme launched in May 2014. The Government representative also reported on an Agreement reached between regions in January 2015 envisaging a National Framework of Regional Qualification to coordinate nationwide recognition to over 2,600 regional vocational qualifications.

Taking into account the discussion, the Committee requested that the Government:

- ensure, in consultation with the social partners, a comprehensive approach to employment policies in order to improve the employment situation and foster job-rich inclusive growth, in line with the Convention;
- ensure tripartite consultation on the development and implementation of employment policies, based on regularly updated labour market data, including on the number, kind, duration of employment, and youth and gender issues and regional disparities;

- examine the measures to promote productive and sustainable employment through cooperatives; and
- provide a detailed report to the Committee of Experts in 2015 on the issues raised in these conclusions.

SPAIN (ratification: 1970)

The Government provided the following written information.

Convention No. 122, which was ratified by Spain in 1970, and which Spain has always shown a willingness to comply with and apply, provides that all Members of the Organization shall pursue an active policy designed to promote full, productive and freely chosen employment, with the participation of the social partners. Over recent years, significant steps have been made in Spain in this direction, with progress and results that demonstrate the beginning of a robust process of unemployment reduction and job creation in a new context of Spanish economic recovery. This change in trends is not only quantitative, but also qualitative. All this has taken place within the framework of social tripartite dialogue, in consultation with employers' and workers' representatives. The Government's economic and employment strategy is established within the framework of the European Semester. Its policies correspond to the three main pillars of the Annual Growth Survey 2015 for the social and economic policy of the European Union (EU) for 2015. Two priorities which are mutually reinforcing should be highlighted: to complete the reforms that have been started and to promote economic recovery and job creation.

The decisions taken regarding active employment and vocational training policies can be understood in the light of the situation and characteristics of the Spanish labour market in December 2011, with its structural weaknesses and inefficiencies that the 2007 crisis only accentuated: the great rigidity in the adaptation of working conditions to the economic situation; the excessive segmentation or duality of the labour market; and the lower productivity per worker than our European partners. These structural problems, coupled with the intense economic crisis, were reflected in dramatic figures. Between the beginning of the crisis and December 2011, the unemployment rate rose from 8.6 to 22.9 per cent. The unemployed population rose to 3.3 million. Over 2.5 million jobs were destroyed, according to the Active Population Survey (EPA). The unemployment rate for persons under 25 years rose from 18.8 to 48.6 per cent. The long-term unemployed accounted for half of all unemployed persons. Permanent employment was falling in December 2011 at an annual rate of 22.5 per cent.

In this context, it was essential to adopt structural reforms, including labour reforms, to allow the economy to grow and generate employment. This reform agenda has enabled the Spanish economy to regain the confidence of the international markets and to gain efficiency, flexibility and the ability to compete. With the 2012 labour reform, a profound transformation of the labour market commenced in Spain which was very much in line with the concept of flexicurity that is prioritized in the EU employment guidelines: that is greater flexibility, but without prejudicing workers' rights or the unemployment protection system, which is an essential part of our welfare state. This has been reflected recently in Constitutional Court Ruling No. 8/2015 of 22 January 2015, which definitively endorses the labour reform and rejects the notion that it violates the right to freedom of association, collective bargaining, work and effective judicial and constitutional protection. According to the estimates of the Ministry of Economy and Competitiveness, this labour market transformation helped to prevent the destruction of over 225,000 jobs during the first year following the entry into force of the reform. Furthermore, the labour reform has contributed

for the first time to employment creation in Spain based on moderate economic growth rates. The data clearly reflect this closer relationship between employment and GDP. In 2014, when there was a change in the trend of this indicator, GDP growth over the whole year was 1.4 per cent and, according to EPA data, employment rose by 2.5 per cent compared with the previous year, that is by over 430,000 people. This pattern has been strengthened by the year-on-year figures for social security affiliation since February 2014 when, for the first time since 2008, total average affiliation rose, with over 417,000 more insured persons at the end of 2014 than the previous year, or an increase of over 2.5 per cent. It is important to emphasize that a fundamental effect of the labour reform has been, for the first time, the creation of employment in Spain based on moderate economic growth rates.

With the modernization of employment relations, it was important to modernize employment activation policies, with the main objective of developing a new employment policy framework within which all of its instruments are geared towards the activation and employability of workers to help ensure that the recovery results in quality and stable employment. Based on the intensive work of previous years, in September 2014 a package of measures was adopted to promote activation, including the new Spanish Employment Activation Strategy 2014–16. This Strategy establishes new working methods for all public employment services throughout the country over a multi-year framework. It includes common objectives, flexible and specific means of achieving them, and a new system of continuous evaluation and results-based performance. The overall objective is the modernization of public employment services. This action is reflected in annual plans, which coordinate and group together all the activities undertaken by public employment services each year in light of the common objectives. Since 2012 four plans have been adopted, and the last one was presented to the meeting of the Sectoral Conference for Employment and Labour Affairs in April 2015, with the Autonomous Communities. These plans set out what is being done and where, so as to compare and above all measure the impact of the various initiatives. To that end, in a particularly significant inter-administrative effort, a system of indicators has been developed, approved by all, to evaluate the results of the measures and, on that basis, determine the distribution of funds for activation policies, which are granted on an annual basis by the State to the Autonomous Communities. Accordingly, for example, the results achieved in 2014 determined the distribution of 60 per cent of the funds in 2015, or around €850 million. The activation strategy includes a series of elements that could be considered the "backbone" of employment services. For example, to facilitate the transition to employment, the Framework Agreement for public-private collaboration in job placement has been developed, in accordance with the Private Employment Agencies Convention, 1997 (No. 181), which defines a common architecture for the development of cooperation projects between the 14 employment services that have adhered to the Agreement and the 80 private job placement agencies that have been selected. The Single Employment Portal is in operation, which channels job vacancies from the various public employment services and private portals that have joined this project. In January 2015, the Common Portfolio of Services under the National Employment System was adopted which determines all the employment services to be provided throughout the country, to which all workers are entitled. For each of the services included in this Portfolio (vocational guidance, placement and advice for enterprises, vocational training and skills development, and advice for self-employment and entrepreneurship), the content and minimum common requirements have been

established and work is already being carried out with the Autonomous Communities on the service protocols that will be adopted as a whole.

Young people are the worst affected by the recent crisis, with the youth unemployment rate rising to 51.4 per cent, or 382,012 young persons under 25 years of age, despite that figure having decreased by nearly 105,500 since 2011. Some of the initiatives launched to promote youth employment as part of the labour reform of 2012 include: the entrepreneur support contract of indefinite duration, which provides incentives of up to €3,600 for three years for the hiring of young persons on indefinite contracts – over 107,000 contracts of this type were concluded with young persons under 30 years of age in the period between the 2012 labour reform and April 2015; and the modification of the training and apprenticeship contract with the purpose of making it more flexible and geared to the daily requirements of enterprises and their training needs – more than three years after its modification, it is a consolidated instrument that paves the way for dual vocational training for young people, enabling them to be trained while in employment. In 2014, a total of 140,000 contracts were concluded, which was 32 per cent more than in 2013 and 130 per cent more than in 2012. During 2015, the pace of progress has been maintained, reaching the year-on-year figure of over 25 per cent. In the period between the 2012 labour reform and April 2015, over 355,000 training and apprenticeship contracts have been recorded.

In 2013, the Spanish Youth Employment and Entrepreneurship Strategy 2013–16 was adopted, including 100 emergency measures, of which 85 per cent have already been put into effect. At present, over 400,000 young people under 30 years of age (402,908 persons as at 12 May) have benefited from the entrepreneurship or employment measures contained in the Strategy, in addition to the measures for training, guidance and improving employability implemented by the Autonomous Communities. A total of 66 per cent have benefited from a recruitment incentive and the remaining 34 per cent have benefited from measures for the promotion of self-employment and entrepreneurship, especially the €50 flat rate social security contribution for the newly self-employed. The upturn in the labour market is beginning to be felt by the young. In 2014, unemployment for the youngest (under-25) age group fell by 93,400, a 10 per cent reduction compared with 2013. It is the second year in which unemployment for the youngest age group has decreased, after constantly rising between 2007 and 2012. In 2014, the employment rate for this age group rose by 1.6 per cent, the first increase since 2006. In the context of the Youth Employment and Entrepreneurship Strategy, and in response to a recommendation by the European Council in April 2014, the National Youth Guarantee System was adopted in July 2014, under which young persons under 25 years of age who are either unemployed or not in the education or training systems can receive offers of employment or training. Through this system, electronic registration in the Youth Guarantee System has been introduced so that beneficiaries can obtain information on the measures available and the results achieved can be monitored and evaluated. In addition, a range of measures have been determined for implementation by the State and the Autonomous Community concerned, according to their respective competencies. These measures include those designed to improve the matching of labour supply and demand and to enhance the vocational skills of beneficiaries. As at 30 April 2015, a total of 48,576 young people were covered by the scheme. Moreover, the 2014–20 operational programme for youth employment has been developed, to which over €2,360 million has been allocated as assistance in launching action to promote labour mar-

ket access for young people. On 13 April 2015, the Sectoral Employment and Labour Affairs Conference, with the participation of ministerial authorities and the employment advisers of the Autonomous Communities, agreed to extend the maximum age for access to the National Youth Guarantee System from 25 to 29 years, on an exceptional basis, until the rate of unemployment between the two ages, currently standing at 29.7 per cent, drops below 20 per cent. Finally, also of relevance in combating youth unemployment are the measures adopted to ensure greater coordination between employment policies and education policies. These include: establishing a more flexible procedure for streamlining the updating of the National Directory of Vocational Qualifications (vocational training diplomas and certificates of vocational competence); boosting vocational training that is better matched to the labour market and more effective, including the establishment of “basic vocational training” (vocational training in the education system has seen an increase from 462,492 students in 2007–08 to 793,034 in 2014–15, an increase of 71.5 per cent); combating early school drop-out through a specific plan for 2014–20 supplementing the education reform. In Spain, the school drop-out rate has fallen gradually from 31.7 per cent in 2008 to 21.9 per cent in 2014 (the intermediate commitment was therefore comfortably achieved). This decrease has been greater than the average achieved across the EU (where the rate fell from 14.8 per cent to 11.1 per cent).

The Extraordinary Programme for Employment Activation, which was adopted in December 2014 in the context of social dialogue and collaboration with the Autonomous Communities, is an illustration of the Government’s determination that the economic recovery should benefit as many workers as possible. It is aimed at categories whose needs arising out of the economic crisis are particularly acute, such as the long-term unemployed with family responsibilities who have exhausted the options available to them under the employment protection scheme and who meet the requirement of actively seeking employment. The Programme envisages activities that are designed to improve the employability of such workers so that they can return to the labour market, as well as time-based assistance in the form of financial support to enable them to benefit from activation measures. Moreover, the scheme is compatible with a contract for an employer, as an innovation that serves as a double incentive for both workers and employers. The Programme also responds to the need to provide personalized employment services and to improve the employability of those with the greatest difficulties in finding employment and who meet the requirement of actively seeking employment. One innovative aspect of the Programme is that the receipt of economic assistance can be combined with work, in which case the financial aid becomes an economic incentive for enterprises which take on unemployed workers.

Spain has for some time been facing the problem of the mismatch between the skills required by the economy and those possessed by workers. Although the country’s vocational training system, which each year trains over three million workers, with the participation of some 480,000 enterprises, managed to keep pace with requirements in a specific social and economic context since it was first set up in 1992, it has not adapted with the required flexibility to the ever more complex requirements of the economy. As early as 2012, the labour reform began a gradual process of transforming the vocational training system in which it opted deliberately for a form of training that could provide the skills required by the economy. It was at that point that the individual right of workers to training was explicitly recognized and that training centres were given direct access to funds that had previously been reserved for the social partners. This gradual transformation

of the training system, which is also reflected in the management and financing of training schemes run by the social partners over the past three years, culminated in the recent reform of the vocational training system that was approved by Royal Legislative Decree No. 4/2015 of 22 March 2015. Some of the most significant features of the reform are as follows: it applies to all public administrations whose responsibilities cover employers and workers throughout the national territory, thereby promoting the necessary labour market unity; the social partners and collective bargaining continue to play a fundamental role; an efficient system of labour market monitoring and forecasting is to be introduced as part of a multi-year strategic plan to ensure that training is consistent with the present and future requirements of the economy and of workers; each worker will have a training account that will accompany them throughout their working life; training at the enterprise will be made as flexible as possible; the training provided through the public administration will be organized on a competitive basis and will be open only to training institutions; tele-training will be used to maximize efficiency and flexibility; the quality and impact of the training will be monitored on an ongoing basis to increase the productivity of workers and the competitiveness of the enterprises; and a special inspection unit and a new endorsement system will be established, based on the principle of zero tolerance of fraud. These innovations will all be made possible by the development of a comprehensive data system to guarantee the traceability of training activities and the comparability, consistency and regular updating of all available information on vocational training. The adoption of the new vocational training model coincides with the increasing signs of economic recovery (six quarters in which GDP has risen steadily and an estimated annual growth rate of around 3 per cent between 2015 and 2018). It should be possible to translate these promising economic forecasts into tangible gains for the labour market through the greater employability of workers and greater competitiveness of the enterprises.

Judging from the various reforms and other measures introduced since the 2012 labour reform and from the benefits that they have brought, the application by Spain of Convention No. 122 constitutes a positive outcome in both quantitative and qualitative terms. Current monthly and quarterly data tend to confirm that the country's economic and employment recovery is here to stay. This is the conclusion that can be drawn from the various sources that measure the labour market situation. According to the survey of the active population, in the first quarter of 2015, the number of unemployed fell by 488,700 compared with the previous year (minus 8.2 per cent year on year), the largest fall in unemployment since 2006. This was due in part to the creation of 504,200 jobs in that quarter, or a growth rate of 3 per cent since the previous year, which was higher than the GDP growth rate of 2.6 per cent. Spain has never before experienced such intense and rapid growth simultaneously in both employment and GDP. According to registered unemployment and social security affiliation, between April 2014 and April 2015, unemployment fell by over 350,000 (minus 351,285), the biggest year-on-year fall ever recorded (with an actual fall of 7.5 per cent, compared with the 12.5 per cent increase in unemployed workers recorded in May 2012). Over the same period, social security affiliation rose by almost 580,000 (plus 578,243), while the fall in unemployment over the last two years combined was over 650,000 (minus 656,177) and affiliation to the social security system exceeded 750,000 (plus 775,944). The underlying trend, as reflected in seasonally adjusted data, continues to be favourable. With the exception of July 2014, Spain has now experienced 24 consecutive months in which seasonally adjusted unemployment has fallen, something un-

heard of for the past 15 years. In seasonally adjusted terms, unemployment in April 2015 dropped by 50,160, the best figure for April ever recorded. Registered unemployment among young persons under 25 years of age has fallen over the past 12 months by 33,965, or 9.5 per cent year on year. Despite these encouraging figures, Spain still suffers from high unemployment. According to the estimates of the 2015–18 Budget Stability Programme, unemployment in 2015 is expected to be 22.1 per cent, and with an estimated GDP growth rate of around 3 per cent over the coming years, the unemployment rate should gradually fall to about 15.6 per cent in 2018.

In accordance with Convention No. 122, social dialogue has been a constant feature of the Government's action during an especially intense period of reforms, in the course of which efforts have always been made to seek agreement with the social partners. This is because only with an instrument as powerful as social dialogue, together with the collaboration of everyone, is it possible to confront the biggest challenge facing Spanish society, namely employment. Although for the past three years people have not always agreed on their diagnosis of the country's labour market, or on the best way to solve the problems posed in each case, all the parties concerned have made an effort to keep all channels and means of communication open. The Government of Spain is fully aware of the irreplaceable role played by the social partners, which is recognized in the Constitution and is of vital importance to the country's democratic system. That is why, irrespective of the differences of view that may have occurred from time to time, the Government has consistently maintained a climate of dialogue with trade unions and employers' associations, which necessarily contributes to the more effective defence of the rights and legitimate interests of both workers and employers. Social dialogue has thus become firmly established, both through meetings of ad hoc working groups and the competent bodies on which the social partners are represented, such as: the State Council for Corporate Social Responsibility; the General Council of the National Employment System; and the Board of the Tripartite Foundation for Vocational Training. The issues on which the social partners have engaged in dialogue and reached consensus include: the Entrepreneurship and Youth Employment Strategy; the Youth Guarantee Plan; the Corporate Social Responsibility Strategy; the introduction of changes in the vocational training subsystem; the annual employment policy plans; the regulation of occupational skills certificates for updating the national register and the amendment of the relevant decree; the training and apprenticeship contract; as well as more specific matters, such as (in 2013 and 2015) the reduction in the number of days of entitlement to agricultural subsidies and support. This systematically open approach to the exchange of views and proposals has also clearly contributed to the conclusion of other agreements on employment issues, such as: the Agreement on proposals for tripartite negotiations to strengthen economic and employment growth rates of July 2014; the Agreement on an activation programme for the long-term unemployed of 15 December 2014; and, after prolonged and intensive negotiations (although the document itself has never been signed) a new tripartite agreement on training. Account has also been taken of the countless proposals and combined analytical input of the social partners and other representative organizations of the self-employed, which have their own enterprises, training centres and experts.

In addition, before the Committee, a **Government representative**, referring to the information provided in writing, added that significant steps had been taken in recent years which demonstrated that the destruction of employment caused by the economic crisis had been curbed and that a

Employment Policy Convention, 1964 (No. 122)

Spain (ratification: 1970)

robust process of reducing unemployment and creating jobs had started in a context of economic recovery. The change was qualitative as well as quantitative. The policies and reforms adopted by the Government had the principal objective of creating stable and high quality jobs in coordination with all economic and social policies. With regard to Article 3 of the Convention, the Government was not only holding prior consultations with workers' representatives on the various standards and programmes that shaped employment policies, but also ensured their participation in various standing forums for discussion and social dialogue, at both the level of the State and the Autonomous Communities.

All of the progress referred to had been achieved in the context of constant social dialogue during an especially intense period of reforms, in the course of which efforts had constantly been made to seek agreement with the social partners. Only through social dialogue and the collaboration of everyone was it possible to confront the biggest challenge facing society, namely employment. The Government was fully aware of the indispensable role played by the social partners. For that reason, irrespective of the differences of view that may have occurred, the Government had consistently endeavoured to maintain a climate of dialogue with trade unions and employers' associations, which necessarily contributed to the more effective defence of the rights and legitimate interests of both workers and employers, with a more complete overview of the labour market so that it could respond to the needs of the economy, in accordance with the system of representation and dialogue established by the Government.

The Worker members recalled that the objective of the Convention to achieve full, productive and freely chosen employment was as topical as ever. The Convention was the main instrument providing guidance on cooperation and coordination of policies on employment at the national level, and viewed employment not as a hypothetical result of economic policies, but as the objective that these policies were to serve. In this regard, the Convention was directly linked to the Decent Work Agenda and was a governance Convention within the meaning of the 2008 Social Justice Declaration, alongside the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), under which governance was based on social dialogue, particularly regarding the revision of employment policies. The objectives of the Convention, in compliance with fundamental principles and rights, had also been reaffirmed by the 2009 Global Jobs Pact, the 2010 Conference Resolution on the recurrent discussion on employment and, more recently, the 2013 Oslo Declaration. Emphasis should also be given to the need to promote strategies that improved employment quality, closed the pay gap between men and women, helped jobseekers, targeting in particular young and older workers, and women's work. A policy for full, productive and freely chosen employment within the meaning of the Convention thereby required compliance with the conclusions of the Oslo Declaration and the holding of effective consultations with the social partners before and whenever any changes were proposed. The case of Spain should also be analysed in the context of Employment Policy Recommendation, 1964 (No. 122), which provided that workers and their organizations should examine the relationship between employment policy and economic and social policy, with a view to making them mutually reinforcing, particularly regarding the quality of employment, gender discrimination, the precarious situation of young persons, the unemployed and social dialogue. At the European level, in 2013, the social partners had adopted, at the inter-occupational level, a declaration on the involvement of the European social partners in economic governance.

The declaration called for the Member States and the EU to ensure that consultation with the social partners was held in a timely manner in order to enable them to make proposals and request analyses.

Recalling the conclusions of the Committee in 2013 on the case of Spain, the Worker members noted that the recommendation to promote sincere and constructive social dialogue among all the parties concerned to remedy the labour market situation had not really been put into effect. The temptation to hide behind economic governance in order to avoid the application of existing ILO standards and processes could not be tolerated. Social dialogue was also encouraged at the European level, especially under the Treaty on the Functioning of the European Union, and economic governance was not hierarchically superior to European or ILO standards. Despite the written information provided by the Government, social dialogue did not seem to be a permanent approach of the Government, which had not consulted trade unions on any relevant employment standards or the modification of the industrial relations framework, on the pretext of the urgency of the issues. Only a bipartite dialogue had been held in Spain, accompanied by a trend to decentralize collective bargaining. Despite the protests of the trade unions, the Government had failed to respond. Furthermore, within the framework of the 2015 annual employment plan, the trade unions had been issued with a final document, which had been formulated in cooperation with the Autonomous Communities, and none of their proposed amendments had been accepted, even though they had been submitted within the very short time limit that had been set. The same applied to the reform of the vocational training system. The General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CC.OO.) had concluded an inter-occupational agreement for 2015–17 with employers on employment and collective bargaining. The agreement focussed on establishing a fairer economic recovery following years of austerity which had had an adverse impact on wages, the quality of jobs and family incomes. The inter-occupational agreement was intended to boost domestic demand and job creation. Its success implied that the Government would respect the social partners and the agreements concluded with a view to improving working conditions. The Committee on Freedom of Association had, on very many occasions, and particularly in its report on Case No. 2947 on a complaint by Spanish trade unions, drawn attention to the fact that consultation with the social partners implied consultations held sufficiently in advance. In addition, the rules governing the industrial relations systems and collective bargaining needed to be approved insofar as by the most representative workers' and employers' organizations. The Spanish labour market was showing alarming signs of youth unemployment, which remained at over 50 per cent and required, for an effective response, the involvement of the social partners, and not only of civil society. Long-term unemployment, especially among the oldest and least qualified workers, also required appropriate measures, as it exceeded 49 per cent in a context of labour market segmentation that was only augmenting precariousness and poverty, and affecting social cohesion. There was an urgent need for dialogue with the social partners to evaluate the effectiveness of the measures in place and make them more accessible. Spain was faced with significant economic challenges and the urgent need to find a new basis for growth was not contested. This must nevertheless be carried out within a framework of structured consultation with the social partners in order to avoid the unbalanced approaches favoured by the Government over recent years. The objective had to be growth that created more and better quality jobs. The issues of training, education and the inclusion in em-

ployment of those who were most marginalized in the labour market needed to be prioritized and the Decent Work Agenda should be returned to the heart of economic policies, which was fully in accordance with the Convention.

The Employer members recalled that in 2013 the Committee had already expressed concern in relation to the deterioration of the labour market and recommended that the Government continue to evaluate, with the participation of the social partners, the impact of measures taken to overcome the crisis. In August 2013, the International Organisation of Employers (IOE) and the Spanish Confederation of Employers' Organizations (CEOE) had welcomed the 2013 reform aimed at establishing a framework for future economic recovery, reducing macroeconomic imbalances, creating a favourable environment for the establishment and development of enterprises, improving competitiveness and productivity, and promoting the export sector. They had also welcomed the labour reform, which had been validated by the Constitutional Court. The reform was in line with the flexibility introduced in other European countries and was governed by the EU Stability and Growth Pact. Regarding youth employment, the Employer members also praised the Youth Employment and Entrepreneurship Strategy 2013–16, which contained 100 measures aimed at boosting employment for young people. They emphasized that the role of the Committee of Experts and the Conference Committee with regard to the Convention was to ensure that member States had the explicit intention of guaranteeing full and productive employment, that measures and institutions existed to attain that objective, that the social partners were consulted on the policies and measures and that review mechanisms existed. It was not within the competence of the Committee of Experts to assess the validity, effectiveness or justification for the measures adopted. The Convention was a promotional instrument which required governments to adopt an employment policy, but it did not specify the content of the policy. That was appropriate as the achievement of full employment required broad economic policies that took into account the political, economic and social context, inflation, and respect for human rights and private property. Job creation also presupposed the proper functioning of the labour market.

A Worker member of Spain said that, three years after the most aggressive labour reform that Spain had seen since the return of democracy, the unemployment situation in the country was dramatic. More than 5.5 million people, or 24 per cent of the population, were unemployed. Of those, 782,000 were under 25 years of age. Youth unemployment stood at 51 per cent. More than 3.3 million people had been unemployed for more than a year, accounting for 61 per cent of all those unemployed. One in four unemployed, on 1.4 million persons, had been looking for work for three years or more. There was a serious risk that unemployment would become structural. More than one million households had no income at all and 29 per cent of the population was at risk of poverty or social exclusion. The current labour market was driving inequality by imposing reductions in wages, massive unemployment and underemployment. Spain was one of the countries where inequality had increased the most as a result of wage gaps and poor quality jobs. The 2012 labour reform had made it easier and cheaper to dismiss workers and allowed employers to modify employment contracts unilaterally, and 60 per cent of dismissals lacked justification and sufficient legal protection. The Convention required the State to pursue an active policy designed to promote full employment. However, the fact that the national budget had been reduced by 48 per cent between 2010 and 2014 showed that full employment was not a priority for the Government. The deterioration in the pub-

lic employment service also showed how little importance was given to the issue. With respect to the scope of consultation with workers' organizations on employment policy, he said that there had been no place for negotiation either within the labour reform process or any other economic measure taken. This was reflected in the number of complaints and representations made to the supervisory bodies. In reply to the Employers' allegations that the Committee of Experts and the Conference Committee were not competent to consider employment policies, he said that accepting such claims would lead to the conclusion that the ILO no longer had any *raison d'être*. Workers rejected that argument.

Another Worker member of Spain, speaking on behalf of the CC.OO. and the UGT, and with the support of the Workers' Labour Union (USO), described the difficult situation in the labour market, characterized by a very slow fall in unemployment, the intolerable absence of protection of the unemployed and the rise in precariousness. Although the number of registered unemployed had increased, spending on benefits had dropped by €7.7 billion between 2010 and 2014, and that trend had continued in 2015. The result of such brutal cutbacks was that the coverage rate had fallen by more than 32 per cent, leaving 2 million unemployed with no protection whatsoever. As a result, the CC.OO. and the UGT were backing a proposed legislative initiative seeking to introduce a minimum income benefit. Data from the general social security system confirmed the huge deterioration in the quality of employment: over half (51 per cent) of those registered were employed on precarious contracts (37 per cent on temporary contracts and 25 per cent on part-time contracts). Of the contracts signed in May 2015, 95 per cent were temporary or part time. Moreover, job creation was only increasing in sectors with low added value. Despite triumphant speeches by the Government, reality showed that there had been no structural change to either the economy or employment. Bearing in mind that 4.2 million people were registered unemployed and that the actual unemployment figure had been estimated at 5.5 million by the active population survey, a reduction of 2.7 per cent was completely insufficient. To emerge from the crisis, the Government continued to promote a production model based on low-value services, with a very low and decreasing proportion of industrial activities, condemning people to precarious employment contracts on low wages, with significant seasonal fluctuations and not enough jobs to provide people with employment opportunities. Against that backdrop, a budgetary policy was needed that fostered structural change in the production system, promoted the efficient use of public resources at all levels in the administration, and helped to boost domestic demand. Public investment must be increased and redirected towards improving the quality and technological level of enterprises. New measures were also urgently needed to improve protection for unemployed people, particularly the long-term unemployed with family responsibilities, as suggested in the ILO report *Spain: Growth with jobs*. In conclusion, she emphasized that it was time to do away with the mistaken notion that dismantling labour rights or collective bargaining would improve the labour market, that cutting public spending would create a more efficient public sector, that any job was a job even if it did not allow workers to escape from poverty and that slashing wages was the way to build a competitive economy.

The Employer member of Spain observed that the economic crisis of recent years had had very serious consequences for the labour sector. At the end of 2011, unemployment in Spain stood at 24 per cent of the active population and 48 per cent of workers under 25 years of age. The Government had accordingly appealed to the social partners to engage in social dialogue to reach an agree-

ment that would serve as a basis for the reform of the country's labour legislation, which was obviously needed. During the period of intense negotiations that followed, it had regrettably not been possible to reach an agreement. As a result, the Government adopted Royal Legislative Decree No. 3/2012 issuing urgent measures for the reform of the labour market, to generate employment through strong measures. Spanish employers were very much in favour of the reform which was consistent with the employment policy of the European Union and that helped to modernize Spain's labour legislation by bringing it more into line with the flexibility prevailing in the surrounding countries. The employers would have liked the reform to have brought working conditions in Spain even closer to the conditions in those countries. Employment figures were now positive and that tended to support the reform: in April unemployment fell by 120,000, and in May by a further 117,000. The European Union and the Organisation for Economic Co-operation and Development (OECD) had also made a positive assessment of the reform, which they saw as favouring employment creation. Social dialogue was an important feature of democracy in Spain and was part of its culture. He referred to some of the significant achievements of social dialogue since the 2012 labour reform which showed that not only had it taken place, but that it had clearly been fruitful. The beginning of 2013, for example, saw the negotiation of the Entrepreneurship and Youth Employment Strategy. On 18 March 2014 an agreement had been reached with the Prime Minister and with the leading representatives of workers' and employers' organizations to promote measures aimed at changing the economic cycle, creating employment and increasing social cohesion. On 29 July 2014, a tripartite agreement had been concluded on proposed tripartite negotiations on raising economic and employment growth rates. That in turn had given rise to a 15 December 2014 agreement on the extraordinary employment activation programme to promote the employability of unemployed workers with special needs. Finally, although the best outcome of social dialogue was the conclusion of an agreement, dialogue could also be intense without necessarily leading to such a result. Linking the existence of social dialogue to its outcome did not properly reflect its essence.

The Government member of France, also speaking on behalf of the Government members of Croatia, Cyprus, Germany, Italy, Luxembourg, Portugal, Romania and Slovenia, indicated that these countries were engaged in a coordinated approach at the EU level for the implementation of active policies aimed at full, productive and freely chosen employment and to combat unemployment. The efforts made by Spain were fully in line with those undertaken in the framework of the European Employment Strategy, and Spain was also committed to combating and overcoming the negative effects of the economic and financial crisis, in full consultation with the social partners. The Government should be encouraged to continue its efforts in this regard, in accordance with the values and principles of the ILO, to which Spain was particularly attached, as shown by the number of Conventions it had ratified. Without social dialogue, it was clear that there could be no sustainable solution to the labour market problems in Europe. Moreover, he emphasized that the ILO needed to play its full role in ensuring that the social issues relating to international labour standards were taken into account in multilateral systems through enhanced cooperation with other international organizations, and specifically economic and financial institutions.

The Employer member of the United Kingdom emphasized the need to view Spain's compliance with the Convention in the context of the ongoing economic crisis. It was also necessary to recall that Spain's labour law re-

forms had been introduced within the framework of the EU Stability and Growth Pact, which placed emphasis on the reduction of the public deficit and debt when the latter grew excessive. He observed that the Spanish economy had started to recover in the second half of 2014 and gross domestic product (GDP) growth of 2.5 to 3 per cent was expected in 2015. Social dialogue was also thriving, although it did not always result in agreement. In this connection, he expressed confidence that Spain would continue to evaluate its employment and social policies with the social partners. The problem of youth unemployment was a multifaceted one that Spain was taking steps to address. He questioned whether the Committee of Experts had the competence to supervise Spain's policies on youth unemployment, which in his view were a matter of national sovereignty. He also maintained that the Committee of Experts lacked the competence to question the rulings of the Spanish Constitutional Court, which had supported Spain's 2012 labour reforms. It was of concern to note that Spain had appeared before the Conference Committee twice in the last three years for failure to apply the Convention. Supervision of the application of the Convention by the Conference Committee was not appropriate, and in the years to come Spain should not appear again on this subject, particularly in view of its ongoing constructive dialogue with the Committee of Experts.

The Worker member of Germany expressed support for Spanish workers. The serious economic crisis also affected society and the negative social effects of austerity policies affected the health, welfare and pension systems. A large proportion of the population lived with precarious jobs, such as short-term contracts, and increased job insecurity was prompting many young people to leave the country. Some employers were particularly creative in crafting flexible contracts which caused inequality because workers were not properly remunerated. The situation resulting from excessive contract flexibility was in contradiction with the principles of fair pay, fair working conditions and fair working time, and challenged the concept of decent work promoted by the ILO since its establishment in 1919. Precarious jobs generated inequality and poverty and better social dialogue was crucial to solve this problem.

The Employer member of Germany said that the economic crisis of 2008 had revealed, among other things, structural weaknesses and rigidities in Spain's labour market. It was both just and important that in addressing the crisis Spain should reform its labour market to increase employability and combat long-term unemployment. She maintained that Spain was fulfilling its obligations under the Convention, and doing so in a manner consistent with the principles laid down in the Oslo Declaration to which the Employer members had referred. The positive effects of the policies that Spain was pursuing could readily be observed: over the previous year, for instance, half a million new jobs had been created. She welcomed the results Spain had achieved in promoting employment, and said that the Government should be encouraged in its ongoing efforts to reform the labour market and pursue fiscal consolidation.

The Worker member of Sweden, speaking on behalf of the Worker members of the Nordic countries and Estonia, noted that almost a decade of economic hardship and austerity measures had had a negative impact on society. Unemployment was at historically high levels, especially for young people, many of whom had to leave the country in search of a better future. Furthermore, a large proportion of the population had precarious contracts, such as short-term contracts. She maintained that these challenges should be addressed through active labour policies serving the interests of both workers and employers, and that they should not be used as a pretext for dismantling social

policies. She emphasized that international labour standards were to be complied with also in times of economic hardship. The EU had launched the Social Investment Package in 2013 with the aim of supporting social policy measures and spending, especially for youth, such as education and support for the transition from education to employment. She urged the Government to provide the information requested by the Committee of Experts, and to take concrete action to reduce youth unemployment, facilitate the entry of young people into the labour market and invest in better education and training programmes.

The Employer member of France emphasized that the 2008 economic crisis had caused a major deterioration in the labour market in Spain, which had in turn resulted in an increase in the national debt, which had obliged the Government to establish a fiscal consolidation plan. The crisis had resulted in significant unemployment, but as a result of the efforts made by everyone, there was now a substantial recovery of economic growth and a reduction in the public deficit. Since 2012, structural reforms had been introduced to create a climate conducive to the creation of enterprises, and therefore to job creation. The national programme of reforms presented in the context of the European Semester in 2013 and Spain's employment strategy would result in a substantial recovery and a fall in unemployment. In March 2014, a tripartite meeting had been held to exchange views on the measures that needed to be taken to promote growth and economic recovery. The Government had adopted numerous measures to promote youth employment, particularly in the fields of training and apprenticeship. The platform for tripartite social dialogue on the future of vocational training launched in May 2013 had been a positive step. Although several agreements on training had been concluded between the social partners since 1992, the CEOE was open to dialogue to adapt them to current economic and social needs. The measures that the Government had taken showed that it was in compliance with the Convention and it should be encouraged to continue its efforts to consolidate growth and therefore return to full employment.

The Employer member of Belgium noted that the 2008 economic crisis had obliged all stakeholders to make major efforts to return to economic growth and employment. In that regard, the structural reform of the labour market that had been introduced was beginning to bear fruit. Both the planning of the reforms and their implementation had involved constant consultation with the social partners. However, it was understandable that the social partners did not all see eye to eye, especially when it was necessary to take measures that were painful. She believed that Article 3 of the Convention was not intended to undermine the sovereignty of States when taking the necessary decisions and that, in the circumstances, the Government had been in full compliance with the Convention.

The Employer member of Italy observed that Spain was pursuing the objectives of the Convention in an extremely challenging context, namely that of the ongoing economic crisis which was also affecting her own country, Italy. The structural weaknesses of Spain's labour market had been magnified by the crisis, and could only be addressed within the framework provided by the EU Stability and Growth Pact. The detailed information provided by the Government representative amply demonstrated that the country was on the right track in terms of addressing the inefficiencies in the labour market while pursuing economic recovery. Moreover, the strategy of addressing unemployment and labour market dualism through a flexicurity approach, which sought to increase employability while maintaining protections for workers, was commendable. Noting with approval the Government's willingness to maintain channels of dialogue with the social partners, for the formulation and implementation of em-

ployment policies, she said that the Government should be encouraged to continue with the labour market reforms that had already begun to yield positive results.

The Worker member of Greece, also speaking on behalf of the Worker members of France and Portugal, recalled that the Convention set full, productive and freely chosen employment as the key objectives of employment policies. In particular, Article 3 of the Convention established the requirement for social dialogue and the Committee of Experts regularly emphasized the importance of full cooperation with the social partners in formulating and implementing employment policies. Furthermore, the 2010 General Survey on employment instruments and the report of the Committee on Freedom of Association of March 2014 considered social dialogue to be even more essential in times of crisis. She regretted that the Government, while recognizing the vital constitutional role of trade unions and social dialogue, refused to consult the social partners on the adoption of laws and regulations which profoundly affected employment standards and the industrial relations framework. In particular, during the parliamentary debate on the adoption of the 2012 labour market reform, the Government had claimed that there was no need or obligation for social dialogue to validate the agreements. Regardless of the fact that in 2013 the Conference Committee had urged the Government to intensify its efforts to reinforce the social dialogue process, a number of laws and decrees had been enacted without prior social dialogue and the entire labour relations system had been modified unilaterally. In this regard, she regretted that the Ministry of Labour had ignored the letter of complaint from the two most representative trade unions calling for the restoration of social dialogue and that it had rejected the observations of the trade unions on three key employment policy initiatives, namely the 2015 annual employment policy plan, the employment activation strategy and the common portfolio for public employment services. She also deplored the fact that the employment training framework had been modified without seeking agreement with the social partners. She emphasized that the social partners were striving to maintain bipartite dialogue, as demonstrated by the 2015–17 Employment and Collective Bargaining Agreement, while the Government was sidelining tripartite social dialogue, undermining bipartite social dialogue and disrupting collective bargaining structures. In conclusion, she urged the Government to comply with the Convention.

The Employer member of Denmark said that, while it was important to address the impact of the economic crisis on workers and their families, it was also necessary to address the need for labour market reform, as the Government had done. In view of all the information placed at the disposal of the Committee, it appeared that the Government was fulfilling its obligations under the Convention, and in a manner consistent with the principle of social dialogue. The Convention itself provided that employment policies should take due account of economic development, which was precisely what the Government had done. Those policies had also already begun to yield results, although much more needed to be done. With respect to the request by the Committee of Experts that social dialogue be reinforced, he maintained that there was no evidence to suggest that social dialogue had not been properly undertaken, apart from the fact that trade unions were not satisfied with its outcome. While affirming the importance of social dialogue as a foundational ILO principle, he nevertheless emphasized that the right to participate in dialogue was not a right to veto labour market reform. He said that social dialogue often resulted in labour market policies that failed to fully reflect the priorities of employers, but employers were regardless obliged to live with them. Consequently, the trade unions

also needed to accept their responsibilities and participate in the much-needed reforms.

The Worker member of Argentina said that the Confederation of Workers of Argentina (CTA Autonomous) supported the Spanish trade unions in their fight to preserve what had been won and resist the loss of their rights. The majority ruling by the Spanish Constitutional Court had found that the labour reform of 2012 provided not only for reinstatement, but also the payment of adequate compensation as one of the possible outcomes of unjustified termination of the employment relationship. Similarly, Ruling No. 119/2014 of July 2014 had set aside an appeal to find contracts involving a probation period of one year unconstitutional. The ruling had justified the purpose of such contracts on the grounds that the promotion of full employment prevailed over the rights potentially acquired during a probation period. It therefore departed from the conclusions of the report by the ILO tripartite committee which had examined the representation made in 2012 by the Spanish trade unions regarding the Termination of Employment Convention, 1982 (No. 158). It should be noted that the Constitutional Court had not considered the observations of the ILO supervisory bodies in response to the complaints made by the Spanish trade unions concerning fundamental aspects of the reform, despite the fact that under article 96 of the Spanish Constitution, international treaties were part of national legislation and prevailed over domestic labour laws. The 2012 labour reform had introduced flexibility into the principle aspects of individual labour rights and significantly weakened collective bargaining, giving priority to enterprise bargaining over branch and regional agreements. During the first phase of the crisis, the destruction of jobs had mainly affected temporary contracts as a result of their greater flexibility. In the second phase, which had coincided with the adoption of the labour reform, the destruction of permanent jobs had increased considerably compared with temporary employment, in relation to previous years. The 2012 labour reform not only gave employers undisputed authority by reinforcing their unilateral power, thereby tipping the increasingly unstable balance between labour law and the free market, but also sought to weaken the trade unions. These rulings, in addition to reinforcing the breakdown of the consensus forged by the Spanish Constitution in relation to the system of labour relations, bolstered the subordination of workers' rights to purely discretionary political considerations.

The Employer member of Colombia said that the case had been examined by the Conference Committee and by other supervisory bodies, and that their conclusions had always demonstrated the need to respond urgently to a severe crisis. The fact that 26 per cent of the active population and over 50 per cent of young people in Spain were unemployed, combined with the country's severe public deficit and public debt, created a serious situation that called for urgent decisions. The Committee of Experts in its last observations had therefore called for further efforts to strengthen social dialogue. The Government had taken measures to reduce macroeconomic imbalances and to support the establishment and development of enterprises. The urgent measures adopted by the Government had been analysed in detail by the Constitutional Tribunal and in several EU forums. As a result of those measures, the number of affiliates of the social security system had increased significantly in May 2015. The OECD had revised upwards its economic growth forecast for Spain from 1.7 to 2.9 per cent for 2015, and from 1.9 to 2.8 per cent for 2016. Similarly, the unemployment rate was decreasing and agreements had been concluded between workers and employers on the appropriate regulation of wages.

The Government representative said that unemployment in Spain was a social problem that could not be disguised. The number of people employed in 1996 had been the same as in 1976, which showed that employment had not been created in the first 20 years of democracy. In 1996 a job creation process had begun, but had been insufficient. The trend had been broken by the economic crisis of 2007, when unemployment had begun to rise. The Government had been obliged to resort to automatic stabilizers, but the crisis had turned out to be more serious than anticipated. In order to combat the situation, other types of measures had been adopted as part of the 2012 labour reform, the aim of which had been to promote job creation and improve the capacity of the labour market to adapt. Spain was in compliance with the Convention. In 2014, the country had topped the eurozone figures for unemployment reduction and job creation, demonstrating the positive impact of the 2012 labour reform and subsequent measures. In the last 12 months, unemployment had fallen by 488,700, the largest annual reduction since 2002. In addition, year-on-year employment had risen by 504,200, a rate of 2.97 per cent above growth in GDP. At the same time, the 2012 labour reform had made the labour market more flexible, but this flexible approach had not been at the expense of job security. Flexibility did not imply precarious work, but placed the emphasis on the worker rather than on the job. It was notable that permanent contracts were on the increase. In 2006, two in three contracts had been permanent, but by 2013 the figure was three in four, which meant that Spain was doing better than the EU average. The improvement in employment was thus not only quantitative, but also qualitative. Moreover, Spain was the second-highest OECD country in terms of spending on active and passive employment policies. One example was the PREPARA programme, an active policy measure that included economic assistance. More recently, the Employment Activation Programme, approved in December 2014, which targeted a category with special needs resulting from the crisis, as was the case with the long-term unemployed with family responsibilities who had exhausted their entitlements under the unemployment protection system at least six months earlier. These programmes were not a Spanish invention, but were based on the experience and possibilities offered by its European partners. It was over 15 years since there had been 24 months of continuous job creation in Spain. This reduction in unemployment was due not only to the actions of the Government, but also to social dialogue, which remained a constant feature of the country.

The Employer members said that the discussion in the Conference Committee highlighted the need to develop active employment policies, in accordance with the requirements of Article 1 of the Convention. The information provided by the Government showed that it was complying with the Convention, starting with Article 1. In that context, the 2012 labour reforms had introduced urgent measures to generate employment and overcome the crisis. The policy pursued by the Government was in line with the EU's Stability and Growth Pact, to which Spain had signed up. In the European context, the Government could not take action in isolation, but must coordinate with all other EU Member States. In accordance with Article 2 of the Convention, the Government's employment policy was an integral part of a coordinated and coherent policy at both the national and regional level. The Employer members emphasized the importance of the rulings of the Constitutional Court which fully supported the labour reforms introduced by the Government, and implied that it was not for the Committee to make further comments on those reforms. In addition, other measures had been taken to give effect to the Convention, such as programmes aimed at the most vulnerable groups, including

young people and the long-term unemployed. At the same time, a gradual transformation of the vocational training system was under way to make it more effective in meeting employment policy objectives. All this was being done in full compliance with Article 3 of the Convention, which required consultation with the social partners on the measures to be adopted. Social dialogue was a means of reaching agreement, but not an end in itself. So far, results had been achieved, such as an agreement on proposals for tripartite negotiation to strengthen economic growth and employment, concluded on 29 July 2014, and an agreement on an activation programme for the long-term unemployed, concluded on 15 December 2014. Lastly, the COEO, the CC.OO. and the UGT were finalizing negotiations with a view to concluding the third agreement on employment and collective bargaining, which would establish guidance on wage increases, as well as on matters relating to job stability for young people. These agreements were specific examples of social dialogue on active employment policies. However, the content of such agreements was specific to each State and it was therefore not for the Conference Committee to analyse the manner in which they should be applied in practice. Various representatives of OECD and EU countries had commented positively on Spain's labour reforms. As such, data reflecting these improvements should be included in the conclusions to the case, highlighting the progress achieved, while recognizing that there was room for improvement.

The Worker members emphasized that the numerous interventions on the case offered clear evidence that the Committee was amply fulfilling its role of examining the application of the Convention. They also welcomed the importance attached by Employers to joint collective bargaining on employment issues. Since the adoption of the Convention in 1964, the world of work had had to face two major crises, one at the end of the 1970s and another during the 1980s, which had resulted in mass unemployment in industrialized countries, and the growth of inequality in a context of globalization and deregulation in which social standards had become the poor relations of the economy. In these circumstances, the ILO had taken the initiative to set up the World Commission on the Social Dimension of Globalization and to adopt the 2008 Social Justice Declaration. In 2009, in response to the current global financial and economic crisis, the ILO had adopted the Global Jobs Pact with the support of all of its constituents. The Pact, the objective of which was to bring the real economy back to the centre of economic policies, emphasized the need to respect fundamental rights and principles at work, as well as a series of international labour Conventions. In accordance with the Pact, the economy needed to be at the service of decent employment and domestic demand, thereby ensuring the sustainability of enterprises. The concept of sustainable enterprises supported by the employers needed to have as a corollary the sustainability of employment and the existence of quality jobs. Unfortunately, those demands of the Pact would appear to have been forgotten since then, especially in Europe, where social dialogue and collective bargaining were often sidelined in view of the urgent need invoked by governments to respond to the economic crisis, as shown by the conclusions and recommendations of the Committee on Freedom of Association's in several cases. Case No. 2847 concerning Spain emphasized the importance of holding detailed tripartite consultations so that national legislation and economic and employment programmes could benefit from a firmer basis and be applied more effectively. The Worker members noted with interest the comments of the Employer member of Spain, who had expressed appreciation of the Government's economic and employment policy. Even though the work-

ers differed in their assessment of the policy, the differences of opinion expressed showed that the Committee was fully exercising its mandate in examining the application of the Convention on the basis of the observations of the Committee of Experts. Regarding the rulings of the Constitutional Court on the labour reform, it was surprising that the Court had not paid any attention to the need to comply with the relevant ILO Conventions ratified by Spain and the European Social Charter. The Court's ruling, which had been highlighted by the Employer members, had in fact given rise to a dissenting vote very convincingly argued by three of the judges. The concept of "flexicurity", had not been taken up in any European directive, and there was no unambiguous definition approved by EU Member States or the social partners. The reference to flexicurity could not justify disregarding ILO standards or imply, through the mere mention of the term, that the requirements of the Convention were being met. In accordance to the Convention, active employment policies had to play a fundamental role in macroeconomic policies, with particular attention being paid to the formulation and implementation of these policies. The examination of the Convention therefore went further than formal recognition that such measures did or did not exist, and necessarily entailed an examination of the substance of employment policy. While it was in no way intended to question the existence of European governance, the fact remained that the EU was not above ILO standards, nor was it above the European Social Charter. In the discussion on this case, the Worker members had felt that it was necessary to follow the conclusions adopted by the Committee in 2013. They accordingly asked the Government to return to the path of tripartite social dialogue and to discuss with the social partners the formulation of an employment policy that was in conformity with the objectives of the Convention. Those consultations should be held before any decision was taken so that there was a genuine opportunity to make counter-proposals. Under Article 2 of the Convention, the Government was required to continue to assess with the social partners the results of the employment policy and of the amendments to labour market legislation. It should also endeavour to ensure that there was broad consensus on programmes related to training, especially for workers with particular difficulties in finding employment and young people, based on strong public services. The Worker members concluded by calling on the Government to accept the technical assistance proposed in 2013 and to inform the Committee of Experts at its next meeting of the steps taken to meet its obligations under the Convention.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative on the discussion that followed on the issues raised by the Committee of Experts related to the measures adopted to mitigate the impact of the crisis, the situation of a persistent unemployment which principally affects young persons and the labour reforms adopted which included programmes to coordinate educational and training measures with employment opportunities and to improve skills levels.

The Committee noted the information provided by the Government representative concerning the comprehensive economic and employment measures taken by the Government to overcome the jobs crisis and the labour reforms initiated in March 2012 in line with the concept of flexicurity prioritized in the European Union employment guidelines. The Committee noted the active labour market measures taken, such as the Spanish Employment Activation Strategy 2014-16, the Single Employment Portal and the Common Portfolio of Services adopted in January 2015 to promote the use of public and private employment services. Youth em-

Minimum Age Convention, 1973 (No. 138)
Plurinational State of Bolivia (ratification: 1997)

ployment remained extremely high and an Extraordinary Programme for Employment Activation was adopted in December 2014 specifically targeting workers whose needs arising out of the jobs crisis were particularly acute, such as the long-term unemployed with family responsibilities. The Government representative also provided information on positive employment data indicating that, in the first quarter of 2015, the number of unemployed persons fell by 488,800 when compared with the previous year, and that 504,200 jobs were created in that same quarter.

The Committee took note of the complete information provided by the Government on the active employment measures that were being implemented in the framework of the Economic and Employment Strategy adopted in the context of the European Union to combat unemployment and the social consequences of the crisis.

Taking into account the discussion, the Committee requested the Government to:

- continue a constructive social dialogue, taking fully into account the experience and views of the social partners with their full cooperation in formulating and enlisting support for such policies concerning the objectives expressed in Article 1 of the Convention;
- consistent with the Convention, evaluate, together with the social partners, the results of employment policy and take such steps as may be needed including, when appropriate, the establishment of programmes for the implementation of the employment policy;
- focus on guaranteeing the largest consensus on programmes linked to vocational training and continue the dialogue with the social partners on vocational training for youth and the unemployed on the basis of strong public services; and
- submit a report to the Committee of Experts in 2015 on the application of the Convention.

Minimum Age Convention, 1973 (No. 138)

PLURINATIONAL STATE OF BOLIVIA (ratification: 1997)

A Government representative expressed the unwavering commitment of the Plurinational State of Bolivia to eradicate the causes of forced and hazardous labour and the labour exploitation of children and young persons, through the development and implementation of policies, plans and programmes at all levels of the State. The Political Constitution of the State and the Children's and Adolescents' Code prohibited forced labour and child exploitation, as well as the performance of any work without the consent and fair compensation of children. The General Labour Act and the Code fixed the minimum working age at 14 years. Social reality in much of the world was that children and young persons, because of necessity, entered work before they reached the minimum age. ILO reports indicated that 10 per cent of the world population of children and young persons were engaged in work and that 5.4 per cent carried out hazardous work which entailed a violation of their rights. In Latin America and the Caribbean the rate of child labour was 8.8 per cent and the Plurinational State of Bolivia was not spared from that reality. It was necessary to take action to raise visibility of and combat this situation. It should also be emphasized that the causes were structural and multiple and public policies for its effective and progressive eradication were therefore necessary, taking into account the fact that informality contributed to the extremely vulnerable everyday situations in which each child and young person continued to experience. Since 2006, the Plurinational State of Bolivia had been developing social and economic policies that guaranteed all its inhabitants a decent and better life, with an increase in the gross annual domestic product of more than 5.8 per cent over the last nine years. The

national minimum wage had also been raised from US\$63 in 2004 to US\$237 in 2015, that is, an increase of 400 per cent. The population living below the extreme poverty line had decreased from 45 per cent in 2000 to 18 per cent in 2015.

He referred to the following examples of public policies adopted for the benefit of children and young persons: (i) the Juancito Pinto allowance, which provided a monetary incentive for primary school pupils (in 2015 this had been extended to secondary school students) which contributed to reducing the school drop-out rate to 1.5 per cent; (ii) the new Education Act; (iii) the eradication of illiteracy; (iv) free school breakfasts in the public education system, thereby reducing the rates of child malnourishment; (v) the Juana Azurduy allowance for pregnant women, which was a payment that reduced the rates of child and maternal mortality and benefited young workers during pregnancy; (vi) the supply of computers to educational centres and schools and of laptops to secondary school students to improve the quality of education; and (vii) the installation of internet services in the education system and in urban and rural areas. In this context, the Code which had been adopted set the minimum age for work at 14 years. In addition, an exception had been established of 12 years for work carried out by children for another person and 10 years for work carried out by children on their own account with, in both cases, special prior authorization from the parents or guardians and the State authorities, provided that the conditions that protected children's rights were ensured. Child exploitation and forced and hazardous labour were also prohibited. The Code envisaged a plurinational plan for children and young persons which incorporated the programme for prevention and social protection for working children under 14 years of age, under which support was to be provided to families in extreme poverty, with the commitment to provide work to the parents of underage workers. Furthermore, among other initiatives, mechanisms had been established to further promote education, training and awareness raising among families and society when the cause of work was extreme poverty. The exception to the minimum age was provisional, with a view to overcoming this problem by 2020. With the aim of protecting children, the following measures had been adopted: the right to receive a salary equal to the national minimum wage, the right to short- and long-term social security, the promotion of the right to education, and a 30-hour working week for work carried out for a third party by children aged 12–14 years, with two hours of that schedule dedicated to study. The Plurinational State of Bolivia was not contravening the Convention, but was seeking to broaden protection of child workers under the new Code, which was an exceptional measure that contributed to the application of the public policies aimed at eradicating child labour. The Government would seek international cooperation so that other countries, particularly those in the region, could share best practices for the eradication of child labour. Conscious of the work that needed to be undertaken over the following five years, the Government expressed its commitment and would make good use of the experience of the international community and the ILO. The Government invited the Committee of Experts to adopt a comprehensive approach in its analysis of the situation of child labour in the country, which took into account all the measures and public policies that had been implemented over the past nine years for children and adolescents.

The Employer members emphasized that the Committee of Experts had made observations on seven occasions on the manner in which the Plurinational State of Bolivia was applying the Convention. It was a situation of the utmost gravity and involved three issues. First, the Com-

mittee of Experts deplored the fact that the new Children's and Adolescents' Code amended section 129 of the previous Code by reducing the minimum age for employment to 10 years in the case of own-account work and 12 years for children working for a third party, which was contrary to Article 7(4) of the Convention. The Committee of Experts had expressed its deep concern at the distinction made between children working on their account and children working for a third party. The 2012 General Survey on the fundamental Conventions stated that equal protection should be given to children in both situations, since many children working on their own account were engaged in the informal economy and under hazardous conditions. Second, even though the Convention contained a flexibility clause in Article 7(1) and (4) enabling children between 12 and 14 years of age to perform light work, provided that it was not harmful to their health and did not prejudice their school attendance or vocational training, the new Code only allowed this possibility from 14 years of age. The Employer members considered that the age for admission to light work should be reduced. Third, the legislation did not contain provisions obliging employers to keep registers, as provided for in Article 9(3) of the Convention. The existence of data on the number of minors in work would enable the Government to perceive the magnitude of the problem of child labour. According to the 2010 ILO Global Report on Child Labour, 23 per cent of children between 5 and 14 years of age were engaged in economic activity and 60 per cent of children in the rural sector were working (14 per cent in hazardous work). It was a widespread phenomenon affecting more than 500,000 children. There was a significant lack of conformity between the legislation and the Convention which needed to be rectified rapidly. However, any amendment of the legislation should be effected in full consultation with the most representative workers' and employers' organizations. There was also a need for the Government to adopt a national plan for the progressive elimination of child labour through social dialogue and to strengthen labour inspection in both the formal and informal sectors. In conclusion, the Employer members emphasized the importance of having recourse to the technical assistance of the Office in that regard.

The Worker members emphasized that the present case concerned the minimum age for admission to employment, light work and the keeping of registers. Prior to 23 July 2014, the Children's and Adolescents' Code, which set the minimum age for admission to employment at 14 years, had been in conformity with the Convention. The new Code reduced the age allowing children to work on their own account from 10 years of age, and for a third party from 12 years of age. According to the Government, this amendment was aimed at improving the country's economy and combating poverty. While noting the various measures mentioned by the Government representative, and without questioning the sincerity of the Government's commitment to reducing poverty, it should be strongly affirmed that the Government had given the wrong signal, both within the country and to neighbouring countries. As children were the most vulnerable persons, legalizing the possibility for them to work would not empower them, but would open the door to all types of abuse. It was also necessary to take into account that the Government had never considered consulting the social partners when there were proposals to amend the law.

The Worker members recalled that in 1997, when it ratified the Convention, the Plurinational State of Bolivia had chosen the option provided for in Article 2 of the Convention to specify a minimum age of 14 years. The Minimum Age Recommendation, 1973 (No. 146), provided that Members should take as their objective the progressive raising to 16 years of the minimum age for

admission to employment. While the Worker members could understand the Government's argument that such measures for the reduction of the minimum age were essential to supplement the income of the poorest families, they did not agree with that view. In this regard, in the 2012 General Survey on the fundamental Conventions, the Committee of Experts emphasized that "Article 2(2) foresees the raising of the minimum age but does not allow the lowering of the minimum age once declared". In addition, the flexibility clauses contained in Articles 4 (exclusion of limited categories of employment or work) and 5 (application to certain branches of economic activity), which were not used by the Plurinational State of Bolivia, were aimed at promoting the progressive elimination of child labour and improving the progressive implementation of the Convention. The temporary nature of the exceptions to the minimum age of 14, for a period up to 2020, did not make them more acceptable, since these exceptions constituted a violation of the Convention and were in violation of Recommendation No. 146. In relation to light work, a State which had specified 14 years as the minimum age at the time of ratification could reduce it to 12 years with respect to certain types of work provided for in Article 7, but the employment of children under 12 years of age in light work could not be authorized under any circumstances. Noting that, pursuant to the Convention, the specified minimum age must not be less than the age of completion of compulsory schooling, it should be emphasized that depriving children of schooling and training opportunities would result in a lack of skills and perpetuate the impoverishment of society. In this regard, it should be recalled that the Government had raised the age for compulsory schooling, and that children needed to have completed 12 years of schooling, which meant that the age for completion of compulsory schooling was at least 16 years. Allowing children to work as from 10 years of age would inevitably affect their compulsory schooling and, the new legislation was therefore incompatible with the Education Act and in clear violation of the Convention. Furthermore, the Convention covered all economic sectors, as well as all forms of employment or work, including work in family holdings or in the agricultural sector, domestic work and own-account work. However, the new Code established a distinction between children working on their own account and those in an employment relationship, while the two groups of children should be entitled to the same level of protection. In this regard, the Worker members wondered whether the notion of "own-account work" held any meaning with respect to a child of 10 years of age. Even if, due to significant economic difficulties, children were left to themselves and were forced to find their own livelihoods, their situation could not be compared to that of adults who chose to be self-employed instead of being employed. While the new Code correctly qualified work in the agricultural and construction sectors as hazardous, it established an exception for children carrying out that type work in a family or community undertaking, which was in violation of the Convention, which did not allow such a distinction and prescribed a higher minimum age for hazardous work (18 years). With respect to the Government's argument that labour inspection would better monitor and protect children in the workplace if they were covered by the General Labour Act, the Worker members were of the view that the Government did not realistically have the capacity to monitor the working conditions of an estimated 850,000 children working nationwide, in addition to adult workers, considering that the national inspectorate only had 69 inspectors. Therefore, reducing the minimum age, while maintaining the same number of labour inspectors, would have an adverse effect and increase the exploitation of children. The Worker members indicated that

Minimum Age Convention, 1973 (No. 138)
Plurinational State of Bolivia (ratification: 1997)

while they understood the Government's argument, the conclusions on this case would have to be firm concerning the action to be taken and the time frame, since no derogation was possible for fundamental issues such as child labour and minimum age.

The Employer member of the Plurinational State of Bolivia said that, although the labour sector in his country (as in many others) operated under very particular circumstances, in which, for example, underage children were obliged to work in order to help their families, it was obvious to the Confederation of Private Employers of Bolivia (CEPB) that the Government had entered into a commitment to eliminate all forms of child labour that did not conform to the principles of the ILO. Any amendments made to the provisions of section 58 of the General Labour Act or to section 52 of Regulatory Decree No. 224, which specified that the minimum age for apprenticeship was 14 years, had to comply strictly with Articles 2(4) and (5) and 5 of the Convention, which essentially provided that: (i) the minimum working age of 14 years was non-negotiable; (ii) the Plurinational State of Bolivia's economy and educational facilities would need to be considered insufficiently developed; and (iii) employers' and workers' organizations had to be consulted first (which had regrettably not been the case). There was no child labour in Bolivia's formal sector represented by the CEPB, because no legally constituted enterprises under the supervision of the authorities recruited minors. On the other hand, the informal economy which, in view of its anonymity, was able to take advantage of the poverty of certain segments of the population and deny them decent jobs, did indeed resort to child labour in order to minimize operating expenses, labour costs and taxation. That being so, keeping registers as a means of identifying child workers, as required under Article 9(3) of the Convention, was especially necessary if the informal sector were to be monitored properly. Consequently, one of the first steps that needed to be taken in tackling the child labour problem responsibly was to develop a set of formalization policies under which the labour legislation could be applied to the informal economy, which currently employed over 70 per cent of the country's workers. The temporary nature of the lower minimum age for work (that is, 5 years) could not justify the legislation not being in conformity with the Convention. Finally, as the promotion and effective practice of tripartism was a fundamental principle of the ILO, and given the fact that there had been no such tripartism when the Government decided to lower the minimum working age in the new Code, even though the consultation of workers and employers was mandatory under Articles 2(4) and (5) and 5 of the Convention, the CEPB was fully prepared to collaborate with the Government in the planning of ways and means of bringing the country's legislation into full conformity with the provisions of the Convention.

The Worker member of the Plurinational State of Bolivia said that the Bolivian Workers' Confederation (COB), the most representative trade union organization, had not participated in drafting the Children's and Adolescents' Code. However, the COB's list of claims addressed the issue of amending the General Labour Act, including setting the minimum age for admission to work at 14 years. Although the Government had acted in good faith, the workers refused to take a step backwards in labour protection and deplored the fact that any flexibility should be sought in the application of international Conventions. Priority should be given to reforming the law in order to resolve the issue. The Government had taken several steps to improve the situation of workers. More should be done to that end, but with the agreement of workers and employers. He requested technical assistance from the Of-

fice, particularly in order to strengthen labour inspection, as many enterprises did not respect workers' rights.

The Government member of Cuba, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), made special mention of the "Regional Initiative for Latin America and the Caribbean Free of Child Labour", which had been established with the support of governments, employers and workers of the region, with a view to stepping up the pace of the reduction of child labour and achieving the goal of its elimination by 2020. GRULAC considered that the persistence of child labour perpetuated inequality and the exclusion of large sections of the population, jeopardized sustained growth in the region and threatened the productivity of the adults of the future by limiting opportunities for access to decent work. GRULAC noted that the actions taken by the Government were set out in its Constitution, which established the duty of the State, society and the family to safeguard the best interests of children and young persons. She also emphasized the information provided by the Government indicating that the Code had been drawn up on the basis of dialogue with civil society and the active participation of the latter, including associations supporting children and young persons. GRULAC observed that the Government's initiative was temporary and geared to the elimination of the causes of work by children and young persons. It should result in better living conditions for them, as well as eliminating the need for such work. She emphasized the progress achieved by the Government in reducing poverty and, consequently, in tackling the structural causes of child labour. She trusted that the Government would continue implementing policies for the progressive reduction of child labour, with a view to its effective elimination, in accordance with the objectives of the Convention.

The Worker member of Uruguay said that the Uruguayan trade union movement had followed with much interest the social and political progress achieved in the country. The Uruguayan trade union movement was aware of the recent progress made, as indicated in the Government's detailed account, and was not indifferent to the general political developments taking place throughout the Americas to promote international labour standards through negotiation and social dialogue. However, as the trade union movement was independent, it was free to express its disagreement with the Government's position. Firstly, he deplored the fact that the social partners had not been invited to participate in the drafting process of the new Children's and Adolescents' Code. Secondly, the distinction introduced by the new Code between children working on their own account and those in employment relationships constituted a clear and unfounded discrimination as there was no obvious reason to distinguish between these two groups of children. He criticized the attempt by the Government to address these societal and poverty issues by reducing the minimum age for admission to work, and firmly believed that the solution to these problems could not be found in permitting 10-year-old children to work. Indeed, even by taking cultural and social aspects into consideration, nothing could justify such a measure which, in addition, was in clear violation of the fundamental principle of Convention No. 138. Finally, he welcomed the commitment of the Employer members' not to employ minors, as those who employed them would be guilty of child labour.

The Government member of Canada noted with concern the new Children's and Adolescent's Code adopted on 17 July 2014, which reduced the minimum age to 10 years for own-account work and 12 years for an employment relationship. He considered that it was not in line with either the letter or the spirit of the Convention, whose goal was to eliminate child labour and to progressively

raise the minimum age. While the national legislation provided for a compulsory schooling of up to 12 years, the new Code would hinder the ability of children to attend school. He recalled that the Convention permitted light work for persons between 13 and 15 years of age only where such work did not threaten children's health and safety, or hinder their education or vocational training. He expressed the view that hazardous workplace conditions in the country would not meet the definition of the term "light work" as provided for in the Convention. He supported the observation of the Committee of Experts, which urged the Government to take immediate measures to ensure the amendment of section 129 of the new Code, so that the minimum age was at least 14 years, in conformity with the age specified by the Government at the time of ratification and with the requirements of the Convention in this regard.

The Government member of Nicaragua commended the steps taken by the Government to eliminate child labour. Inequality, poverty and the unequal distribution of wealth made it difficult to eradicate what was a structural problem. The measures taken by the Government had been highlighted during the Human Rights Council's Universal Periodic Review in terms of the social and economic progress made. Work was currently under way to adopt a national five-year plan to prevent and progressively eradicate the worst forms of child labour and to protect young workers. The measures taken should be considered as a whole, since structural problems could not be eliminated in isolation. In the case of child labour, the viewpoints of children, families, communities and the nation should be kept in mind. Consideration should be given not only to the commitments made by the Government, but also to the action it took.

The Government member of the Bolivarian Republic of Venezuela, aligning himself with the statement made on behalf of GRULAC, took note of the commitment of the Government to eliminate child labour. The national legislation on the issue had been drafted with the active participation and in dialogue with civil society. His Government had no doubt that the Government of the Plurinational State of Bolivia would pursue its child and adolescent protection policies with a view to eradicating the causes of child labour, and he hoped that the Conference Committee would not overlook the positive aspects of the explanations and arguments put forward by the Government. He trusted that the conclusions reached would be objective and balanced.

The Worker member of Ghana said that child labour was a threat to the progress of any country which faced challenges, as well as to the growth of a well-trained and capable future global workforce. The phenomenon of child labour was deplorable and should be condemned everywhere. Child labour was often justified by the immediate need to relieve poverty and not the long-term development and best interests of the child. While recognizing that the challenge with child labour in various sectors in Ghana was a function of poverty, he provided information concerning the projects and measures adopted to confront the situation, including through tripartism and working closely with the ILO, with a particular focus on the fishing and cocoa sectors and education initiatives. To permit and certify 10-year-olds, as had been done by the Government of the Plurinational State of Bolivia, was a retrograde step, and he urged the Government to revert to the age of 14 as the minimum age for work, in keeping with the ratification of the Convention.

The Government member of Switzerland expressed concern regarding the recent changes in Bolivian law to legalize child labour from the age of ten years. Act No. 548 of 17 July 2014 was incompatible with the Convention, as Switzerland had already pointed out during the 20th Ses-

sion of the Human Rights Council's Universal Periodic Review. Lowering the legal minimum age for work sent the wrong message to families and children, as the employment of children under the age of 14 was not consistent with the requirements of a proper education that would enable children to break the cycle of poverty and gain access to decent work as adults. He therefore requested the Government of the Plurinational State of Bolivia to bring its legislation into line with the Convention and to take measures to promote the rights of the child.

The Government member of Egypt said that there was no doubt that the Bolivian Government had the political will to stop the exploitation of children, as demonstrated by the Government's ratification of the Convention and the legislation adopted in 2014 preventing children's exploitation in work. The international community was responsible for protecting children in the world of work, and the Bolivian Government should have the opportunity to continue its efforts in that respect.

The Government member of Cuba expressed support for the statement made by GRULAC. She emphasized that the information provided by the Bolivian Government demonstrated its firm political will to make progress in eradicating child labour and to fulfil the commitments arising from the application of the Convention, as endorsed by the Bolivian Constitution, which guaranteed the best interests of children and young people. This political will was also reflected in the projects that the Bolivian Government had developed to eradicate child labour, as indicated in the report of the Committee of Experts. They included the Triple Seal programme of incentives for co-operation, which required enterprises to demonstrate that they did not use any form of child labour in order to be eligible for certain benefits; the Action Plan 2013–17 in conjunction with UNICEF; and the introduction of awareness-raising measures and training. She recommended that account should be taken of the progress made by the Bolivian Government in eradicating poverty and fighting for social inclusion, as well as social programmes that had a bearing on eradicating child labour.

The Government member of Pakistan thanked the Government for its commitment to promoting international labour standards and recognized that the Bolivian Government was striving to expand its range of protection of the rights of children and young persons and was making efforts to reduce structural elements that contributed to extreme poverty. The legislative Code under discussion aimed to prohibit dangerous work or work activities that prejudiced the health or morals of children and prohibited those which jeopardized their educational prospects. It strove to protect children who had otherwise been outside legislative protection. While he noted with satisfaction that public education and health facilities had improved in recent years, he urged the country to take into account the valuable input of the social partners at the national and international levels to improve the law and its implementation and he welcomed the Government's readiness in that regard.

The Government representative said that the problem would not be so complex if the current capitalist global economic system did not place such overriding importance on profits which gave rise to and facilitated this type of exploitation of boys and girls. Child labour was a social reality and laws would not make the situation worse. On the contrary, the law reflected this reality. He recalled that the Plurinational State of Bolivia had taken the practical steps already mentioned to eradicate child labour. Those measures had produced positive results, such as a reduction in malnutrition and the end of illiteracy, as also confirmed by international indicators. Moreover, the recent legislation had only reduced the working age for light work and work under state control. The sub-

ject of child labour had been controversial since the dark days of neoliberalism, when his people had been cruelly exploited. But since 2006, with the Constituent Assembly and the new Political Constitution, the debate had begun on child labour. The President, Evo Morales had indicated that it was necessary to govern for the people, and particularly listening to the sacred voice of boys and girls in defence of their rights. He also recalled that delegations of the workers concerned had called for the recognition and protection of their rights at work and, referring to the statement of GRULAC, he highlighted the political will of the Bolivian State to safeguard the rights of children and end child exploitation and child labour. That was the undertaking. President Evo Morales had given instructions to improve the situation of children and to resolve their problems of health, nutrition and education. The legislative amendments adopted were therefore simply an exception and were intended to protect these working children, who were also heads of household, with the ultimate aim of eradicating child labour.

The Worker members observed that a law that authorized child labour could not be justified as a means of combating the problem. Certain measures referred to by the Government representative of the Plurinational State of Bolivia were positive, but would be more effective if the law on child labour was restored. Authorizing exceptions, even temporary ones, to the principles contained in Convention No. 138 could be interpreted as legitimization by the International Labour Conference of an opt-out system, which would send the wrong signal to countries in situations of poverty or whose economies were in transition. This backward step would call into question the credibility of international action against child labour. The new Children's and Adolescents' Code was not in conformity with Convention No. 138, as it permitted work by children below the minimum age specified by the Convention. That was a step in the wrong direction. More investment was needed in the areas of public education and social protection. The Government should: (1) withdraw the contentious legislation and, after consultation with the social partners, prepare a new law that was in conformity with the provisions of the Convention; and (2) strengthen human and technical inspection resources and training for labour inspectors in order to take specific action in law and practice. It could show its willingness by accepting ILO technical assistance, which could begin by preparing, in conjunction with the social partners, a time frame for actions to bring the law into conformity with the Convention. It should also inform the Committee of Experts at its next session of the specific steps taken.

The Employer members emphasized that, even if the Bolivian Act was temporary, it was in violation of the Convention, which was one of the fundamental Conventions of the ILO. With regard to dialogue with civil society, they emphasized that the Convention required consultation with the most representative organizations of workers and employers, and those organizations had not been consulted when the new Act was passed. Various points should therefore be reflected in the conclusions. First, the Government of the Plurinational State of Bolivia should be urged to bring its legislation into conformity with the Convention and to hold prior effective consultations with the most representative organizations of employers and workers so that steps to eradicate child labour were the fruit of tripartite dialogue. They also emphasized the importance of developing a national plan, in consultation with the social partners, that took into account primary and secondary education, which were the only ways out of poverty. It was also necessary to strengthen labour inspection which, in order to be effective, needed not only human resources but also a strategy to extend coverage to the informal sector. The Government should also be urged

to accept ILO technical assistance for the eradication of child labour.

Conclusions

The Committee took note of the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that followed relating to the 2014 amendments to the Children's and Adolescents' Code which lowered the minimum working age from 14 to 10 years for self-employed workers and to 12 years for those children in an employment relationship, although the Government had specified a minimum age of 14 years for admission to employment or work upon ratification of Convention No. 138. These amendments also allowed all children under the age of 14 to undertake light work without setting a lower minimum age for such work. The discussions had also highlighted that these amendments would legally authorize children between 10 and 14 years to work, in addition to the approximately 800,000 children between 5 and 17 years of age who were in a child labour situation according to the last Child Labour Survey of 2008 which had been carried out by the National Institute of Statistics (INA) with ILO support.

The Committee also noted the detailed information provided by the Government outlining the economic and social policies put in place since 2006 which had produced positive results, such as a reduction in malnutrition and the end of illiteracy. The Government had also referred to a host of public policies adopted for the benefit of children and adolescents. In this context, the Children's and Adolescents' Code set a minimum working age of 14 years, but established an exception of 12 years for work carried out by children in an employment relationship, and of 10 years for work carried out by self-employed children. The exception to the minimum age was provisional, with a view to overcoming the problem of providing support to families in extreme poverty by 2020. The Government had stated that it did not contravene the Convention, but sought rather to broaden the protection of child workers under the new Code. Finally, the Committee noted the Government's had statement that it would seek international cooperation so that other countries, particularly those in the region, could share best practices for the eradication of child labour.

Taking into account the discussion that took place, the Committee urged the Government to:

- repeal the provisions of the legislation setting the minimum age for admission to employment or work and light work, in particular sections 129, 132 and 133 of the Children's and Adolescents' Code of 17 July 2014;
- immediately prepare a new law, in consultation with the social partners, increasing the minimum age for admission to employment or work in conformity with Convention No. 138;
- provide the labour inspectorate with more human and technical resources, as well as training, with a view to a more efficient and concrete approach in relation to implementing Convention No. 138 in law and practice;
- avail itself of ILO technical assistance to bring the legislation into compliance with the Convention; and
- report in detail to the Committee of Experts for its upcoming session.

The Government representative expressed disagreement with the conclusions and reserved the right to analyse them and send his observations at a later stage.

Occupational Safety and Health Convention, 1981 (No. 155)

TURKEY (ratification: 2005)

A Government representative expressed the Government's surprise and disappointment about the inclusion of the application of the Convention by Turkey in the list of individual cases discussed by the Committee, despite the

decisive steps taken by the Government. With respect to legislation, a major overhaul of the occupational safety and health (OSH) system had taken place in 2012 with the enactment of the Occupational Safety and Health Act No. 6331 (OSH Act), which had been prepared in close consultation with the social partners, taking into consideration the relevant ILO Conventions and European Union directives. In addition, 36 implementing regulations and six communiqués had been issued. The new OSH legislation applied to all activities and workplaces in the public and private sectors, with limited categories of workers (armed forces and police, disaster and emergency activities, domestic services, self-employed persons, and prisoners receiving training under rehabilitation programmes) excluded from its scope. In order to apply the legislation effectively, social dialogue had been institutionalized through the establishment in 2005 of the National Occupational Safety and Health Council. He added that he had found it strange to hear comments about the insufficient frequency of meetings of the Council from trade union confederations that were not actively participating in it. The Council had adopted the Third National Occupational Safety and Health Policy Document and Action Plan for 2014–18, the objectives of which were: improving OSH activities, particularly in the agricultural and public sectors; reducing the number of accidents, especially in the metal, mining and construction sectors; improving statistics; determining the most common occupational diseases and collecting diagnostic data on them; and fostering a “safety culture”. The Government would communicate detailed information on the activities of the Council in its next report on the application of the Convention. The speaker then replied to questions raised by the Committee of Experts in its observations. Regarding the roles and responsibilities of employers and occupational safety experts, the OSH Act dedicated one chapter to this matter. With respect to activities conducted in the mining, metal and construction sectors, a project had been carried out between 2010 and 2012 to improve health and safety conditions in small and medium-sized enterprises (SMEs) in these sectors. There was also ongoing cooperation with the ILO to improve OSH in the mining and construction sectors. In this context, a National Tripartite Meeting on Improving Occupational Safety and Health in Mining had been organized in October 2014. This meeting had led to a technical assistance project being set up in January 2015, which aimed to develop a plan of action to improve working conditions in mining. As regards the functioning of the inspection system, the Labour Inspection Board was entrusted with verifying compliance with OSH legislation and carrying out inspections. The Board conducted at least two inspections every year targeting mine and construction workplaces. Annual reports on the Board’s activities were regularly communicated to the ILO in the context of reporting on the application of the Labour Inspection Convention, 1947 (No. 81). A series of legislative amendments had been adopted recently, covering the following matters: strengthening the authority and responsibilities of occupational physicians and occupational safety experts; introducing incentives and disincentives for enterprises with positive or negative OSH track records; consideration of OSH aspects in public procurement procedures; allowing pressure to overproduce to be deemed a legitimate reason for stopping work; working hours for miners to be limited to 37.5 hours weekly and 7.5 hours daily; and OSH matters to be part of compulsory curricula at certain universities. In addition, the duration of paid annual leave for miners had been increased by four days and the minimum wage for miners had been doubled. In order to promote a safety culture widely, various activities had been undertaken. They included: OSH guidelines for different sectors, a national campaign, and

workshops and seminars to promote the OSH Act, training programmes for SMEs, and the development and dissemination of promotional materials (letters, booklets and advertisements). In addition, Turkey had hosted regional and international conferences, including the 19th World Congress on the Safety and Health at Work held, in September 2011 in Istanbul in cooperation with the ILO. In the last two years, Turkey had ratified the Safety and Health in Construction Convention, 1988 (No. 167), Safety and Health in Mines Convention, 1995 (No. 176) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), which symbolized the Government’s commitment to work on the matter. At the diplomatic level, Turkey had placed the issue of safer workplaces among the employment priorities of the Turkish presidency of the G20. In conclusion, the Government representative once again expressed his disappointment in the strongest terms at the inclusion of Turkey on the agenda of the Committee, despite the measures taken. The speaker considered that this decision was unfair and inconsistent. Nevertheless, the Government had taken this opportunity to explain recent developments, albeit in a limited amount of time. The speaker reiterated that the Government was committed to improving OSH conditions for the well-being of the people, and that it was also determined to continue its efforts towards effective implementation of legislation and a safety culture in society.

The Worker members expressed their appreciation for the Government’s determination to protect workers’ safety and health. Although this was the first time the Committee of Experts’ observations of Turkey’s compliance with the Convention had been discussed, it was particularly appropriate, after the major mine accident in Soma, which had exposed the country’s challenges regarding OSH. They proceeded to give statistical information from the National Statistical Institute regarding workplace accidents in general, as well as at the Soma and Ermenek mines. By ratifying Convention No. 155, as well as Conventions Nos 167 and No. 176, the Government had accepted the responsibility for establishing a safe working environment. While welcoming those ratifications, the Worker members considered that it was an appropriate response to the public outrage and pressure from the trade unions, and hoped that, together, they would take all necessary measures to bring laws and practice into compliance with the Convention. They also welcomed the tripartite consultations on OSH in mines, ILO technical assistance and the roadmap. The OSH Act had been adopted in 2012 and, while it could have been considered a step forward, there were still serious shortcomings since it excluded a large number of workers from its scope who were not covered by any other OSH regulations, and its applicability to public sector workers would only begin in July 2016. Section 13 of the Act elaborated a procedure to be followed when workers were exposed to serious and imminent danger, which could only be bypassed in the event of unavoidable danger, suggesting that an accident would occur before a worker could remove himself or herself. Workers should be allowed to remove themselves when they had reasonable justification to believe that the work situation presented an imminent and serious danger, whether an accident had occurred or not. Furthermore, although the Act provided for the establishment of OSH committees to ensure the joint liability of the main employer and subcontractors, the obligation would only arise when outsourcing contracts exceeded six months. Trade unions had not been sufficiently consulted in the development of legal measures and OSH policies and, therefore, successive action plans have been deeply flawed and ineffective. The National Action Plan 2014–18 did little more than repeat previous action plans that had failed to achieve their goals. The Government had failed to moni-

tor workers' health in order to detect and register occupational diseases, which was essential in developing appropriate OSH action. Although an adequate and appropriate system of inspection was also required to ensure the enforcement of OSH legislation, the already insufficient number of labour inspectors had been decreasing drastically and sanctions were not properly enforced. A major factor in the high number of workplace accidents was the increase in subcontractual employment arrangements which allowed employers to decrease direct labour costs and circumvent employment protection legislation. Labour inspections were inadequate and subcontracted workers were forced to work under unhealthy and insecure working conditions. Worker representatives played a key role in ensuring that effective OSH policies were adopted and implemented, and, therefore, along with employers, they were relied upon for the successful application of national OSH infrastructures. It was therefore important that they could exercise their right to freedom of association in an atmosphere free of violence and repression. As long as the Government had not taken sufficient measures in law, policy and practice to effectively implement the Convention, Turkish workers would continue to suffer.

The Employer members expressed their appreciation for the detailed information that the Government had provided. The tragedy in the Soma mine had been devastating, and health and safety of mine workers was important. However, in order to be fair and balanced, the Committee could not let one tragedy eclipse their discussion of national law and practice. Commendably, Turkey had ratified the main ILO OSH Conventions, and its inclusion on the Committee's list of cases provided a constructive opportunity to discuss the measures it had been taking to implement Convention No. 155 in law and in practice, as discussion of cases on the list did not always entail a failure to implement a Convention. She recalled the 2010 observation of the Committee of Experts, which had requested information concerning measures to adopt a bill on OSH. Following that observation, the Government had adopted the OSH Act in 2012 and had enacted new policies and measures, including sanctions and penalties, in that respect. Under the Act, the National OSH Council, in which the social partners participated, had been developed and had adopted a new action plan that set safety targets for the next four-year period. In addition, in 2014, the Government had initiated a technical assistance project on OSH with ILO assistance and support from the social partners. An additional positive initiative was the October 2014 National Tripartite Meeting on Improving Occupational Safety and Health in Mining, which had included the participation of the ILO and the social partners and involved the adoption of a roadmap concerning improvements to OSH in mines, and which could apply to other industries. The Government had agreed that a research institution would carry out research on OSH in the context of subcontracting arrangements in certain high-risk sectors.

Turning to the concern that had been raised by the Committee of Experts in its 2014 observation with respect to the scope of the new Act, the Employer members encouraged the Government to continue to provide information to explain whether those exclusions existed and, if so, the rationale behind them. Noting the concerns regarding the participation of the social partners in the National OSH Council, they invited the Government to provide information to the Committee of Experts at its next session and stressed the importance of social dialogue to the goal of achieving full compliance with the Convention. With respect to the recruitment and role of occupational physicians and occupational safety experts (OSEs), they understood from the Government's submission that it had

provided a clarification concerning the different roles played by employers and OSEs, and that the Government had taken measures to strengthen occupational safety. They encouraged the Government to share information concerning that positive measure with the Committee of Experts. Regarding the Committee of Experts' observations of deficiencies identified in the OSH system, the Employer members noted that the system was still being set up in the country and they encouraged the Government to continue its efforts, in consultation with the social partners. With respect to the concerns that had been raised regarding the establishment and application of procedures for notifying occupational accidents and diseases and producing statistics, the Employer members encouraged the Government to take measures, in consultation with the social partners, to improve its notification procedures and to provide the Committee of Experts with the statistics requested. To conclude, they welcomed the Government's ongoing efforts, together with the social partners, to improve safety and health at work, as had been demonstrated at the National Tripartite Meeting to overcome gaps in application in practice. The positive measures taken by the Government should be highlighted, and the Employer members encouraged the Government to continue its efforts, in consultation with the social partner and to continue its long-standing collaboration with the ILO.

The Worker member of Turkey conveyed his condolences to the families of workers who had lost their lives in occupational accidents in Turkey. He welcomed the enactment and enforcement of the OSH Act which, apart from some exceptions, covered all workplaces and workers in both the private and public sectors. However, in view of the high number of workplace accidents, further steps needed to be taken. The number of OSEs was insufficient and their independence should be guaranteed. In addition, SMEs, which represented the majority of workplaces in Turkey, had limited resources and were facing challenges to implementing safety and health measures. The Government of Turkey should reconsider unionization and respect for workers' rights, and awareness raising was vitally important for the efficient implementation of legislation. He invited the employers to adopt a human-based, sustainable approach by reviewing their position as regards OSH, so as not to consider it only as a cost issue. The lack of adequate diagnosis and treatment of occupational diseases was another issue to be solved urgently. Unemployment, undocumented work and subcontracting practices also intensified OSH challenges. The speaker underlined the importance of tripartism and social dialogue mechanisms in the area of OSH, and encouraged the Government to improve the inspection system and the collection of data regarding occupational accidents and diseases, with a view to taking a preventative approach.

The Employer member of Turkey recalled that Turkey was one of the countries which had ratified the main ILO OSH Conventions and, over the last 34 years, had been discussed 27 times by the Committee, demonstrating its commitment to align itself with ILO standards and to recognize its shortcomings. Turkey had been undergoing a reform process in OSH for years, which had to be considered as a case of progress in order to encourage further improvement. In 2003, a new Labour Code had been enacted in order to comply with European Union (EU) and ILO OSH standards. Turkey had also ratified both Convention No. 155 and the Occupational Health Services Convention, 1985 (No. 161), had established a National OSH Council, and had adopted its first national OSH policy document in 2006. To respond to implementation gaps, the capacity of the general directorate on OSH and the Turkish labour inspectorate had been improved. In 2012, Parliament had enacted a separate OSH Act, which was a milestone in the development of new policies and

preventative measures, provided a sound legal basis for the National OSH Council, and introduced new sanctions and stronger administrative penalties. The enactment of the Act had been problematic and, accordingly, it had been amended four times. As indicated in the report of the Committee of Experts, a new initiative had begun in 2014, with ILO and social partner support, including a National Tripartite Meeting on Improving Occupational Safety and Health in Mining. This had led to an ILO technical assistance project on occupational safety and health, under which the ILO would facilitate national efforts to improve OSH in Turkey. The National OSH Council had adopted a new action plan which set out targets and activities for the next four years. The speaker explained the duties and functions of OSEs under the new Act, according to which, if an employer terminated the employment contract of an OSE on the grounds that the OSE had notified a possible occupational disease or emergency, the employer would pay compensation of at least one year's salary of OSE or occupational physician in question. The problem in Turkey was not its legislation but the implementation thereof, which must be addressed with the necessary tools to strengthen the safety culture in society, such as through specific plans and measures to include OSH in all levels of education.

The Worker member of South Africa recalled the Soma tragedy and the lack of preventative measures taken. He said that the Government had decided that mining accidents were inevitable and had no will to confront them and take the appropriate measures. Most of the workers who had died in the Soma mine accident were subcontracted workers who were disproportionately employed in low-skilled and hazardous occupations and industries, and their employment created a downward pressure on wages, working conditions, safety and livelihoods. Labour inspections were rare in Turkey, but that situation was worse with respect to subcontracted workers owing to their unstable and disguised employment relationship. The Government needed to address the increase in subcontracting as part of the discussion around health and safety. South Africa also had a huge mining industry and the country continued to fight against casual labour. The speaker expressed his solidarity with the workers of Turkey and recommended immediate reforms by the Government to prevent further worker exploitation, giving due regard to the problem of subcontracted workers.

The Worker member of New Zealand expressed sympathy with Turkish workers in relation to OSH issues. There were a number of similarities between the situation in Turkey and that in New Zealand, which had also recently ratified Convention No. 155, and was undergoing a fundamental harmonization of its safety and health legislation, had also acted following a coal mining tragedy, and was also actively engaged in reviewing the regulations and rights concerned. The speaker congratulated the Turkish Government for its recent actions to try to address those issues, particularly by ratifying Conventions Nos 167 and 176. However, more could and should be done to protect workers. According to the Declaration of Philadelphia, a core part of the ILO's mission was to provide "adequate protection for the life and health of workers in all occupations". However, exemptions from the scope of application of the OSH Act compromised that fundamental right for certain groups of workers: public sector workers were denied access to occupational health services under exemptions contained in sections 6 and 7 of the OSH Act until July 2016, which should be removed as a matter of urgency; and "own-account contractors" were further excluded from the Act's scope. Considering that the Act could encourage disguised forms of employment, the Government should expand the scope of application of the OSH Act to cover "own-account contractors". The

Government had taken many measures regarding those issues; however, as the Committee of Experts had emphasized on several occasions, OSH required a dynamic ongoing process.

An observer of the International Transport Workers' Federation (ITF) recalled that, in 2005, Turkey had ratified both Convention No. 155 and the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152). However, since then, the Government had failed to fully bring its laws and practices into line with those Conventions, particularly in Turkish ports. Dock workers were exposed to significant workplace hazards, such as the use of unsuitable surfaces for crane operations, and did not have adequate personal protective equipment available to them, which was the most basic of safety requirements. Heavy congestion in ports not only led to traffic accidents but also increased exposure to carbon monoxide. The speaker cited statistics from 2012 concerning fatal accidents in Turkish ports, as well as cases of permanent disability, injuries, and occupational disease diagnoses. Those statistics were high, despite the fact that they excluded informal and precarious workers, who made up a large proportion of the country's port labour force. Labour inspection in Turkish ports also remained a critical issue, as there were not enough qualified labour inspectors conducting port inspections. In terms of penalties, the fines levied against employers were not sufficiently dissuasive. In that regard, the Government needed to consider the Committee of Experts' observations in relation to the Labour Inspection Convention, 1947 (No. 81), and take appropriate remedies. In addition, Worker representatives on port OSH committees did not receive adequate training to fulfil their duties, and existing OSH policies were not communicated to workers in an understandable manner. Ports-specific OSH measures were needed with the aim of reducing the incidence of fatal occupational accidents and enhancing safety standards. Those measures should deal, among other things, with the handling of dangerous goods, protective equipment and clothing, and container transport procedures. The Government's recent ratification of Conventions Nos 167 and 176 and the subsequent introduction of OSH measures for the mining and construction sectors were encouraging initiatives which might possibly pave the way for sector-specific OSH measures in ports. The speaker encouraged the Government to avail itself of ILO technical assistance in that regard.

An observer representing Public Services International (PSI) said that the Government had not satisfied its responsibilities with respect to the OSH working conditions of public workers in Turkey. Not only were public sector employees temporarily excluded from the application of the OSH Act until July 2016, but "own-account contractors" were permanently excluded. The Act would encourage disguised forms of employment. In the public sector, there was no obligation to keep statistics related to occupational injuries and diseases, in violation of Article 11 of the Convention. A civil servant exercising the right not to work, in application of the OSH Act, could still be sanctioned under sections 26 and 125 of the State Servants Act 657. Violence against civil servants employed in various sectors, including health and education, should be addressed within the scope of OSH as some of those workers were deprived of protective measures despite their vulnerability when faced with violence. The health system was critically underfunded, with increasing proportions of precarious and outsourced workers amounting to a de facto privatization of public health institutions, which directly impacted the quality of care and services provided. She expressed concern over the privatization of the management of OSH systems, as the independence of inspectors could not possibly be ensured if they were paid

by the same employers who refused to invest in safe working conditions for their workers. Moreover, it was not just management systems for OSH that were at risk of privatization, because the modalities of the management influenced the content of the OSH delivered. Full participation by the social partners in the definition, implementation and management of OSH was essential to improving working conditions and preventing deaths and injuries. She underlined the urgency for the ILO to develop a standard on the management of OSH.

The Government representative said that he had taken careful note of all the constructive criticisms expressed by the Committee, although he still disagreed with the decision to include it in the list of cases. Nevertheless, he was pleased to hear that improvements in Turkey regarding OSH had been acknowledged by the majority of Worker and Employer representatives. Concerning the Soma mine accident, 16 programmed and non-programmed inspections with regard to OSH had been carried out by labour inspectors over the past four years and the mine had been closed down by the Ministry. The accident had occurred as a result of the employer's negligence, and sanctions had been imposed as provided for in legislation. He recalled that mine workers were represented by one of the strongest trade unions in Turkey, and stressed that the active involvement of employers and workers was necessary to ensure effective workplace safety. Employers, trade unions and workers should also act responsibly to keep the working environment safe and healthy, and they should help the relevant authorities in the discharge of their duties and in the continuous application of measures taken. With respect to the social security benefits provided to those affected by accidents in mines, in addition to the general provisions of social security legislation, some specific arrangements had been made by two new laws, under which any debts of the deceased miners owed to the social security institution had been revoked and their survivors were accorded the right to receive survivors' pensions regardless of whether they fulfilled the required conditions. With respect to the Ermenek mine accident, there had been ten inspections since 2009, when the work had begun. Judicial processes were under way in both the Soma and Ermenek cases. The Ministry's labour inspectorate had conducted two programmed inspections every year at each of the mines, and non-programmed inspections were also carried out when complaints were received. In cases of violations of the law, either an administrative fine was imposed or, when danger to life existed, operations at the workplace were stopped. During the first five months of 2015, 433 mine workplaces had been inspected and, in 82 cases, their operations had been stopped, while in 236 cases administrative fines had been levied.

The Convention did not prohibit subcontracting. Subcontractors, like main contractors, were responsible for ensuring a safe and healthy working environment and must abide by the provisions of relevant legislation. The main contractors were jointly responsible for ensuring compliance with the law. Concerning collaboration between the main contractor and the subcontractor, section 22 of the OSH Act required the establishment of OSH committees in workplaces where subcontracting continued for more than six months. The requirement for collaboration and coordination of safety and health activities among several employers sharing one workplace was not conditional upon the duration of the work; rather, it must be fulfilled in all cases under section 23 of the Act. On the right of workers to remove themselves in cases of serious and imminent danger, section 13 of the Act did not preclude such action, where serious and imminent danger was deemed unavoidable in the opinion of the worker concerned. With regard to the number of hospitals that

were authorized to diagnose occupational diseases, he clarified that, despite reports of there being only three such hospitals, that number had been increased to 129. Similarly, the number of occupational safety experts had increased from 8,665 (before the Act had entered into force) to 106,000, and the number of occupational physicians had increased from 8,446 (before the Act had entered into force) to 26,000. Concerning the rate of accidents in Turkey, statistics only covered wage earners, among whom accident rates were relatively high. If public employees and "own-account contractors" were included, the accident rate would be much lower. There was a constant decrease in the rate of fatal occupational accidents in the country. Regarding the number of inspections, he said that inspection figures would be provided in a written report but further reported that, in 2014, there had been 5,087 programmed inspections and 5,042 non-programmed inspections. In the construction sector, the Labour Inspection Board had carried out a special inspection in 45 provinces with more than 300 inspectors in October 2014, during which 2,087 construction sites had been inspected and operations had been stopped in four out of five workplaces. That rate, nearly 80 per cent, indicated that there was much to be done with regard to raising awareness among employers and workers. In 2014, a total of 3,625 construction sites had been inspected and 1,858 shut down. The total amount of administrative fines levied was more than 27 million liras, that is. US\$10 million. Statistics and data collection on occupational diseases for civil servants would be undertaken in line with the decision made by the National OSH Council and taking place and through action plans. Turkey continued to improve its legislation and had achieved enormous progress during the last decade. It attached great importance to the participation and active involvement of the social partners, civil society and universities, even though some of those partners had not participated in the process of drafting legislation or in the National OSH Council's meetings. He stressed that Turkey had exerted enormous efforts in recent years in order to ensure that all workers were employed in safer and healthier workplaces and would continue to do so for the well-being of its citizens.

The Employer members thanked the Government for its efforts to respond to the concerns that had been raised. The discussion had provided an opportunity to positively note the measures that the Government had taken to comply with the Convention in law and in practice, in consultation with the social partners and, where applicable, with the ILO. They expressed their appreciation for the measures taken to bring legislation, practice and safety culture into line with the Convention, and encouraged the Government to continue to report to the Committee of Experts on the measures it had taken in that regard. They further encouraged the Government to continue to work with the social partners in those efforts.

The Worker members stated that the ratification of Conventions Nos 167 and 176 was an important step, taken together with the social partners, particularly given that construction and mining were the most dangerous sectors for workers. The Worker members agreed with the Employer members' statement that the Soma tragedy should not eclipse discussions and that overall progress and increased efforts should also be mentioned. The statistics provided by the Turkish Statistical Institute were evidence that the Government's measures had not been sufficiently effective to prevent disastrous accidents and, therefore, certain issues should be taken up with the social partners to address the situation of workers exposed to serious and imminent danger, who were not permitted to withdraw without the consent of the employer, as well as "own-account workers" and public sector workers who were excluded from the scope of the Act. The Government had

not replied to questions raised regarding the increased vulnerability of subcontracted workers, who were only covered by OSH measures if their contract exceeded six months, nor had it provided information on the number of workers excluded under the Act. The Worker members proposed that the Government: (i) revise the OSH Act in order to bring it into compliance with the Convention; (ii) assess the effectiveness of measures undertaken as part of the national action plan to increase workplace safety; (iii) improve record-keeping and monitoring systems concerning OSH; (iv) increase the number of labour inspections and ensure that dissuasive sanctions would be imposed for infractions, particularly those involving subcontractors; and (v) refrain from interfering violently in trade union activities addressing health and safety deficits, and instead engage in genuine dialogue with all social partners. Finally, they urged the Government to present its report on the Convention to the Committee of Experts and to continue to avail itself of ILO technical assistance.

Conclusions

The Committee noted the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to: ensuring that occupational safety and health (OSH) legislation applied to all workplaces covered by the Convention; the need to improve the functioning of the National OSH Council, including effective representation and consultation of the social partners; the need to improve inter-ministerial coordination on OSH issues; clarifying the roles and responsibilities of employers and occupational safety experts (OSEs) and ensuring workplace safety; the need to periodically review the OSH situation with particular attention to subcontracting and the mining, metal and construction sectors; strengthening labour inspection, particularly with respect to the various forms of precarious work, and ensuring the effective application of penalties; improving and ensuring the application in practice of procedures established for the notification of occupational accidents and diseases, and the production of annual statistics; ensuring that workers can remove themselves from situations of serious and imminent danger without suffering undue consequences; and ensuring collaboration on OSH between two or more undertakings engaging in activities simultaneously at one workplace.

The Committee noted the information provided by the Government representative on the adoption of the Third National Occupational Health and Safety Policy Document and Action Plan for 2014–18 by the tripartite National Occupational Health and Safety Council. This Action Plan included the objectives of: improving the quality of OSH activities; reducing the number of accidents in the metal, mining and construction sectors; intensifying OSH activities for agriculture and public sectors; disseminating a safety culture; improving the collection of statistics on work accidents and occupational diseases as well as diagnostic data; and providing hospitals with the infrastructure necessary to diagnose occupational diseases. In this regard, the Government indicated that a workshop with the relevant stakeholders had been held in May 2015 in order to identify a roadmap for improving the collection and dissemination of data on OSH. Moreover, amendments to the Occupational Safety and Health Act No. 6331 had been adopted in April 2015 to: strengthen the applicable administrative fines; clarify the authority and responsibility of workplace physicians and OSEs; add incentives for enterprises with good OSH records; include OSH obligations in public procurement and prohibit mining companies that had experienced fatal work accidents from public procurement for two years; specify that pressure for overproduction could be a reason for suspending work; limit the maximum hours of work for miners; and introduce OSH as a compulsory curricula component in

relevant educational programmes. The Government indicated it was implementing several awareness raising measures aimed at developing a preventative culture of safety and health, including by disseminating information on the new legislation. Other measures taken included the ratification of the Safety and Health in Mines Convention, 1995 (No. 176) and the Safety and Health in Construction Convention, 1988 (No. 167) in March 2015. The Government further indicated that it was cooperating with the ILO on a project that aimed to develop a tripartite roadmap for improving occupational safety and health, particularly in the mining and construction sectors, in line with international commitments under relevant ILO labour standards. The Government provided information on the number of labour inspections undertaken, including sectoral inspections, administrative fines imposed and stop orders issued.

The Committee welcomed the ongoing efforts made by the Government and the social partners to improve safety and health at work and the intention to overcome the issues identified in a comprehensive and sustained way, with the support of the Office.

Taking into account the discussion, the Committee requested the Government to:

- ensure that the Occupational Safety and Health Act is in compliance with Convention No. 155, in particular with respect to its coverage and in ensuring the right of workers to withdraw themselves from serious and imminent danger;
- assess the effectiveness of the measures undertaken in the context of the National Action Plan aimed at increasing workplace safety;
- improve record keeping and monitoring systems concerning health and safety, including occupational diseases;
- increase the number of labour inspections and ensure that dissuasive sanctions are imposed for infractions of laws and regulations, in particular with respect to subcontractors;
- refrain from interfering violently in lawful, peaceful and legitimate trade union activities addressing health and safety concerns; and
- engage in genuine dialogue with all social partners.

The Committee urged the Government to present its report on the Convention to the Committee of Experts this year, and to continue to avail itself of ILO technical assistance.

Safety and Health in Mines Convention, 1995 (No. 176)

PHILIPPINES (ratification: 1998)

A Government representative expressed her appreciation for the work of the Committee of Experts and the Conference Committee. Referring to legislation, she indicated that Republic Act No. 7942 (Mining Act) of 1995, and its Implementing Rules and Regulations, and Department of Environment and Natural Resources (DENR) Administrative Orders Nos 2010-21 and 2000-98 gave effect to the Convention. The DENR Administrative Order, or DAO, 2000-98 was the Mine Safety and Health Standards Order, which mandated the competent authority, the Mines and Geosciences Bureau (MGB) of the DENR, to enforce safety and health measures in the exploration, mining, quarrying, mineral processing and other allied or related services. With regard to the preparation of appropriate plans of working by the employer under Article 5(5) of the Convention, these must be submitted by mining firms. Detailed plans for work programmes were evaluated by the MGB prior to the approval of applicable contracts and relevant permits. With regard to Article 7(a) of the Convention, part of the duties of the employer under DAO 2000-98 was to assess all safety and health risks in all of

its workplaces, and to involve the safety engineer in the preparation of risk assessment regarding the design, alteration, selection or modification of processes, construction of structures, installation of machinery and equipment. A plan was required to be kept at the mine showing the location of all permanently installed electrical machinery and apparatus in connection with the mine's electrical system. All mining firms had at least one safety engineer and one safety inspector who had undergone the required 40-hour training on basic occupational safety and health in the mines (BOSH), and held the required licence and mining operation experience.

With regard to Article 10(c) of the Convention, the "chapa" system was a traditional method of accounting for workers underground and was still being used by some mining firms today. Under the "chapa" system, underground miners were grouped into teams led by a foreman who reported to a shift boss, who in turn reported the location, type of activity and details on each team to the mine supervisor. Each mineworker had a pair of "chapa" metal chips, similar to those used by the army, with the miner's number. One "chapa" was deposited at the entrance to shafts or portals and placed at a location map indicating the work area of a team or a certain miner. The mineworker would keep the duplicate. The "chapa" was also used for the issuance of chargeable miners' lamps with effective usage of eight hours. The depository for "chapas" was usually located near the mine entrance or shaft, where security guards were posted. Other mining firms used logbooks, which were kept at the entrance to shafts or portals, recording the miner and his/her assigned work area. A system of radio communication was a requirement for underground mines. At present, most mining firms used electronic devices for accuracy, in lieu of the traditional punch card, in entering or exiting mine sites. All underground workers had a designated work area specified in daily reports, and shift bosses, supervisors and safety officers closely monitored each work area. As had been noted by the Committee of Experts, some provisions of the Convention were not explicitly specified in national laws, rules and regulations. The Government would thus integrate in the proposed bills to criminalize Occupational Safety and Health (OSH) violations, the responsibility of employers to ensure that mines were designed and constructed safely and provided conditions of safe operation and a healthy working environment, including the right of workers and their representatives to report accidents. The Mine Safety and Health Standards Order and DAO 2010-21 were being reviewed by the MGB, in coordination with the Department of Labor and Employment (DOLE), to identify gaps and to bring the regulations into conformity with Convention No. 176. The review and completion of the work, including the widest possible consultation, was envisaged within the year. A Joint Memorandum of Agreement between the DOLE and the DENR for closer coordination to further strengthen safety and health in the mines, given the noted increase in the number of work accidents, would be worked out. This was a new mechanism for coordinating effective application of the Convention and was expected to be completed within the year. It would include action by the MGB to restore the accreditation system for service contractors in the mines so as to ensure compliance with Article 12 of the Convention. Moreover, the "incentive and penalties" approach would be enhanced by the MGB to prevent work accidents in the mines or at mill sites. The MGB regional offices conducted quarterly monitoring of mining operations within their respective jurisdictions, while the MGB Central Office audited safety and health, and environmental and social development management. From 2010 to 2014, a total of 74 audits had been conducted. The MGB had also issued suspension

orders and had brought criminal charges for violations of the mining law. As part of the coordinated efforts by the DOLE, the potential of existing tripartite mechanisms in the mining industry, including the Mining Industry Tripartite Council (MITC) would be further harnessed. At present, the tripartite council for the mining sector in the Caraga region, host to 43 mining sites employing approximately 17,700 workers, excluding contractors and subcontractors, had a voluntary code of good practice on observing freedom of association and dispute resolution, and through its Chamber of Mines, functioning as the Mines OSHNET, regularly conducted the 40-hour basic OSH training for member firms. As of 2014, a total of seven rounds of BOSH training had been conducted in the Visayas and Mindanao regions benefiting 405 safety engineers, inspectors and managers in 179 enterprises.

The Government representative acknowledged that much still needed to be done and requested technical assistance from the ILO for capacity-building for mine health and safety inspectors, unions and employers, as well as in developing better safety and health standards in the mines and on advocacy for compliance. The Government was firmly committed to ensuring compliance with safety and health standards in all industries. The Government also had an ongoing engagement with the Government of the Republic of Korea to enhance Philippine occupational safety and health policies, particularly with regard to industrial accident prevention, workplace improvement and accident compensation. The Government was also engaged with its neighbours through its active participation in the Association of Southeast Asian Nations ASEAN-OSHNET. In conclusion, the speaker indicated that, as requested by the Committee of Experts, the Government would submit a detailed reply in 2016 with regard to the Convention.

The Worker members welcomed the information provided by the Government on the application of the Convention. However, it was difficult for them to assess the information and be sure that it met the requirements of the Convention. Convention No. 176 was a technical Convention, but the life and health of many workers depended on its proper application. That was why they were anxious to expose any failure to apply the safety and health policy in mines in the Philippines. To begin with, there were serious shortcomings from the juridical standpoint: although the country had ratified the Convention, it had still not incorporated it into its domestic legislation, and implementation was based simply on an administrative order issued by the DENR. Secondly, there were some major technical shortcomings in the administrative order. For example, according to the order, all employers in charge of mines had to submit an annual safety and health programme that comprised rules for the organization and management of the environmental risk involved, but there was no requirement that they prepare plans of workings such as were called for in Article 5(5) of the Convention. Moreover, the existing provisions did not require the employer to ensure that the mine was provided with electrical, mechanical and other equipment so as to provide conditions for safe operation and a healthy working environment, as stipulated in Article 7. In reference to Article 10(c) of the Convention, the Government stated that employers had to set up security posts at the main entrance to underground mines and keep a register of the daily hours of work of each worker. However, it had not provided any information on how the probable location of each worker could be ascertained or on the technical system that was used in most underground mining operations. Furthermore, the Government had provided no information on any regulations for implementing Articles 13(1)(a) and 13(2)(f). Lastly, the Government had not provided accurate information on accidents in the mining sector for the

2012–13 fiscal year. The number of accidents had risen sharply and that increase had most likely been aggravated by the boom in small unregulated mines that resorted extensively to subcontracting. Finally, the Worker members regretted that the Government had not indicated what steps it had taken or planned to take in order to tackle the increase in work accidents in the country's fast-expanding mining sector.

The Employer members thanked the representative of the Government of the Philippines for the detailed information provided. They stressed that this case was about doing the right thing before tragedies happened, such as the tragic accident that had occurred at the Pike River Mine in New Zealand on 19 November 2010, where 29 miners had lost their lives. The Government's report that had been submitted to the Committee of Experts had not provided enough information to assess whether there was full compliance with the Convention. Laws in the Philippines gave effect to some provisions of the Convention, but not all provisions. The traditional system, known as the "chapa" system, used to designate work areas was not used systemically in the country. Laws and orders needed attention to ensure that they complied with all the provisions of the Convention. Given that workers in a mine needed to know that they would be rescued in the event of an accident, and that the key to being rescued quickly was the security of knowing the names and probable location of workers in a mine, the Employer members called upon the Government to work effectively towards full compliance with all provisions of the Convention, including the establishment of a system to record the names of workers and their probable location in the mine.

The Worker member of the Philippines said that, since the enactment of the Republic Act No. 7942 (Mining Act) in 1995, investment and expansion in the mining sector had been increasing. According to mining industry statistics from the MGB, employment in the mining sector had increased from 130,000 workers in 1997 to 250,000 workers in 2013, but had fallen to 235,000 workers in 2014. The health and safety of Filipino workers in the mining sector had yet to be seriously addressed. While he recognized the efforts of the DOLE to ensure compliance with existing labour laws, they needed to be reviewed and enhanced. Recalling the 13 May 2015 factory fire which had taken the lives of 72 workers, he said that more needed to be done for workers. In Compostela Valley, there had been cases of landslides and caving in which were a direct result of mining activities and had led to deaths. Small-scale mining was pervasive in the area with serious health issues among the major concerns. A mobile clinic and an occupational safety and health audit in the area, conducted by the Federation of Free Workers (FFW) through its unions in the health sector and in cooperation with the Occupational Safety and Health Centre, had revealed that many children and others who had worked in open-pit mines had levels of mercury and lead in their blood that were way beyond the allowable levels. Exposure to hazards and accidents had happened because of the lack of a comprehensive law that genuinely promoted the welfare of workers. Although the Labour Code and the Mining Act provided some general provisions on occupational safety and health, not all provisions of the Convention had yet been incorporated into domestic legislation. A draft code on safety and health in the workplace had been proposed more than two decades ago. The draft bill had however never been passed into law. Although there was a pending bill in the House of Representatives on a proposed new law on safety and health endorsed by the tripartite social partners, it was still awaiting deliberation. It was imperative that the Government exert more effort to protect workers' occupational safety and health by adopting a code on occupational safety and

health in compliance with Convention No. 176 and other international commitments and by imposing higher penalties, including imprisonment, in cases of violations. New legislation should not only include corporate mining but also small-scale mining, as the Convention applied to all mines. Technical assistance from the ILO, as well as workers' capacity-building on OSH issues, was requested. Moreover, the speaker emphasized the need to strengthen the voice of workers by strengthening freedom of association and collective bargaining in the mining sector. Unions would help in making employers comply with labour laws, including those on safety and health in the workplace. OSH committees with union representatives should be institutionalized. It was a major concern for trade unions that subcontracting of labour was widespread in the mining sector. An example was given of a mining firm in Agusan where the FFW had successfully organized workers in the mines. However, the management of the mining firm had refused to recognize the union, saying that they were not employees of the mining firm, but rather employees of the illegal manpower agency operating within the firm, disguised as a cooperative. This case was still pending in court.

The Employer member of the Philippines welcomed the comprehensive and positive information provided by the Government to the Committee. While the Employers had a positive attitude towards the Committee of Experts' report, he referred to the comments of the Committee of Experts on the application of the Convention by the Philippines and considered that there was no real violation of the Convention to be detected. With regard to the design of a working plan which contained elements on organizational rules and risk management in mine operations by employers, he indicated that this requirement referred to simple administrative procedures with which employers would comply voluntarily in a speedy manner. As to the responsibility of employers to ensure that mines were planned and constructed in a manner that would ensure safe operations and a healthy working environment, he observed that this was a responsibility that mining companies assumed even before starting operation at a mine, as the Government only had a permit to bring a mine into operation if the installation requirements set forth had been met. Turning to the requirement to establish a recording system for names and probable locations of all persons working underground, he assumed that, once technical progress had been made, the mining companies would establish such a system. In that regard, he added that no report existed on the loss of workers in the mines. Coming to the right of workers to report accidents, dangerous occurrences and hazards to the competent authority, he thought that this was a non-issue, since no report highlighted that this right was suppressed in the country. Moreover, its exercise was in the best interest of all, Government, employers and workers. He added that the tripartite partners were ready to engage in dialogue in order to take further measures to prevent accidents. In summary, in his views, the comments of the Committee of Experts had more the character of a "gentle reminder" to the Government and employers to improve and maximize safety and health in mines. In that respect, he said that the Employers' Confederation of the Philippines (ECOP), the umbrella organization for employers' organizations in the country, would hold a seminar in June 2015 on occupational safety and health matters, focusing on risk prevention, in order to promote the implementation of occupational safety and health standards and ILO Conventions on this subject. Moreover, the Employers endorsed a bill to criminalize violations of occupational safety and health standards, which also highlighted the Employers' commitment to social justice.

The Government member of Singapore welcomed the efforts made by the Government to enhance the safety standards of workers in the mining industry, along with the steps taken to implement the Convention. In particular, she noted the enhancement of the “incentive and penalties” approach to encourage greater compliance by mining companies. The Government was reviewing the rules and regulations to bring them into conformity with the Convention. This should be done in consultation with the relevant stakeholders. In conclusion, the speaker requested the Government to provide the information requested by the Committee of Experts and to avail itself of technical assistance from the ILO.

The Worker member of Japan expressed his sympathy and support for the deplorable working conditions of workers in the mining sector in the Philippines, especially in the unregulated small-scale mining sector. The country was identified as having high mineral potential, with 9 million hectares of land containing untapped mineral resources. Employment in this sector had increased from 130,000 workers in 1997 to 252,000 workers in 2012, indicating an annual increase of 9.6 per cent. Although legislation to ensure safety and health in mining, quarrying and related activities was in place, both implementing rules and regulations and practice needed to be aligned with the spirit of the Convention. He pointed out that data revealing the incidence of accidents, as noted by the Committee of Experts, only covered reports from large mining firms, while serious and fatal accidents occurring in the small-scale mining sector went unreported. The Government’s tripartite approach, though laudable, did not appear to be effective in the mining sector owing to the low unionization rate of less than 5 per cent. The low unionization rate was attributed to the fact that workers were supplied by manpower agencies and cooperatives, and to other precarious working arrangements. Finally, he urged the Government to align its laws and practices and to comply with its obligations under the Convention.

The Government member of the Republic of Korea indicated that the Republic of Korea had supported the reforms undertaken by the Government, through a technical cooperation programme, to develop policies to prevent industrial accidents, improve workplaces and provide industrial accident compensation. In addition, training for OSH personnel within the Philippine Department of Labor and Employment was provided by the Korean Occupational Safety and Health Agency (KOSHA). The technical cooperation programme and technical assistance would give OSH personnel the skills to ensure compliance with the Convention.

The Worker member of Indonesia said that, by the end of 2015, the Philippines and Indonesia would be part of a single market within the framework of ASEAN. This would mean increased flows of goods, services, investments and skilled labour that would have an impact on the labour market. As a consequence, the demand for global workers would increase. It was important, then, to ensure that there were stronger safety and health policies in place to avoid accidents and deaths. As indicated in the Report of the Director-General on the future of work, 2.3 millions people in the world died every year as a result of work-related accidents. The direct cost of occupational illness and accidents had reached US\$2,800 billion worldwide. Mining and construction were considered the most dangerous industries along with transport and services. He called on the Government to take the necessary steps to provide workers with adequate protection and to adopt a comprehensive law on occupational safety and health that included adequate penalties. Moreover, in conformity with the Convention, participation by workers’ representatives in inspections and investigations must be ensured. To that end, it was essential for independent un-

ions to exist in the country. This was not the case in the Philippines, where workers, including contract workers, were not organized. He concluded by highlighting the fact that accidents usually occurred in workplaces where unions were absent, banned or discouraged.

The Government member of Indonesia expressed support for the Government’s initiatives to improve implementation of the Convention. As a member of ASEAN, the Philippines participated in ASEAN-OSHNET which aimed to ensure cooperation among national OSH institutions undertaking research or disseminating information. Within this framework, since 2010, the Philippines had provided training programmes on OSH both to ASEAN member States and to third countries. This cooperation would facilitate implementation of the provisions of the Convention in the broader context of the ongoing reform of the labour law compliance system. The ILO should continue supporting and cooperating with governments to secure the implementation of the Convention.

The Worker member of Malaysia said that the statistical information on the number of accidents, both fatal and non-fatal, in the mining industry, which had increased considerably from 2011 to 2013, did not include accidents occurring in the small-scale mining sector. Moreover, quoting some examples, he said that several incidents involving waste spillovers from large-scale mining firms had been documented. He stressed that unreported fatal accidents, especially in the small-scale mining sector, were due to poor governance and lack of Government capacity to carry out regular inspections. Referring to a study by a university in Manila, he said that corruption among officials in return for ignoring environmental regulations had led to more environmental disasters. He urged the Government to strengthen its laws and to align them with the provisions of the Convention. Efforts should be made to ensure the effective enforcement of laws covering all employers in the mining sector, whether big or small, through regular inspection with the involvement of trade union representatives.

The Government representative said that the discussion had been beneficial, as the Government was always keen to learn from the experiences of other countries that had ratified the Convention. This was particularly important for the continuing process of revising standards related to occupational safety and health. She underlined the Government’s commitment to improving the occupational safety and health system, including in the small-scale mining sector, in order to align it with the requirements and standards set out in the Convention. To that end, the Government was working at an accelerated pace that was sometimes difficult for the social partners to handle. However, tripartism was robust in the country, and consultations were held with the social partners on all legislative initiatives and other measures in the area of occupational safety and health. She added that, by the end of 2014, a training campaign for trade unions on occupational safety and health had been launched, with support from the United States Department of Labor and the ILO, and was expected to be expanded in 2015. She also mentioned that the competent authorities on research into occupational safety and health matters were tripartite in nature. In conclusion, the Government expected to be able to undertake the necessary reforms to fully comply with the Convention and would provide a detailed report to the Committee of Experts in 2016.

The Employer members recognized that any accident in mining, whether fatal or non-fatal, was unacceptable. They observed, however, that much had been done by the Government, together with the social partners, to improve the situation and hence meet the requirements set out in the Convention. A number of areas had been identified in which implementing regulations needed to be perfected,

since they were not in full compliance with the Convention. To that end, they noted the Government's extensive information on programmes and measures under way to build capacity in the area of occupational safety and health. The Government had also showed clear commitment to taking the necessary steps with the technical assistance it already had requested from the ILO. They therefore thought that the Government should finish its work and provide a report to the Committee of Experts in 2016, allowing the progress made to be examined further.

The Worker members indicated that, even though discussions on this case had been less contentious than on others, they were nevertheless extremely important given that the work in question was hard and invisible, exposing workers to considerable risks to their safety and health. Although the Convention was a technical one, it contributed to achieving the objectives of the ILO Constitution to the effect that no country should impose inhuman working conditions in any sector of activity. In that regard, it should be recalled that the issues of trade union freedom, collective bargaining and effective social dialogue were key at both national and local levels. In view of the increasing number of fatal and non-fatal accidents in the mining industry, the Government should formulate stronger policies in the area of occupational accidents with the aim of achieving zero deaths and should fully comply with its obligations under the Convention. To that end, the Government should adopt a framework law on occupational safety and health; ensure that employers prepared and updated plans of workings; require mines to be designed and equipped so as to ensure their safe operation and a healthy working environment; establish a system for recording the names and probable locations of all those working underground; organize regular inspection of all employers, large and small; and ensure that workers and their representatives were involved in investigations and inspections. In addition, the Government should provide further information on the measures taken or planned to respond to the increase in occupational accidents and on the application of the Convention in practice. It should also avail itself of ILO technical assistance.

Conclusions

The Committee took note of the oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to: the need to have a comprehensive legal framework to give effect to all provisions of the Convention; the increase in the number of work accidents in the mining industry; the effective application of penalties for violations related to occupational safety and health; the need to take measures to ensure that workers and their representatives have the right to report accidents, dangerous occurrences and hazards to the employer and to the competent authority; the need to ensure that workers' safety and health representatives receive notice of accidents and dangerous occurrences; and the need to ensure that employers in charge of mines be responsible for the preparation of appropriate plans of workings of the mines, for the establishment of a recording system of persons underground and their probable location, and for ensuring that the mine is designed, constructed and provided with electrical, mechanical and other equipment to provide conditions for safe operation and a healthy working environment.

The Committee noted the information provided by the Government representative as well as the Government's indication that some provisions of the Convention had not been incorporated into national laws or regulations. The Government explained that it planned to undertake consultations for the review of the national regulations and standards relating to occupational safety and health in the mining sector. It indicated that provisions would be integrated into

draft legislation, currently before Congress, relating to the responsibility of employers to ensure that mines are designed and constructed safely, and also their responsibility to provide conditions of safe operation and a healthy working environment, as well as to the right of the workers and their representatives to report accidents. The Government also indicated that it intended to develop a joint memorandum of agreement between the Department of Labour and Employment and the Department of Environment and Natural Resources for closer coordination in order to strengthen safety and health in mines. This joint memorandum of agreement would include action to restore the accreditation system for service contractors in mines in order to ensure the coordination of two or more employers at a mine in implementing measures concerning the safety and health of workers. The Government further indicated that it would continue to work with the Mining Industry Tripartite Council and pursue its efforts to develop the capacity of the social partners with respect to occupational safety and health. The Committee also noted the Government's request for technical assistance from the ILO.

Taking into account the discussion, the Committee requested the Government to:

- provide further information on the measures taken to ensure that the employer in charge of the mine prepares appropriate plans of workings before the start of the operation;
- adopt legislative provisions that impose responsibility upon employers to ensure that the mine is designed and constructed safely and provided with electrical, mechanical and other equipment, including communication systems;
- provide information on the manner in which probable location of the workers in the mine is recorded;
- indicate measures taken to ensure that whenever two or more employers undertake activities at the same mine, the employer in charge of the mine coordinates the implementation of all measures concerning the safety and health of workers, and is held primarily responsible for the safety of the operations;
- indicate measures undertaken or envisaged to ensure that workers and their representatives have the right to report accidents, dangerous occurrences and hazards to the employer and to the competent authority;
- provide information on measures taken or planned to respond to the increase in work accidents in the mining industry;
- enact as soon as possible the pending legislative measure which proposes to impose stiffer penalties and criminalization of the violation of occupational safety and health standards; and
- increase the capacity and involvement of social partners, particularly trade union representatives, in ensuring compliance with occupational safety and health standards in the mining industry, including in the conduct of safety and health inspection.

The Committee further requested the ILO to extend technical assistance and capacity building to the Government of the Philippines and its social partners towards effective observance of the safety and health standards in the mining industry without regard to the size of operation of the employer.

The Government representative took due note of the conclusions and recommendations of the Committee. The Government was committed to carry out the necessary measures and would provide the requested detailed information to the Committee of Experts in 2016, together with a progress report on the actions undertaken to bring the legislation into conformity with the provisions of the Convention.

Worst Forms of Child Labour Convention, 1999 (No. 182)

ALBANIA (ratification: 2001)

A Government representative referred to the study conducted in 2014 on street children which had identified 2,527 children living on the streets. Many of them were under 18 years of age and were forced to work by their families. They were not in school and were engaged in activities such as begging on a seasonal and temporary basis. They were often subject to violence and exploitation. The data collected through the study had been used to formulate an action plan to protect children from all forms of abuses. The plan adopted a holistic approach covering both children and their families. The activities under this plan were twofold. The first pillar was training on child labour provided to both public and civil society organizations at the municipal level. The second set of activities was based on a long-term approach to ensure continuity, which included an awareness-raising campaign. At the national level, an inter-ministerial agreement had been concluded and a regional action plan adopted by virtue of the agreement under the coordination the State Agency for Child Rights Protection. The implementation of the regional action plan had started in May 2014 under the primary responsibility of the Child Protection Unit, in cooperation with various government agencies, as well as social workers and non-governmental organizations. The activities had resulted, for instance, in 108 children and 44 families in Tirana no longer living on the streets. Improvements had also been observed in other areas, including: the number of children and/or their families brought under protection by social care services, the number of children newly enrolled in schools, and the number of families trained for employment and offered a job. She added that only a limited number of institutions were involved in the issue of sexual abuse of children, and specialized services were lacking. In this context, the Ministry of Labour, Social Affairs and Equal Opportunities had implemented a programme to protect children from abuse and exploitation in collaboration with UNICEF. Under this programme, various stakeholders, including social services, teachers, medical professionals, the General Prosecutor's Office, had jointly established a platform for specialized care. Particular attention had been paid to the Roma community, with training to identify child abuse being provided to that community.

The Worker members deeply regretted that the Government had prevented Albanian worker representatives from being present at the discussion. The International Trade Union Confederation (ITUC) had filed a complaint on this subject on 2 June 2015 under article 3(2) and (5) of the ILO Constitution. Finally, a delegate representing Albanian workers had been able to attend the discussion. In the absence of other Albanian worker representatives, the following was based on information that they had transmitted. Member States that had ratified the Convention were required to implement programmes of action aimed at eliminating the worst forms of child labour and to take all the necessary measures to ensure the effective implementation and compliance with the Convention. In 1999, the Government had signed a Memorandum of Understanding with the ILO International Programme on the Elimination of Child Labour (ILO-IPEC) in relation to the prevention of child labour and the rehabilitation of children who were in intolerable situations. Despite the Committee of Experts making five observations and five direct requests since the ratification of the Convention in 2001, the issue had still not been resolved. Albania continued to be a country of origin of child trafficking. In 2012, the United Nations Committee on the Rights of the Child had stated that it was deeply concerned at the high number of children exposed to economic exploitation, and

specifically to hazardous activities. The issue of the worst forms of child labour included trafficking, which was international in scope, forced begging, and also affected the manufacturing industry. The problem was particularly prevalent in certain communities, such as the Roma and Egyptian populations, where children had great difficulty in gaining access to education. Approximately 50,000 children were affected. However, the Government had made efforts, as noted by the Committee of Experts. A national strategy and a plan of action against the trafficking of children and to protect child victims of trafficking had been implemented between 2005 and 2007. An Act adopted in April 2014 prohibited the sale and trafficking of children and criminalized the involvement of children under the age of 18 in the use, production and trafficking of drugs. The Government had also established bodies to work with labour inspection to enforce sanctions more effectively. Despite the fact that the trafficking of children for economic or sexual exploitation was prohibited by law, in practice it was still a serious problem and the Government's response was not satisfactory. The Worker members emphasized the following points: (i) the worrying absence of accurate information on the number, sex and age of child victims of trafficking for sexual exploitation; (ii) the two minority communities mainly affected (Roma and Egyptian children); and (iii) the problems of the Albanian education system, which did not allow children from those communities to improve their educational level, as well as the dilapidated state of school buildings. School fees were also a major obstacle for the access of Roma and Egyptian children to education and, despite the plans that had been established by the Government, social services for children were inadequate. Even though efforts had been made, inspection services were inadequate and were not yet capable of detecting the worst forms of child labour, which made the legislation unenforceable, as recently noted by the United Nations Committee on the Rights of the Child. In order to ensure prohibition and elimination of the worst forms of child labour, the Government needed to take strong measures without delay.

The Employer members recalled that the Convention provided that a ratifying country must take immediate and effective measures as a matter of urgency. With respect to Albania, they observed that in its observations published in 2011 and 2015, the Committee of Experts had noted the measures taken by the Government, such as the National Anti-Trafficking Strategy, the standard operating procedures on the identification and referral of victims and potential victims of trafficking, and the Child Protection Unit that collaborated with the labour inspectorate to identify children at risk of child labour. The Committee of Experts had also noted with satisfaction the adoption of Act No. 10347 of 11 April 2014 which prohibited the sale and trafficking of children and their involvement in drug trafficking. The Penal Code had also been amended to increase penalties for crimes against children, including trafficking, and to criminalize possession of child pornography. The Employer members also noted that, in its findings of 2013 on the worst forms of child labour, the Department of Labor of the United States had noted "significant advancement", referring to effective labour inspection, prosecution and the funding of social programmes. With the information on all these measures taken, the Employer members considered that the case of Albania was one of progress. They observed that the Committee of Experts had also noted in its observations other measures, including the educational efforts for children of the Roma community, support for families and children living in the streets, the Action Plan for Children and the Action Plan for the Decade of Roma Inclusion which aimed at increasing the participation of Roma children in education. While the situation was not perfect, as the Government

itself recognized, and there remained concerns with respect to child trafficking, the Government had taken immediate and effective steps and treated issues related to child labour as a matter of urgency, as required by the Convention.

The Worker member of Albania indicated that the Government had introduced a wide range of laws and regulations, including laws on safety and health at work, anti-discrimination and education and vocational training; and government decisions on labour inspection, a list of professions in difficult conditions, dangerous work, the integration of abused and trafficked children and state social services. In Albania, 10 per cent of the population lived in poverty, which had led to an increasing number of children being at risk of the denial of their fundamental rights. Children from the Roma and Egyptian communities continued to suffer from exclusion and segregation in schools. Violence against children was an issue of concern in Albania. Many adults believed that physical and psychological pressure had positive effects on children, which lead children to believe that violence was necessary at home and in school. Albania was a country of origin of child trafficking to western European countries, especially for forced labour and begging. Although the Government was not fully in compliance with the minimum standards for the elimination of child trafficking, significant efforts had been made recently. Child labour was and would remain a priority for the Confederation of Trade Unions of Albania (KSSH). He expressed his concern that, according to KSSH studies, about 50,000 children in the country aged between 7 and 17 were working in various economic sectors. He considered that the high rate of child labour was the source of poverty in the country, associated with poor education and the lack of administrative and legislative reform. He regretted that little had been done to prevent child labour and believed that public awareness raising was important with the involvement of trade unions in all sectors. He also expressed concern at the issue of the lack of credibility of statistical information, as he observed that the figures were manipulated in accordance with the intentions of the body issuing the information.

The Worker member of Italy, based on the information provided by the Union of Independent Trade Unions of Albania (BSPSH), referred to studies reporting that Albanian children were engaged primarily in agriculture and domestic work, as well as forced begging. Despite the legislative, institutional and policy frameworks adopted, child trafficking persisted, especially for children from the Roma and Egyptian communities, who accounted for the majority of street children. Primary and secondary schooling was compulsory, but the associated costs often prevented poor families from sending their children to school, especially in the case of girls. Roma children faced additional difficulties, as they lacked civil registration and had to work to help their families. She emphasized the need to further strengthen institutional structures and monitoring mechanisms for the implementation of children's rights at the national and regional levels so as to develop sound policies and programmes for children aimed at protection and prevention from child labour, education and vocational training, and social reintegration focused on family empowerment. Labour inspection needed to be strengthened and adequately supported by relevant expertise with a view to ensuring that the relevant legislation was enforced and violations were penalized. Labour market policies needed to be implemented to promote youth employment and the formalization of the informal economy. The social partners could make a valuable contribution in this regard. She called on the Government to continue to request ILO technical assistance and to consider ratifying the Domestic Workers Conven-

tion, 2011 (No. 189), as many children were engaged in domestic work.

The Worker member of Serbia said that the situation of child labour in Albania, as described by the Committee of Experts, might exist in any other country in the region, differing only in terms of the level of the problem. It was rooted in the traditional culture whereby child labour within a farming family had been normal. This meant that technologically underdeveloped farming needed more hands to work for the family. After the privatization process in the 1990s in socialist States, pauperization had hit families. With both parents unemployed, children, especially those from highly underdeveloped parts of the country, would seek to resolve their problems through informal activities, including criminal activities. Minorities were the most vulnerable, in particular the Roma. He outlined two negative elements as the root of this situation. First, children were discouraged from pursuing education or seeking decent formal jobs as they were misled into believing that they did not have access to them. Secondly, the minorities lured youngsters in other countries into joining them, and subjected them to blackmail. Those minorities were mostly the organizers of the transfer of young persons from the Balkans to Europe. Sometimes they were relatives, who kept the young persons under their influence. He added that relevant social services should be established in receiving countries.

The Government representative indicated that she had noted all the suggestions and comments made during the discussion. Fourteen years after the ratification of the Convention, the Government considered that progress was being made and that the country was on the right path, with the legal framework complete, institutional frameworks set up and measures being taken for their implementation. Field structures had recently been established and monitoring mechanisms were in place. She affirmed that there were still problems in Albania with regard to child labour, but there was a strong political will to enforce the legislation in order to eradicate the worst forms of child labour.

The Worker members emphasized the importance of the issue of the worst forms of child labour, which was an essential problem requiring commitment from everyone. They emphasized that additional measures needed to be taken by the Government as a matter of urgency. The main difficulties previously highlighted were: deficiencies in the data collected and made public by the authorities; the fact that minorities were particularly affected by child trafficking; the situation of the Albanian education system and the fact that it was impossible for many Roma and Egyptian children to benefit from it; and the weakness of the inspection services. For these reasons, the Worker members suggested that the Government intensify its efforts and take the following measures urgently: (i) improve the monitoring and statistical services to make detailed information available on children and to analyse in depth international child trafficking, and particularly the reasons driving the emigration of unaccompanied minors; (ii) improve access to civil registers to avoid certain sectors of the population being outside Government action; (iii) remove obstacles to increase the participation by Roma and Egyptian children in the education system, particularly by abolishing costs related to education and improving infrastructure, and combating forced begging in collaboration with UNICEF; and (iv) strengthen inspection services and provide labour inspectors with the necessary means to discharge their duties. In this regard, labour inspectors needed to be provided with expertise on child labour, and especially on detection of child labour. These measures should cover child trafficking at both the national and international levels so as to ensure that crimes were prosecuted effectively and deterrent sanc-

tions imposed in practice. The Worker members requested further collaboration with ILO-IPEC and asked for an ILO technical assistance mission to be organized. The Government's acceptance of such a mission would indicate a genuine will to move towards the improved application of the Convention. Noting the suggestion by the Employer members that this should be considered a case of progress, the Worker members recalled that a case could only be qualified as one of progress when the Committee of Experts noted that there had been progress on a particular point. That did not mean that the country was in compliance with all of the provisions of the Convention, nor did it exclude follow-up on certain issues. This was the reason why the Worker members had proposed their measures noted above.

The Employer members noted that only the Government of Albania had taken the floor, and that no other Employer members had made statements. They indicated that, while there were reasons to remain concerned with respect to child labour and child trafficking in Albania, similar situations, though their extent might vary, existed in many of the countries that had ratified the Convention. Considering that the Government was taking effective measures in a speedy manner, they were of the view this was a case of progress. They then highlighted further measures which they would like to see implemented: increasing the number of labour inspectors trained to deal with matters relating to child trafficking and the number of police investigations in this respect; more effective functioning of the Child Protection Unit; and more effective measures with regard to the Roma community.

Conclusions

The Committee took note of the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the prevalence of the trafficking of children for sexual exploitation from Albania, which continued to be a source country, as well as the high number of street children and Roma children with low levels of education involved in the worst forms of child labour including trafficking, begging and work on the streets.

The Committee noted the Government's statement outlining laws and policies put in place to combat the sale and trafficking of children for sexual exploitation, as well as the action programmes that were being undertaken to remove children from such situations. The Committee further noted the Government's indication that it was carrying out initiatives to raise awareness amongst various stakeholders to combat the sexual exploitation of children and trafficking for that purpose. The Committee also noted the Government's statement that it had undertaken various programmatic measures to identify and protect children from the Roma and Egyptian communities from the worst forms of child labour, including begging and street work. This included the implementation of an inter-ministerial initiative in 2014 entitled "Support for families and children living on the street", which had removed a certain number of children from the street and provided for their social integration. In addition, and given the low school attendance rates of Roma children, the Government had adopted the Action Plan for Children and the Action Plan for the Decade of Roma Inclusion which aimed to increase the attendance of Roma children in compulsory education. Lastly, the Committee noted the Government's statement that while there were implementation issues in Albania, its legislative framework was in line with the Convention and the political will of the Government clearly existed to address the implementation gaps.

Taking into account the discussion that took place, the Committee urged the Government to:

- continue removing barriers to greater participation of Roma and Egyptian children in the education system,

including access to free basic education and access to education in their own language;

- continue taking urgent measures to stop trafficking, the practice of forced begging and work on the streets, in conjunction with UNICEF, and report on these measures;
- increase the number of labour inspectors as well as the resources allocated to them; train inspectors on child labour under national and international law and on methods to effectively monitor and enforce these laws;
- increase the number of police investigators for child rights;
- effectively enforce anti-trafficking legislation, take measures for effective implementation in practice and provide information on the progress to the Committee of Experts made in this regard, including on the number of investigations, prosecutions, convictions and penal sanctions applied; and
- re-initiate collaboration with ILO-IPEC, which ended on 31 December 2010.

The Government representative indicated that the Government would take the necessary measures to address the issues raised by the Committee.

CAMBODIA (ratification: 2006)

The Government provided the following written information.

With regard to the issue of the sale and trafficking of children, the Government indicates that it has been working very hard to prevent and eliminate this phenomenon. As a result, 95 actions have been taken in 2014 in all 25 provinces by the National Police and Royal Armed Forces. 127 suspects have been sent to the Municipal Court of First Instance. As reported by the National Committee for Counter Trafficking (NCCT) in 2014, there are 412 people that have been saved from human trafficking, of whom 67 persons are aged below 15 years of age and 36 persons are aged between 15 and 18 years of age. These people have been transferred to the Department of Social Affairs, Veterans and Youth Rehabilitation, organizations and their families for safeguard. In addition, the Government has continued strengthening effective law enforcement and taking measures to ensure the robust prosecution of offenders. In this regard, the Action Plan of the NCCT 2014–18 was adopted in early 2015. This Action Plan is a significant roadmap to contribute to the eradication of all forms of child labour and exploitation of children under its four key strategies namely: (1) strengthening law, policy and enhancing cooperation; (2) enhancing prevention; (3) enhancing the criminal justice response to human trafficking; and (4) protecting victims through quality support appropriate to their gender and age. Regarding the issue of compulsory labour exacted in drug rehabilitation centres, the Government indicates that children under the ages of 18 years are not permitted to be in drug rehabilitation centres. Instead of being detained in drug rehabilitation centres, they are sent to different organizations or orphanages for their rehabilitation in which they are not subjected to the obligation to perform work. Finally, the Government indicates that it has been fully engaged in improving the national education system through reforms by the Ministry of Education, Youth and Sports (MoEYS) in accordance with the National Strategic Development Plan 2014–18. MoEYS has been implementing the 3rd Education Strategic Plan 2014–18 in which the numbers of schools and students have increased gradually. The 2014–15 annual report of MoEYS indicates that 31 out of 72 education policies have been completely implemented, 61.4 per cent out of 66 per cent of the target of all forms of educational services provided for children aged 5 has been achieved, the drop-out rate at primary school level has been reduced from 10.5 per cent

in 2013–14 to 8.3 per cent in 2014–15, the drop-out rate at secondary school level has fallen from 21.2 per cent in 2012–13 to 21 per cent in 2013–14, and the real enrolment rate at the primary school level has risen from 95.3 per cent in 2013–14 to 99.4 per cent in 2014–15.

In addition, before the Committee, a **Government representative** referred to the recent observation by the Committee of Experts. First, concerning the application of Articles 3(a), 7(1) and 7(2)(a) and (b) of the Convention, he said that the NCCT had been actively implementing activities based on the national Action Plan and its implementation together with the Village/Commune Safety Policy. According to the 2014 annual report of the Ministry of Social Affairs, Veterans and Youth Rehabilitation, seven provincial departments of the Ministry in Phnom Penh, Pursat, Kampot, Kratie, Siem Reap, Svay Reang and Banteay Mean Chey had successfully rescued victims from 346 cases of human trafficking (including child trafficking), 154 of whom had been provided with counselling, education, rehabilitation and vocational skills training. Child labour prevention activities had continued to remove children from the worst forms of child labour and ensure support services, including education, vocational training and reintegration and cooperation had continued with civil society organizations to combat trafficking of women and children and to promote decent work for children. As a result, in 2014, the Ministry of Labour and Vocational Training had removed 12,515 children from the worst forms of child labour and prevented 8,106 children from entering child labour by supporting them and providing them with non-formal education and vocational training. Furthermore, the National Multi-Sectoral Orphans and Vulnerable Children Task Force (NOVCTF) had provided care support at home to orphans, vulnerable children, children living with HIV/AIDS through social counselling and sensitizing children at school for care and treatment, and had provided food, shelter and seed capital for family businesses in target provinces. Second, with respect to the application of Article 3(a) of the Convention, he noted that the Law on Juvenile Justice was still in the drafting stage and the protection and safeguard of minors under detention therefore remained in accordance with Article 67 of the Law on Prisons of 21 November 2011. Third, concerning the application of article 7(2)(a) of the Convention, he explained that, with government support, schools at all educational levels had been built every year and the number of children in school had gradually increased. Simultaneously, private and public schools had been built both in urban and rural areas to provide better access to education. The Sub-national Committee on Combating Child Labour and Other Forms of Exploitation of Children and Women had also been preparing a National Plan of Action on Child Labour Reduction and Elimination of the Worst Forms of Child Labour Phase II (2014–18). In conclusion, he affirmed his Government's commitment to providing better protection and safeguards to all children in the country and to preventing them from all forms of child labour and child trafficking. The Cambodian National Council for Children (CNCC) was establishing a National Child Protection System to improve networking among all government institutions. Action plans and policies would be adopted to promote child protection and child development throughout the country.

The Worker members noted that Cambodia was still in a situation of serious violation of various fundamental labour Conventions and invited the Government to respond to concerns relating to all of the Conventions indicated by the Committee of Experts. They expressed serious concern at the trafficking of children for sexual and labour exploitation, despite the adoption of a National Plan of Action on Trafficking and Sexual Exploitation of Chil-

dren. They noted that children from poor families were extremely vulnerable to forced labour, which was particularly prevalent in the forms of domestic servitude and forced begging. Victims of trafficking in children for sex in Cambodia, which remained extremely widespread, included young Cambodian girls, others from ethnic minorities in Viet Nam, and women and children from Viet Nam who were victims of debt bondage. Little action was being taken to bring the perpetrators to justice, protect victims or prevent such crimes. Despite existing legislation, the number of cases of trafficking that had been successfully investigated by the Government, leading to convictions, remained small and had even fallen. This was due to insufficient understanding of the phenomenon of trafficking for labour exploitation, difficulties in gathering evidence and inadequate efforts to protect victims. There had been numerous reports of corrupt officials in Cambodia, Thailand and Malaysia collaborating with labour recruiters to transport victims of trafficking across borders. There were other reports of children under 18 years of age being detained in drug rehabilitation centres operating on the edge of the law after operations to “clean up the streets”, even if they were not drug addicts, who were subjected to physical and psychological abuse. Those centres infringed on a whole series of relevant international humanitarian law standards, including the Forced Labour Convention, 1930 (No. 29), and Convention No. 182. The Worker members emphasized that, according to a report from the United States Department of Labor, half of the children working in Cambodia were employed in agriculture (particularly harvesting sugar cane, a product largely destined for foreign markets), forestry and fishing. Many of these children performed dangerous activities. There were also cases of hazardous work in salt pans, construction and fisheries. This was also the case in the clothing sector, where young girls worked full time, often using dangerous machinery and sometimes even at night, with false identity papers as they were under age. This was due to poverty and the need to contribute to family income, as wages in Cambodia were often too low to meet essential needs. Cambodia was facing a series of challenges in respecting, promoting and realizing certain fundamental workers' rights, including the elimination of the worst forms of child labour. The Government could and should do more, particularly in terms of putting an end to corruption, which seriously undermined any effort to achieve sustainable solutions. The Worker members expressed their concern at the existence of the worst forms of child labour in the production of goods that endorsed the global supply chain. The Government must ensure full respect for the law, and it was also the responsibility of enterprises to identify and resolve problems promptly.

The Employer members said that the Convention was fundamental because the abuse and exploitation of anyone, particularly children, could not be justified at any level. They could not accept any practice that was in violation of the principles and requirements of the Convention and, in that light, viewed the observation of the Committee of Experts published in 2015 with great concern, particularly because little had changed to alleviate the same concerns expressed by the Committee in 2012. They recalled Articles 1, 3 and 7 of the Convention, the latter of which set out two requirements: that ratifying Governments identified abusive child labour and, as a corollary, that they realized the right to children's education to ensure decent work. They further recalled certain points in the observation of the Committee of Experts in 2012, in which it had noted that the provisions of the Labour Code of 1997 prohibiting children under 18 years from engaging in hazardous work did not reconcile with findings that children as young as 6 or 7 years of age were

engaged in domestic work for 12 to 16 hours a day, seven days a week. The Labour Code appeared to only apply to those with an employment relationship and failed to cover many areas of informal sector work where the most serious child labour problems existed. Furthermore, despite the Government's information concerning efforts to increase arrests, serious corruption was weakening the efforts that were being made. The Government had provided information concerning an inter-ministerial mechanism to combat the trafficking of women and children, as well as the initiatives by a large number of governmental departments to address trafficking issues. Nevertheless, the Committee of Experts had expressed concern at the low number of actual prosecutions and convictions of traffickers and had urged the Government to take the necessary measures to ensure that thorough investigations and robust prosecutions of offenders were carried out. Turning to the current observation of the Committee of Experts, they noted that, according to recent figures, there had been no meaningful improvement concerning the success rate of children saved from trafficking. The implementation of anti-trafficking legislation remained largely ineffective and trafficking of children, particularly for the purpose of sexual exploitation, was continuing. Additional information was needed on the nature and extent of trafficking in the country, which required consistent and standardized approaches to victim identification, data collection and analysis. Moreover, although the Government had taken measures to coordinate national efforts to combat trafficking, further work was needed to convert those efforts and policies into concrete and financially supported action. With respect to concerns about the involuntary admission of persons to drug treatment centres, the Government had provided information concerning different organizations or orphanages that were responsible for rehabilitating detained children, but had not provided assurances that those children were protected from mistreatment. Concerning access to free basic education, the Government had recently provided information that drop-out rates had improved slightly and enrolment at primary school level was nearing 100 per cent. However, it had not addressed the main concerns with respect to the completion of a full programme of education. The Government should be asked to implement new strategies that would produce meaningful results as a matter of urgency.

An observer representing the International Trade Union Confederation (ITUC) welcomed the Government's policy and the master plan aimed at eliminating the worst forms of child labour by 2015, but said that there was still much to be done. He recalled the 2012 joint survey by the Cambodian Government and the ILO which provided statistics of child workers and those in hazardous jobs. Regarding the worst forms of child labour, he raised three points. First, concerning sex and drug trafficking, young girls had been victimized, forced to work in brothels, and even raped and tortured. The number of arrests of child traffickers reported by the Government did not include the major offenders. He emphasized that child trafficking was well organized and that a strong commitment, manpower and prosecution was required from the Government to combat the major offenders. Second, children were made to work long hours and under hazardous conditions in the construction, agriculture, informal and SME sectors, and received limited attention from the Government. In this regard, the sugar industry was the worst sector of child labour in Cambodia, as children aged 12–17 years were driven by poverty to quit schooling and were made to do heavy work for US\$3 a day. Third, because the law restricted employment to those aged 15 years and above, underage workers were found in the garment sectors using fake identification. He referred to the Human Rights Watch Report of 2015, which had found that law en-

forcement was weakened by the lack of access of children to education, that children were paid less than the minimum wage and that they were instructed to hide from inspectors.

The Employer member of Cambodia emphasized that instances of child labour, including its worst forms, were serious concerns to the Employer members and required the highest attention of all of the tripartite partners in the country, including relevant authorities, as well as the civil society. Gross abuses of children were not acceptable, whether or not they took place in industries. She provided information on several shared efforts with ILO–IPEC to eliminate child labour, including projects to eliminate the worst forms of child labour. The first phase of the project had ended in 2008 and had aimed to strengthen and mobilize capacity, while the second phase extended to 2012. She highlighted the key achievements of the projects, including the development of tools and codes of conduct and of focal points which were provided with tools and education to eliminate child labour. The second phase of the project had continued to focus on building capacity, and had developed a guidebook and awareness-raising packages to be used by employers and workers to disseminate information in industries, including the garment sector. While there was an ongoing engagement between employers and the ILO to combat child labour in Cambodia, further engagement was needed from the tripartite constituents to achieve the full elimination of the worst forms of child labour. The Government needed to move from enacting laws to the enforcement of those laws and should be encouraged to intensify its efforts to eliminate child labour in all its forms. Education and access were essential in this respect, but those reforms would take time before having positive results. She highlighted recent initiatives with employers, including transition measures from primary to secondary school. Other important initiatives included the improvement of the quality of teaching methods, access to education and curriculum design. Any change in the education system would have a marked impact that needed to be managed carefully and strategically. To ensure that young people graduated with relevant labour market tools, the Minister of Education was including vocational training schemes in secondary schools to ensure a more practical education. In the field of education, employers were consulted at all levels and significant positive efforts were under way, but would still take time. It was essential to continue to intensify measures to identify those children most at risk of being trafficked or moved into the worst forms of child labour, and the Employer members were ready to assist. The Cambodian national employment agency had taken innovative steps, working closely with private employment agencies, to disseminate information. There were several opportunities for employers to play a more active role. The elimination of child labour, including its worst forms, needed to be a priority for all constituents, and governments also needed to ensure that the necessary resources were allocated to ensure effective law enforcement and the importance of sanctions.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway, Republic of Moldova and Armenia, said that the EU sought to promote the universal ratification and implementation of the eight fundamental ILO Conventions as part of its human rights strategy. The EU called on all countries to protect and promote all human rights and fundamental freedoms to which their people were entitled. She noted that the Committee of Experts encouraged the Government to strengthen its efforts to combat the sale and trafficking of children through the effective implementation of its anti-

trafficking legislation, particularly by enhancing the capacity of law enforcement agencies, including their financial capacity. The EU was concerned by the 2011 concluding observations of the Committee on the Rights of the Child, where the mistreatment of persons in drug retention centres apparently extended to children, and urged the Government to indicate what safeguards existed, in both law and in practice, to ensure that children below the age of 18 years detained in drug rehabilitation centres, who had not been convicted by a court of law, were not subjected to the obligation to perform work. According to an ILO-IPEC survey, the Cambodia Labour Force and Labour Survey 2012, only 3 million out of the 4 million (79 per cent) children aged 5 to 17 years in the country attended school. The EU urged the Government to continue its efforts to reinforce the education system, notably by continuing to increase its financial allocation to the sector and by prioritizing the implementation of its policies to place equitable access, the retention of children in formal education and the quality of education at the centre of its work. Acknowledging the strong leadership of the Government in 2014 in the areas of examination reform, school inspection and teacher policy, which provided a basis for improvement in the sector, she called on the Government to cooperate with the ILO and to respond to the requests of the Committee of Experts and expressed its continued readiness to cooperate with the Government to promote development and the full enjoyment of all human rights.

The Government member of Switzerland supported the statement made by the EU. He expressed great concern about child labour, specifically the sale and trafficking of children. He supported the observations of the Committee of Experts on this issue and said that it was necessary to conduct in-depth investigations. He stressed that all governments should prioritize the education of children. According to the data provided by ILO-IPEC and UNICEF, only around 75 per cent of the children in Cambodia were in school. He encouraged Cambodia to continue its efforts to increase school attendance rates.

The Worker member of Japan referred to statistics provided by the Cambodia Labour Force and Child Labour Survey 2012 and said that those figures were already enough to describe how bad the situation of child labour was in the country; nevertheless, it did not reflect the reality. Thousands of girls and boys were trafficked from, through and within the country every year for the purpose of sexual exploitation and forced labour. Furthermore, over a million children were engaged in child labour, many of them in the worst forms of child labour, including in small enterprises and informal workplaces. Labour inspection, corrective action and accountability were crucial to combating child labour. In 2014, the Cambodian Labour Ministry had taken some positive steps to revamp its monitoring, creating integrated labour inspectorate teams to inspect factories. Those steps were encouraging and overdue, but the Ministry's efforts continued to be weak in several critical respects: tackling government corruption and collusion with factory management, the lack of transparency about its inspections and outcomes, and poor accountability. He added that the presence of democratic and independent trade unions was essential to eliminating child labour. As monitors of the implementation of the law and collective agreements in the workplace, unions had an important role in combating child labour, alongside employers, by identifying illegal child labour, removing children from the workplace and sending them to school. The high presence of government-dominated trade unions in some sectors, however, allowed the worst forms of child labour to continue unopposed. He therefore urged the Government to ensure that all trade union rights were respected in both law and prac-

tice at the earliest date, as this would have a positive impact on the eradication of the worst forms of child labour.

The Government member of Canada recalled that, while Convention No. 182 was one of the most recent ILO Conventions, it had experienced the fastest rate of ratifications and had become one of the eight fundamental Conventions. The Convention addressed egregious activities centred upon some of the most vulnerable people in our societies, namely children. His Government therefore strongly encouraged all States to fully implement its provisions. He welcomed the actions that had already been undertaken to address trafficking and sexual exploitation of children, and to prevent the engagement of children in the worst forms of child labour, by expanding access to early childhood, secondary and post-secondary education, as well as to non-formal, technical and vocational education. While noting positively the efforts focusing on marginalized and vulnerable children and girls who were at risk of dropping out of school, there were still areas where more had to be done, or information had to be provided. He urged the Government to strengthen its efforts to combat the sale and trafficking of children through the implementation of the anti-trafficking legislation, the conduct of investigations, robust prosecutions and the strengthening of law enforcement authorities. He also urged the Government to take action to increase school enrolment, and especially to reduce the drop-out rate at the secondary school level. While noting the information provided by the Government, he indicated that he looked forward to receiving information on the rules governing persons under 18 detained in drug rehabilitation centres, the possible compulsory exaction of child labour in such facilities and the lack of criminal convictions.

The Worker member of the Philippines was alarmed at the high number of out-of-school children in Cambodia. The percentage of girls not attending school was close to 12 per cent. Data also showed that a large proportion of these children (almost 60 per cent) did not attend school because they could not afford to do so or could not access a nearby school. According to UNICEF statistics for 2012, the net attendance rate at primary school, 85.2 per cent for boys and 83.4 per cent for girls, dropped significantly to 45.9 per cent for boys and 44.7 per cent for girls in secondary school. He added that the fact that children and young people were being detained in drug rehabilitation centres could not be ignored. Most persons detained were confined for three to six months, while some detentions lasted up to 18 months. According to government statistics, some 2,200 people were detained in these centres in 2012. The majority of detainees were young men between the ages of 18 and 25, although at least 10 per cent of the total population were children. Under international law, arresting and locking up homeless persons, sex workers, street children or persons with disabilities in drug rehabilitation centres was wholly unacceptable. He therefore asked that all individuals currently detained in Cambodia's drug rehabilitation centres be immediately and unconditionally released. He added that the expansion of voluntary treatment services should not be a precondition for shutting down and closing inadequate rehabilitation centres. Torture and other ill treatment in these centres were common. Cruel assaults by staff appeared routine and there had been numerous similar cases reported earlier by Human Rights Watch. Bold measures were needed, now more than ever, for a better future for these children and young people.

The Government representative indicated firstly that Mr Kung Atith was not a Cambodian delegate. While taking due note of all the constructive comments made, he observed that some of the information provided was exaggerated and failed to reflect the reality of the situation. The Government was strongly committed to providing

better protection and safeguards for children in the country, as well as to preventing their involvement in all forms of child labour and trafficking of persons. The Government continued to strengthen the effective implementation of existing legislation and would endeavour to take further measures. The CNCC was setting up the National Child Protection System in order to ensure close cooperation among government institutions. The CNCC had already been working very closely with the relevant ministries and the social partners for the purposes of promoting child protection. Moreover, despite its limited resources, the NCCT had also been working strenuously to prevent human trafficking and to bring perpetrators to justice. The Government welcomed the collaboration of the national social partners and continued to work closely with the country's development and social partners. In 2014, 20 per cent of the national budget had been allocated to education and the Government had further increased the allocated budget in 2015. He concluded by expressing his Government's readiness and commitment to cooperate with the Committee of Experts and to keep it informed of any further progress made.

The Worker members emphasized that the Government needed to be determined to taking urgent, immediate and concrete measures to resolve the serious situation of child labour in Cambodia. They were deeply troubled first and foremost with the absence of a quality national public education system. A combination of corruption and the misuse of resources was depriving many children of a quality education. Instead of education, children were exploited for sex and other worst forms of child labour by criminal networks. They emphasized that children held in drug rehabilitation centres were subjected to forced labour. Children were often forced as the result of the dire poverty of their parents and sometimes worked alongside them, as in the case of agriculture, salt production, fisheries and construction, or they worked on their own in garment factories, using fake identification documents. They therefore urged the Government to immediately end the "clean the streets" operations, immediately release all children held in drug rehabilitation centres, provide medical treatment to those children with actual drug problems by certified medical professionals, and move to close the drug centres completely. They also called for the effective enforcement of anti-trafficking legislation and the provision of information on the progress made in this regard, as well as on the number of investigations, prosecutions, convictions and penal sanctions applied. Inspections should be increased to ensure that workers under the age of 18 were not employed in hazardous work as envisaged by Convention No. 182 and Recommendation No. 190. The Government should work with trade unions and employers to identify the best methods for detecting and eradicating the worst forms of child labour in agriculture and industry. Investment was also needed in quality public education for all children. They called on the Government to accept ILO technical assistance to accomplish these goals.

The Employer members recalled that Convention No. 182 was a fundamental Convention of paramount importance and indicated that the variety of examples that had been mentioned in the discussion showed that the Convention was not being effectively implemented in Cambodia. There were two important areas of focus: the prevention and elimination of trafficking, and the education of children. Moreover, there were concerns with regard to the placement of underprivileged children in drug rehabilitation centres and their poor school attendance rates. The Government had given assurances on a number of programmes, activities and resources that had been established to prevent trafficking and prosecute offenders. The budget for the education system had been increased

significantly and there was therefore no excuse for the lack of progress. While aware that building a truly democratic society took time, more still needed to be done. The Employer members agreed with the Worker members on the need for the Government to upgrade the anti-trafficking programmes, provide evidence of significant progress to the Committee, ensure that children were not placed in drug rehabilitation centres, orphanages and other rehabilitation organizations that engaged in practices such as involuntary work, and increase its education budget so as to close the education gap at both the primary and secondary school levels. The Employer members also agreed that ILO technical assistance would be needed to ensure rapid progress.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the sale and trafficking of children for labour and sexual exploitation, compulsory labour exacted in drug rehabilitation camps, the significant number of children involved in hazardous work in agriculture, salt fields, construction, fisheries and the garment industry, as well as the high number of children not attending school, particularly secondary school.

The Committee noted the detailed information provided by the Government outlining the measures taken to combat the trafficking of children. These included measures to withdraw children under 18 from trafficking and to provide for their rehabilitation and social integration, as well as through the adoption of the Action Plan of the National Committee for Counter Trafficking 2014–18 adopted in early 2015. This National Plan of Action contributed to enhancing prevention and the criminal justice response to human trafficking, as well as protecting victims with gender- and age-appropriate support. **The Committee** also noted the Government's indication that children under the age of 18 are not detained in drug rehabilitation centres, but instead were sent to different organizations or orphanages for their rehabilitation in which they were not subjected to the obligation to perform work. Finally, the Committee noted the information provided by the Government on measures taken to implement the National Strategic Development Plan (2014–18) which aimed to expand access to early childhood, secondary and post-secondary education, as well as non-formal, technical and vocational education. As a result, the number of schools and students had increased gradually, enrolment rates at the primary school level had risen and drop-out rates at both the primary and secondary school levels had dropped. Finally, the Government had indicated that it had increased over the past two years the percentage of the national budget allocated to education.

Taking into account the discussion that took place, the Committee urged the Government to:

- in coordination with the social partners, increase its efforts and focus on preventing children from being exposed to the worst forms of child labour, including through increased labour inspections in the formal and informal economy;
- effectively enforce anti-trafficking legislation and provide information on the progress made in this regard, including on the number of investigations, prosecutions, convictions and penal sanctions applied;
- investigate and provide verifiable information on the extent to which forced labour, abuse and related practices occur in drug rehabilitation centres, including assurances that children are not detained in such centres or subject to forced labour and other related practices in any other institution in which they may be lawfully detained. In cases where children are found in such centres or similar institutions, they should be immedi-

ately released and provided with appropriate treatment; and

- within the context of the National Strategic Development Plan (2014–18), develop concrete plans to increase the retention rates of children in school, particularly at the secondary school level, and to report on the progress made.

The Committee invited the ILO to offer, and the Government of Cambodia to accept, technical assistance to accomplish the points above.

The Government representative took due note of the conclusions, which his Government would consider within the framework of the Action Plan of the National Committee of Counter Trafficking (2014–18). The data and information provided by the social partners regarding the number of children in the worst forms of labour first needed to be verified. Technical assistance from the ILO and other parties concerned would strengthen the capacity to eradicate the worst forms of child labour in Cambodia, and his Government would keep the ILO informed of progress in that regard.

CAMEROON (ratification: 2006)

A Government representative said that child labour was a priority issue and that it held a central place within society. That was the reason why Cameroon had ratified Convention No. 182. The objective of the Government was to remove children from labour, particularly in the agricultural sector, in order to teach them the skills for a job or to enrol them in school. He added that Act No. 2005/015 of 29 December 2005 to combat the trafficking and smuggling of children had been adopted and that the scope of application of this Act had been broadened in 2011 in order to also cover child smuggling. He emphasized that his country had adopted a national plan of action to eradicate child labour. To that end, the Committee to Combat Child Labour had been set up in April 2015. He considered that the statistics that had been published were exaggerated as they had been provided by unofficial channels. He insisted that Cameroon was resolutely determined to eradicate child labour. In that regard, he referred to the International Day for the Protection of Children, held on 2 June 2015, when UNICEF had ranked Cameroon among the 25 countries that had adopted policies on child protection, and had commended the adoption by Cameroon of Act No. 2005/015. In conclusion, he indicated that his country had established the objective of eradicating child labour by 2017.

The Employer members indicated that 56 per cent of children under the age of 14, which was the minimum age for work, were currently engaged in work, and up to 40 per cent of them (1.6 million children or 8 per cent of the entire population) were engaged in the worst forms of child labour. According to a study partially prepared by the Government in 2012, between 600,000 and 3 million children were victims of human trafficking, which accounted for up to 15 per cent of the entire population. Children were engaged in domestic work, forced street begging, industrial work and commercial sexual exploitation, including child pornography, both within and outside of the country. Despite the measures taken to resolve these issues, the Employer members pointed out that they were too few and too slow. Referring to the Convention, they added that the measures taken were not immediate and effective, or not adopted with urgency. In particular, Act No. 2005/015 did not prohibit the use, procuring or offering of children for illicit activities and had resulted in only a few prosecutions involving children. Additionally, the drafting of the new Child Protection Code prohibiting the use, procuring and offering of children for pornography and sexual exploitation had been in process for nine years, since 2006. They appreciated the establishment of a

committee of stakeholders, including organizations of employers and workers, to combat trafficking, as well as increased vice squad monitoring, carried out in conjunction with INTERPOL, and a constantly monitored phone line for anonymous complaints and three officers on permanent standby to investigate child labour issues. The Employer members emphasized, however, that these measures were not sufficient and urged the Government to take the immediate and effective measures it had agreed to adopt in 2002 when ratifying the Convention, and also to treat this matter with the urgency required by the Convention.

The Worker members said that they welcomed the Government's announcements concerning legislation and the targets set. It was important, however, to emphasize the urgent nature of the issue of child labour, and particularly its worst forms. The Government's reference to pressure exerted on certain individuals to collect statistical data on child labour only served to weaken its arguments. In that regard, they observed that an alarming number of children, representing almost half the population of Cameroon, suffered economic exploitation through the worst forms of child labour, which were themselves perpetuated by the lack of an effective Government response. The labour legislation set the minimum age for admission to employment at 14 years. It was estimated that the number of children under 14 engaged in work was at least 1.5 million, or around 28 per cent of children in that age group. Around 164,000 children aged between 14 and 17 were engaged in dangerous activities. Moreover, Cameroon had not reviewed its list of hazardous occupations, as required by Act No. 17 of 1969. In fact, Act No. 17 did not prohibit underwater work or work at dangerous heights, as in the case of children employed in fishing or to harvest bananas. According to UNAIDS, there were currently some 510,000 HIV/AIDS orphans in Cameroon that were particularly vulnerable to the worst forms of child labour. Often deprived of adequate family support, these children had no choice but to resort to economic activity to meet their needs. Many sectors of the economy were heavily reliant on child labour, including domestic service, street vendors, mining, agriculture, transport and construction. At least half the children in rural areas worked in agriculture, while in rural areas in the north of the country, the rate was as high as three quarters, mostly in tea and cocoa plantations, where production served international supply chains. Child domestic workers, most of whom were girls, suffered particularly difficult conditions, especially working days averaging 12 to 15 hours with no specific rest day. Although social services existed, the Government did not seem to have adopted effective policies to abolish the use of child labour in domestic work.

In the northern rural areas in the country, the tradition of sending boys to study religion in Koranic schools continued to be abused to force children to beg or perform other work, giving all their earnings to religious teachers. Children were also victims of abuse on urban streets, where they were employed in petty trades and other small-scale production activities, including by their parents. These children were particularly vulnerable to the worst forms of child labour, becoming victims of trafficking, forced labour, prostitution, begging networks, networks selling and trafficking drugs, and other forms of petty crime, as well as hazardous work. According to an ILO survey, nearly 4,000 children between 11 and 17 years of age, mainly girls, were subject to commercial sexual exploitation. The procuring or offering of children under 18 for the production of pornography or for pornographic performances and other illicit activities, including the production and trafficking of drugs, was not penalized. Despite repeated appeals by the Committee of Ex-

perts since 2006, the Government had still not adopted the Child Protection Code. Up to 3 million children were victims of human trafficking in Cameroon, which was a country of origin, destination and transit. However, the Government had not taken sufficient measures to ensure exhaustive investigations and effective prosecutions in order to bring the perpetrators to justice. The anti-trafficking legislation (Act No. 2005/015) was hardly applied, while penalties constituting an effective deterrent were not imposed in practice. For example, in 2013, it was indicated that the Government had conducted ten investigations into the trafficking of children and had assisted five children who had been victims of labour exploitation. Those investigations could hardly be considered an adequate response in view of the scale of the problem. The laxity in the application of the legislation was exacerbated by the fact that the labour legislation only applied to contractual employment relationships, while the majority of children who worked had no formal employment contract. Only 81 labour inspectors were employed by the Ministry of Labour and Social Security, which was totally inadequate for responding to the massive incidence of child labour in Cameroon. Furthermore, inspectors often did not have the necessary transport facilities or fuel to carry out their inspection tours. There were no reliable official statistics on the number of child labour violations, penalties or summonses issued, or of children assisted and provided with care following inspections. In conclusion, they emphasized the importance of the links between child labour and education. Children deprived of access to education had few alternatives to entering the job market, where they were often forced to work under hazardous conditions and were the victims of blatant exploitation. It was therefore crucial to extend access to free compulsory education in order to reduce child labour. Cameroon had fixed the age of completion of compulsory schooling at 14 years and the right to free education was provided for under Presidential Decree No. 2001/041. In practice, however, additional school fees and the cost of books and uniforms were prohibitive for many families and had been cited as the main cause of school drop-outs. Access to education was hampered by the remoteness of schools and the lack of drinking water in rural schools. In addition, at least 60 per cent of children were not registered at birth and as a result faced enormous difficulties, including with regard to education.

The Employer member of Cameroon condemned the use of child labour. However, he expressed surprise at the statistics that had been published and felt that the numbers had been exaggerated. The Government should act quickly in order to eliminate the worst forms of child labour. He recalled that his organization was a member of the Committee to Combat Child Labour, which had been mentioned by the Government representative. The Government needed to map the areas where child labour was an issue and ILO assistance would be necessary to that end.

The Worker member of Cameroon considered that the Government's efforts to combat and eliminate the worst forms of child labour were slow to bear fruit. The social fabric had begun to unravel, exposing workers to dire poverty, and that had fostered another multidimensional form of exploitation of children in domestic work, agricultural and forestry undertakings, fishing and sex work. Despite public primary education being proclaimed as free of charge, a number of snags remained, including the requirement to pay the fees of the parent's association, which represented an obstacle for many parents. He made it clear that in private education those rates were even higher, in some cases forcing parents to choose which of their children should enjoy the benefits of education. In such cases, boys were more likely to be given preference

than girls. He noted that, despite the commendable efforts of the Government, the school enrolment rate in Cameroon remained relatively low. Enrolment rates in primary education varied by region. However, the Government had a panoply of legal texts with which to combat the worst forms of child labour. Those texts however, whether laws or other instruments, could not be successful unless a far-reaching policy was put in place by the Government. He recalled the root causes of the trafficking of children and the worst forms of child labour, including poverty, the isolation of rural areas and the search for job opportunities. He emphasized that child labour was the product of various socio-cultural and economic factors. Despite the current sociopolitical context characterized by the attacks on national territorial integrity by the Boko Haram terrorist group in the north of the country and the repeated incursions in the east by other armed groups, resulting in a growth of immigrant and displaced population groups, the Government should intensify its efforts to put a definitive end to the phenomenon. In conclusion, the efforts to combat the widespread poverty of households should constitute a major priority, as that the social responsibility of families remained the surest means of ensuring the safety of children. The political commitment of the State and the application of laws and regulations could not bear fruit without the support of the families concerned.

The Government member of Latvia, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Norway, Republic of Moldova and Armenia, said that the EU was engaged in promoting the universal ratification and implementation of the eight fundamental ILO Conventions as part of its human rights strategy. The EU called on all countries to protect and promote all human rights and fundamental freedoms to which their people were entitled. The EU wished to recall the commitment made by Cameroon under the Cotonou Agreement, the framework for Cameroon's cooperation with the EU, to respect democracy, the rule of law and human rights principles, which included the abolition of the worst forms of child labour. Compliance with Convention No. 182 was essential in this respect. Noting that the Committee of Experts requested the Government to take all the necessary measures to ensure that investigations and thorough prosecutions were carried out with respect to persons engaged in the sale and trafficking of children under 18 years of age, the EU encouraged the Government to reinforce the capacity of the authorities responsible for Act No. 2005/015. Noting that the Child Protection Code had been in the process of adoption since 2006, she urged the Government to take the necessary measures for the adoption of the Code. The Government was also urged to take immediate and effective measures to ensure the implementation of the National Plan of Action for the Elimination of the Worst Forms of Child Labour (PANETEC) in the very near future, in particular by removing children from the worst forms of child labour, including hazardous types of work. The EU was concerned by the apparent increase in the numbers of children who were HIV/AIDS orphans. Expressing its solidarity with the families of the victims, the EU urged the Government to make sure that these children were not engaged in the worst forms of child labour. Noting that the Committee of Experts requested the Government to take effective and time-bound measures to protect children engaged in domestic work, she encouraged the Government to cooperate with the ILO in the context of the ILO-IPEC project on this subject. In conclusion, the EU called on the Government to cooperate with the ILO and to respond to the requests of the Committees of Experts. The EU also expressed its continued readiness to cooper-

ate with the Government to promote development and the full enjoyment of all human rights.

An observer representing Public Services International (PSI) said that the trafficking of children and the worst forms of child labour in Cameroon were the consequences of poverty and economic regression. The drastic slump of some 70 per cent in wage levels in the wake of the economic and financial crises had had a negative impact on school enrolment of children, who were therefore deprived of education. School enrolment rates were much lower than those in countries having comparable per capita income levels to Cameroon. There was a practice of not sending children to school, which was unprecedented for a country that had not suffered the effects of war and civil conflict. Boys tended to be given preferential treatment at the expense of girls. For boys, the primary school enrolment rate varied from 39 per cent to nearly 100 per cent according to the region, compared with the enrolment rate for girls, which was 26 per cent in the regions of the far north. Children belonging to minority groups, such as pygmies and nomads, and those in border areas, did not attend school. Furthermore, the allowances previously awarded to teachers working in regions other than their own had been abolished. This had caused a gradual withdrawal of teachers from the most remote regions to the big cities, resulting in turn in the closure of rural schools. To alleviate the situation, parents had begun to contribute heavily to the financing of education. In the far north, the region worst affected, 61 per cent of teachers were paid by parents. In the central region, which was the richest, the equivalent figure was 13 per cent. Inspectors, who had the task of ensuring the smooth running of schools, estimated that children now received only 25 weeks of teaching in the cities and 20 weeks in rural areas, compared with the official figure of 36 weeks. The situation was similar in secondary education, where for years the link between training programmes and job market openings had been non-existent, but that had not produced the necessary readjustment. The further a school was from a city, the worse its chances of receiving support in any form. It was therefore important to create jobs, especially decent work for adults in order to combat child labour at the same time. In conclusion, she called on the Government to take steps to abolish primary school fees; adopt a new national policy on schoolbooks; draw up an education programme that ensured access for girls; respect children's rights; provide education that was geared to the needs of the job market; ensure decent pay for teachers; fight corruption; and respect the trade union rights of all workers.

The Government member of Algeria agreed that the concrete actions described by the Government of Cameroon should be supported, such as the implementation of a national committee to combat child labour and the adoption of a national plan of action and legislative and regulatory measures. The Government's efforts to give greater visibility to the issue and effectively combat child labour should be supported as long as they strengthened the implementation of the national plan of action and assist the work of the national committee.

The Worker member of the United Kingdom emphasized that progress had been woefully slow despite the Government's commitment, at the time of ratification, to put in place and implement, as a priority, programmes for the elimination of the worst forms of child labour and for the rehabilitation of children removed from such labour. She noted that the sale and trafficking of children, as well as children involved in domestic work, was high, that sexual exploitation and the use of children for pornography was common, while a high number of HIV/AIDS orphans were without care or education. Although Act No. 2005/015 had been adopted to combat the trafficking and

smuggling of children, its implementation was regrettably low as there was little to show in the way of improvement. While noting the extremely high rate of child trafficking in the country, she called for the capacity and effectiveness of the monitoring mechanisms to be reviewed, such as the vice squad. The investigating team consisting of just three officers, who relied on reporting by members of the public by telephone which, unsurprisingly was not an impressive mechanism. Considering the scale of the problem in the country, the figures for the prosecutions conducted in 2012 of only two cases involving a total of five children, out of the estimated 600,000 children trafficked in the country appeared to be very low. Referring to the adoption of the Child Protection Code, she said that although the Government had been promising its adoption since 2006, there had still been no indication of when the Code would be adopted and whether it would meet the requirements of the Convention. She deplored the fact that, despite the PANATEC programme, which offered to provide care for vulnerable children, including HIV/AIDS orphans, the number of orphans who had little or no care and who remained vulnerable to severe exploitation through the worst forms of child labour had increased to over half a million in 2013. She therefore called for urgent legislative and other measures to be taken to make a real difference in the situation of children in Cameroon.

The Worker member of Nigeria observed that child labour was a reality for many children in Cameroon. These children not only lived on the margins of society, but had also been deprived of normal development. He indicated that he came from the northern part of Nigeria which had borders with Cameroon and had therefore witnessed the growing incidence of the exploitation and trade of children for work, such as domestic servants, sex slavery and agricultural undertakings. With the appearance of Boko Haram, these practices had significantly erupted. The average working hours of many children were between 12 and 15 without rest periods or the provision of food. As the Committee of Experts rightly observed, this deplorable situation was even worse for girls, who constituted 60 per cent of the trafficked and bonded workforce. These girls were generally used for commercial sex tourism and other forms of sexual exploitation, including the production of pornography. Turning to the practice of the exploitation of boys attending Koranic schools, where they received education which included a vocational or apprenticeship component, he said that these boys were sent out onto the streets to beg for money which they had to hand over to the instructors of their Koranic school. He indicated that child labour, including practices of human trafficking and forced labour, was also an easy manner to provide children as child fighters for Boko Haram. In conclusion, the Government must accelerate its efforts to protect the rights of the child through a system of coherent and consistent sanctions. To this effect, robust and proactive protection and rehabilitation measures were also necessary.

The Government member of Switzerland indicated that child labour, and particularly child trafficking were unacceptable. The conclusions of the Committee of Experts related to combating the sale and trafficking of children should be supported. Sufficiently dissuasive sanctions should be implemented and appropriate measures taken to raise awareness and discourage parents who were putting their children to work. With regard to the legislation, the Government should adopt the Child Protection Code in order to demonstrate strong political commitment to making progress on the issue and to effectively combat child pornography. The Government should implement PANATEC to remove children from hazardous and domestic work.

The Government representative of Canada, recognizing the considerable challenges faced by the Government, supported the specific efforts made to respond to the concerns expressed by the Committee of Experts, in particular with regard to combating the sale and trafficking of children. Children were often displaced for the purpose of labour exploitation, especially in agricultural holdings, unregulated industrial activities, construction sites and for sexual exploitation for commercial purposes. In addition, although anchored in the traditional customs of the country, the practice of domestic work made children vulnerable by exposing them to various forms of abuse. The efforts made to bring to justice those who were found guilty of the sale and trafficking of children should be welcomed, and the Government should increase and intensify its efforts in that area by adopting the Child Protection Code as soon as possible, continuing its cooperation with the ILO and responding to the requests for information contained in the observations of the Committee of Experts.

The Government representative, while thanking all speakers for their recommendations and suggestions, questioned whether some of the data that had been cited actually related to Cameroon. On average, school attendance rates were over 80 per cent, and even 95 per cent in some regions. With regard to the problems in the extreme north of the country, it should not be forgotten that the region had been devastated by the war against Boko Haram and that saving lives was the main concern there. He also queried the information regarding child labour in mines, since Cameroon did not have a mining industry. The same was true of sex tourism, which was non-existent in the country. The low number of investigations was due to the small number of complaints made. The Government would take note of the recommendations made and would provide further information. It was however important not to paint such a bleak picture. The Government recognized that a problem existed and had taken steps to address it, particularly by establishing a legal framework. It was now important to stay on course and move forward faster when the economic and social situation so permitted. His Government greatly appreciated the support offered by partners, particularly the EU, and was committed to making every effort to combat the worst forms of child labour effectively so that they could be eradicated.

The Employer members thanked the Minister of Labour for coming to the Committee to examine the application of the Convention by his country. They had carefully listened to all the explanations provided. They clarified that, contrary to what the Government representative apparently understood, nobody believed that the Government had institutionalized child labour, including its worst forms. However, the discussions in the Committee expressed frustration at the slowness with which the problems were being addressed. Referring to the wording of the Convention, they emphasized that the Government's commitment, at the time of ratification, was to take immediate action to abolish the worst forms of child labour. Hence, the slow speed with which the measures and actions were taken under the Convention was a problem. In conclusion, while they trusted that the Government had done its best to implement the Convention, they emphasized that the Government, with technical assistance from the ILO, needed to take more measures more rapidly.

The Worker members said that addressing the worst forms of child labour was difficult and thanked the Government representative for the information supplied. Without going into a discussion of figures, it should be recalled that the report of the Committee of Experts was based on a series of studies conducted jointly with the Government and that the gap between the figures quoted in the studies and the results achieved was too large, and

hence frustrating. Child labour, and especially its worst forms, were a widespread practice in the country and the legislative and practical measures taken were totally insufficient. A considerable number of children at special risk were working in the informal economy outside the scope of the national legislation and the number of labour inspections was far from adequate, without mentioning the fact that national law did not penalize the offering of children for illicit activities. Moreover, the high school fees resulted in many children dropping out of school and ending up in the job market. The Government should therefore ensure that the national legislation covered children working in the informal economy; revise the list of hazardous types of work in consultation with the social partners; promptly adopt the Child Protection Code so as to prohibit the use and offering of children for illicit activities; reduce the very large number of working children under 14 years of age by allocating the necessary resources to the labour inspectorate; ensure that school costs did not represent an obstacle to education; and, lastly, adopt, in consultation with the social partners, a national plan of action to combat child labour and the trafficking of children. To that end, the Government should consider availing itself of ILO technical assistance in order to identify the best way to coordinate the necessary measures and obtain prompt results, while bringing national law and practice into conformity with the Convention.

Conclusions

The Committee noted the detailed oral information provided by the Government representative on the issues raised by the Committee of Experts and the discussion that ensued relating to the trafficking of children for labour and sexual exploitation, the absence of legislation prohibiting the use, procuring or offering of children for pornography or for illicit activities, the large number of children involved in hazardous work and the increase in the number of children at risk of the worst forms of child labour including HIV/AIDS orphans and child domestic workers.

The Committee noted the information provided by the Government representative outlining policies and programmes put in place to combat the sale and trafficking of children, as well as hazardous work by children. This included the adoption of a comprehensive action programme, the National Plan of Action for the Elimination of the Worst Forms of Child Labour (PANETEC) that was being undertaken in collaboration with the ILO-IPEC to remove children from such situations. The Government had established, within the framework of the PANETEC, a national committee, which was responsible for the elimination of child labour and its worst forms by 2017. The Committee also noted the Government's statement that measures would be taken within the framework of the PANETEC to address the situation of HIV/AIDS orphans and child domestic workers in order to protect them from the worst forms of child labour. The Committee observed that the Government had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO.

Taking into account the discussion that took place, the Committee urged the Government to:

- urgently revise, in consultation with the social partners, the list of hazardous work established by Law No. 17 of 1969 in order to protect children under the age of 18 from engaging in dangerous activities, including working underwater and at dangerous heights;
- adopt and implement the Child Protection Code, which has been pending for almost a decade, in order to prohibit the use, procurement and offering of children for illicit activities;
- reduce the extremely high number of children below the age of 14 engaged in employment, including haz-

ardous work, through: (a) a significant increase in the number of labour inspectors; (b) a significant increase in the resources allocated to them; and (c) the amendment of the Labour Code so as to limit the exceptions to the general prohibition against children working who are 14 years and below; and

- consistent with Presidential Decree No. 2001/041, and as required by Article 7(2)(c) of the Convention, en-

sure that children have access to free basic education and are therefore less vulnerable to the worst forms of child labour.

The Committee requested the ILO to offer, and the Government of Cameroon to accept, technical assistance in order to bring its laws and practices into line with Convention No. 182.

Appendix I. Table of Reports on ratified Conventions due for 2014 and received since the last session of the CEACR (as of 13 June 2015)

(articles 22 and 35 of the Constitution)

The table published in the Report of the Committee of Experts, page 515, should be brought up to date in the following manner:

*Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.*

Bangladesh	8 reports requested
<hr/>	
· 7 reports received: Conventions Nos. 16, 22, 29, 81, 87, 105, 182	
· 1 report not received: Convention No. 149	
Brunei Darussalam	2 reports requested
<hr/>	
<i>(Paragraph 46)</i>	
· All reports received: Conventions Nos. (138), 182	
Cabo Verde	4 reports requested
<hr/>	
<i>(Paragraph 46)</i>	
· All reports received: Conventions Nos. 29, 105, 138, 182	
Central African Republic	9 reports requested
<hr/>	
· All reports received: Conventions Nos. 29, 87, 98, 105, 122, 138, 150, 169, 182	
Czech Republic	11 reports requested
<hr/>	
· All reports received: Conventions Nos. 29, 105, 108, 122, 135, 138, 150, 160, 163, 164, 182	
Egypt	23 reports requested
<hr/>	
· All reports received: Conventions Nos. 9, 22, 29, 53, 55, 56, 63, 68, 69, 71, 73, 74, 92, 105, 134, 135, 138, 144, 145, 147, 150, 166, 182	
France	11 reports requested
<hr/>	
· All reports received: Conventions Nos. 29, 63, 71, 96, 97, 105, 122, 135, 138, 182, 185	
Germany	12 reports requested
<hr/>	
<i>(Paragraph 46)</i>	
· All reports received: Conventions Nos. 8, 9, 16, 22, 81, 87, 98, 129, 135, 140, 150, 160	
Guinea	38 reports requested
<hr/>	
<i>(Paragraph 41)</i>	
· 13 reports received: Conventions Nos. 3, 81, 87, 90, 98, 100, 117, 118, 121, 132, 140, 144, 159	
· 25 reports not received: Conventions Nos. 11, 14, 16, 45, 62, 89, 94, 105, 111, 113, 115, 122, 133, 134, 135, 136, 139, 142, 143, 148, 149, 150, 151, 152, 156	
Italy	10 reports requested
<hr/>	
· All reports received: Conventions Nos. 71, 81, 87, 98, 108, 129, 135, 150, 151, 160	
Jamaica	6 reports requested
<hr/>	
· All reports received: Conventions Nos. 8, 16, 81, 87, 98, 150	
Lebanon	25 reports requested
<hr/>	
· 11 reports received: Conventions Nos. 1, 14, 30, 52, 89, 100, 106, 111, 122, 142, 172	
· 14 reports not received: Conventions Nos. 45, 81, 88, 98, 115, 120, 127, 136, 139, 148, 159, 170, 174, 176	

Liberia	5 reports requested
<ul style="list-style-type: none"> · 1 report received: Convention No. 81 · 4 reports not received: Conventions Nos. 87, 98, 108, MLC 	
Madagascar	12 reports requested
<i>(Paragraph 46)</i>	
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 13, 81, 87, 88, 98, 117, 119, 120, 127, 129, 144, 159 	
Malawi	15 reports requested
<ul style="list-style-type: none"> · 14 reports received: Conventions Nos. 29, 81, 87, 89, 98, 99, 100, 105, 107, 111, 129, 149, 158, 159 · 1 report not received: Convention No. 45 	
Malaysia - Peninsular	2 reports requested
<i>(Paragraphs 41 and 46)</i>	
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 19, 45 	
Malaysia - Sabah	1 report requested
<ul style="list-style-type: none"> · All reports received: Convention No. 97 	
Malaysia - Sarawak	2 reports requested
<i>(Paragraph 46)</i>	
<ul style="list-style-type: none"> · 1 report received: Convention No. 19 · 1 report not received: Convention No. 14 	
Mauritania	21 reports requested
<ul style="list-style-type: none"> · 13 reports received: Conventions Nos. 3, 13, 14, 29, 33, 52, 62, 87, 89, 101, 102, 122, 182 · 8 reports not received: Conventions Nos. 81, 96, 98, 100, 111, 112, 114, 138 	
Mexico	13 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 13, 45, 87, 96, 115, 120, 135, 150, 155, 159, 161, 167, 170 	
Nepal	2 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 98, 169 	
Niger	12 reports requested
<i>(Paragraph 46)</i>	
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 13, 81, 87, 98, 119, 135, 138, 148, 154, 155, 161, 187 	
Palau	1 report requested
<ul style="list-style-type: none"> · All reports received: Convention No. MLC 	
Panama	17 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 13, 30, 45, 88, 100, 107, 110, 111, 117, 119, 120, 127, 138, 159, 167, 181, MLC 	
Papua New Guinea	4 reports requested
<i>(Paragraph 46)</i>	
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 2, 45, 100, 111 	
Portugal	28 reports requested
<ul style="list-style-type: none"> · All reports received: Conventions Nos. 29, 45, 88, 100, 105, 111, 115, 117, 120, 122, 127, 135, 139, 142, 144, 148, 149, 151, 155, 158, 159, 162, 173, 175, 176, 181, 183, 184 	
Rwanda	12 reports requested
<ul style="list-style-type: none"> · 11 reports received: Conventions Nos. 14, 29, 62, 81, 100, 105, 111, 132, 135, 138, 182 · 1 report not received: Convention No. 89 	

Sao Tome and Principe 11 reports requested

(Paragraphs 42 and 46)

- 10 reports received: Conventions Nos. 88, 98, 100, 111, 135, 144, 151, 154, 159, (184)
- 1 report not received: Convention No. 155

Swaziland 7 reports requested

- All reports received: Conventions Nos. 45, 87, 96, 100, 111, 144, 160

Thailand 9 reports requested

- 8 reports received: Conventions Nos. 14, 19, 88, 100, 105, 122, 127, 159
- 1 report not received: Convention No. 182

Tunisia 13 reports requested

(Paragraph 46)

- All reports received: Conventions Nos. 13, 45, 62, 88, 100, 111, 117, 119, 120, 122, 127, 135, 159

Uganda 13 reports requested

(Paragraph 46)

- 7 reports received: Conventions Nos. 26, 29, 100, 105, 154, 159, 162
- 6 reports not received: Conventions Nos. 12, 19, 45, 111, 144, 158

Grand Total

A total of 2,251 reports (article 22) were requested,
of which 1,739 reports (77.25 per cent) were received.

A total of 132 reports (article 35) were requested,
of which 112 reports (84.85 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions
(article 22 of the Constitution)

Reports received as of 13 June 2015

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested	Reports received in time for the session of the Committee of Experts	Reports received in time for the session of the Conference
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.				
1977	1529	215 14.0%	1120 73.2%	1328 87.0%
1978	1701	251 14.7%	1289 75.7%	1391 81.7%
1979	1593	234 14.7%	1270 79.8%	1376 86.4%
1980	1581	168 10.6%	1302 82.2%	1437 90.8%
1981	1543	127 8.1%	1210 78.4%	1340 86.7%
1982	1695	332 19.4%	1382 81.4%	1493 88.0%
1983	1737	236 13.5%	1388 79.9%	1558 89.6%
1984	1669	189 11.3%	1286 77.0%	1412 84.6%
1985	1666	189 11.3%	1312 78.7%	1471 88.2%
1986	1752	207 11.8%	1388 79.2%	1529 87.3%
1987	1793	171 9.5%	1408 78.4%	1542 86.0%
1988	1636	149 9.0%	1230 75.9%	1384 84.4%
1989	1719	196 11.4%	1256 73.0%	1409 81.9%
1990	1958	192 9.8%	1409 71.9%	1639 83.7%
1991	2010	271 13.4%	1411 69.9%	1544 76.8%
1992	1824	313 17.1%	1194 65.4%	1384 75.8%
1993	1906	471 24.7%	1233 64.6%	1473 77.2%
1994	2290	370 16.1%	1573 68.7%	1879 82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.				
1995	1252	479 38.2%	824 65.8%	988 78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.				
1996	1806	362 20.5%	1145 63.3%	1413 78.2%
1997	1927	553 28.7%	1211 62.8%	1438 74.6%
1998	2036	463 22.7%	1264 62.1%	1455 71.4%
1999	2288	520 22.7%	1406 61.4%	1641 71.7%
2000	2550	740 29.0%	1798 70.5%	1952 76.6%
2001	2313	598 25.9%	1513 65.4%	1672 72.2%
2002	2368	600 25.3%	1529 64.5%	1701 71.8%
2003	2344	568 24.2%	1544 65.9%	1701 72.6%
2004	2569	659 25.6%	1645 64.0%	1852 72.1%
2005	2638	696 26.4%	1820 69.0%	2065 78.3%
2006	2586	745 28.8%	1719 66.5%	1949 75.4%
2007	2478	845 34.1%	1611 65.0%	1812 73.2%
2008	2517	811 32.2%	1768 70.2%	1962 78.0%
2009	2733	682 24.9%	1853 67.8%	2120 77.6%
2010	2745	861 31.4%	1866 67.9%	2122 77.3%
2011	2735	960 35.1%	1855 67.8%	2117 77.4%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
<p>As a result of a decision by the Governing Body (November 2009 and March 2011), reports are requested, according to certain criteria, at yearly, three-yearly or five-yearly intervals.</p>							
2012	2207	809	36.7%	1497	67.8%	1742	78.9%
2013	2176	740	34.1%	1578	72.5%	1755	80.6%
2014	2251	875	38.9%	1597	70.9%	1739	77.2%

INDEX BY COUNTRY

Afghanistan

Part One: General report, paras 125, 128

Part Two: A

Albania

Part Two: B No. 182

Algeria

Part Two: B No. 87

Angola

Part One: General report, paras 121, 127

Part Two: A

Azerbaijan

Part One: General report, paras 121, 153

Part Two: A

Bahrain

Part One: General report, paras 121, 128

Part Two: A

Bangladesh

Part Two: B No. 87

Barbados

Part One: General report, para. 127

Part Two: A

Belarus

Part Two: B No. 87

Belize

Part One: General report, paras 127, 154

Part Two: A

Bolivia, Plurinational State of

Part Two: B No. 138

Brazil

Part Two: A

Brunei Darussalam

Part Two: A

Burundi

Part One: General report, paras 124, 127, 153

Part Two: A

Cabo Verde

Part Two: A

Cambodia

Part Two: B No. 182

Cameroon

Part Two: B No. 182

Comoros

Part One: General report, paras 121, 131

Part Two: A

Congo

Part One: General report, paras 131, 153

Part Two: A

Croatia

Part One: General report, paras 127, 128

Part Two: A

Côte d'Ivoire

Part One: General report, paras 121, 153

Part Two: A

Democratic Republic of the Congo

Part One: General report, paras 121, 127, 131

Part Two: A

Djibouti

Part One: General report, para. 121

Part Two: A

Dominica

Part One: General report, paras 121, 124, 127, 154

Part Two: A

El Salvador

Part One: General report, para. 121

Part Two: A

Part Two: B No. 87

Equatorial Guinea

Part One: General report, paras 121, 124, 125, 127, 131

Part Two: A

Eritrea

Part Two: B No. 29

France - French Southern and Antarctic Territories

Part One: General report, paras 124, 127

Part Two: A

Gambia

Part One: General report, paras 124, 127, 153

Part Two: A

Germany

Part Two: A

Ghana

Part One: General report, para. 125

Part Two: A

Grenada

Part One: General report, paras 127, 131, 154

Part Two: A

Guatemala

Part Two: B No. 87

Guinea

Part One: General report, paras 121, 127, 131

Part Two: A

Guinea - Bissau

Part One: General report, paras 127, 131, 154

Part Two: A

Guyana

Part One: General report, paras 131, 154

Part Two: A

Haiti

Part One: General report, paras 121, 124, 127, 153

Part Two: A

Honduras

Part Two: B No. 81

India

Part Two: B No. 81

Iraq

Part One: General report, para. 121

Part Two: A

Ireland

Part One: General report, para. 127

Part Two: A

Italy

Part Two: B No. 122

Jamaica

Part One: General report, paras 121, 128

Part Two: A

Jordan

Part One: General report, para. 121

Part Two: A

Kazakhstan

Part One: General report, paras 121, 137, 153,
155 Part Two: A

Part Two: B No. 87

Kiribati

Part One: General report, paras 131, 154

Part Two: A

Korea, Republic of

Part Two: B No. 111

Kuwait

Part One: General report, paras 121, 128

Part Two: A

Kyrgyzstan

Part One: General report, paras 121, 127, 153 Part
Two: A

Lebanon

Part One: General report, para. 127

Part Two: A

Liberia

Part One: General report, paras 127, 131, 153 Part

Two: A

Libya

Part One: General report, paras 121, 131

Part Two: A

Madagascar

Part Two: A

Malaysia - Malaysia - Peninsular

Part Two: A

Malaysia - Malaysia - Sarawak

Part Two: A

Mali

Part One: General report, para. 121

Part Two: A

Marshall Islands

Part One: General report, paras 131, 154

Part Two: A

Mauritania

Part One: General report, paras 121, 127, 128, 142

Part Two: A

Part Two: B No. 29

Mauritius

Part Two: B No. 98

Mexico

Part Two: B No.87

Mozambique

Part One: General report, para. 121

Part Two: A

Niger

Part Two: A

Nigeria

Part One: General report, para. 127

Part Two: A

Pakistan

Part One: General report, paras 121, 128

Part Two: A

Papua New Guinea

Part One: General report, para. 121

Part Two: A

Philippines

Part Two: B No. 176

Qatar

Part Two: B No. 29

Rwanda

Part One: General report, paras 121, 153

Part Two: A

Saint Kitts and Nevis

Part One: General report, paras 127, 128, 131

Part Two: A

Saint Lucia

Part One: General report, paras 121, 127, 154

Part Two: A

Saint Vincent and the Grenadines

Part One: General report, paras 127, 154

Part Two: A

Samoa

Part One: General report, paras 127, 128

Part Two: A

San Marino

Part One: General report, paras 124, 127, 153

Part Two: A

Sao Tome and Principe

Part One: General report, para. 131

Part Two: A

Sierra Leone

Part One: General report, paras 121, 127, 131, 153

Part Two: A

Solomon Islands

Part One: General report, paras 121, 127, 131, 154

Part Two: A

Somalia

Part One: General report, paras 121, 124, 131, 153

Part Two: A

Spain

Part Two: B No. 122

Sudan

Part One: General report, para. 121

Part Two: A

Suriname

Part One: General report, paras 121, 128

Part Two: A

Swaziland

Part One: General report, para. 147

Part Two: A

Part Two: B No. 87

Syrian Arab Republic

Part One: General report, paras 121, 153

Part Two: A

Tajikistan

Part One: General report, paras 121, 124, 127, 153

Part Two: A

Tunisia

Part Two: A

Turkey

Part Two: B No. 155

Tuvalu

Part One: General report, paras 131, 154

Part Two: A

Uganda

Part One: General report, para. 121

Part Two: A

Vanuatu

Part One: General report, paras 121, 131, 154

Part Two: A

Venezuela, Bolivarian Republic of

Part Two: B No.87

Zambia

Part One: General report, paras 128, 131

Part Two: A

