



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

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

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A. DISCUSSION OF CASES OF SERIOUS FAILURE BY MEMBER STATES TO RESPECT THEIR REPORTING OR 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 reporting obligations constituted a serious failure. While ratification of international labour standards was important, it was equally crucial for member States to comply with their reporting obligations. If a State did not have sufficient resources to comply with the obligation to report, it was recommended that it reconsider whether ratification of a particular instrument was appropriate. Since the ILO supervisory system was largely based on self-reporting, the failure of some member States to submit reports placed greater scrutiny on member States that did comply with their obligation to report. The Employer members expressed the hope that member States would take their reporting obligations seriously, as the ILO supervisory system could not function without the timely submission of reports. Recalling that only 69 per cent of member States had provided the requested reports this year, the Employer members highlighted the importance of technical assistance and capacity-building, including in the pre-ratification process. Emphasizing the need to keep the body of international labour standards up-to-date, they referred to the Standards Review Mechanism, which was considered an opportunity to identify labour standards that were no longer relevant and to give more visibility to up-to-date and relevant standards.

The Worker members expressed concern at the serious failures recorded in the report of the Committee of Experts. The governance of the supervisory system placed the obligation on member States to comply with the constitutional provisions, and particularly articles 22 and 35. Too many countries had not provided a report for over five years. Moreover, the information requested was only useful if it was supplied within the time limits, and the procedures for sending reminders should be reviewed. The Office needed to ensure that countries encountering difficulties benefited from technical cooperation so that they could fulfil their obligations. The failures reported were often an indication of worrying situations. With regard to the obligation of submission of instruments to the competent authorities, there was a significant lack of good will, which needed to be addressed. It was time to adopt a sterner tone towards countries which persisted in ignoring their constitutional obligations.

A Government representative of Angola said that his Government had responded to most of the comments made by the Committee of Experts, except for three pending issues, on which information would be submitted to the Committee in due course. Regarding the submission of ILO instruments to the Parliament, he indicated that the process was under consideration by the relevant ministerial departments.

A Government representative of Côte d'Ivoire said that in April 2014 the Minister of Employment and Social Protection had sent the Government a large number of instruments that the International Labour Conference had adopted between 1996 and 2014 for submission to the National Assembly. However, the authority responsible for the transmission of the instruments still had to be determined. The Minister of Employment and Social Protection had been designated as the responsible authority on 25 May

2016, and it should be possible to submit the 33 remaining instruments to the competent authority before the end of July 2016.

A Government representative of the Democratic Republic of Congo assured the Committee that the information and reports that had been requested would be submitted before the end of the session.

A Government representative of El Salvador said that work was under way to comply with the reporting requirements. The Government hoped, thanks to the technical advice and cooperation of the Office, to be able to draft a protocol on institutional competencies so as to have greater clarity on the procedure to be followed, and to move forward with the submission of the outstanding reports. She added that the Government had transmitted the request to ratify the Domestic Workers Convention, 2011 (No. 189), and the Maritime Labour Convention, 2006 (MLC, 2006), to the Legislative Assembly.

A Government representative of Ghana said that his Government was very responsive to its ILO reporting obligations, and that the instruments would be submitted to the competent authority as soon as the delegation had returned to the capital.

A Government representative of Guinea said that the failure to send reports was due to the 2010 post-electoral crisis, the difficulties in establishing the National Assembly and the Ebola epidemic. They would be provided before the end of the year.

A Government representative of Iraq indicated that the new Law No. 35/2015 had enabled the Ministry of Labour and Social Affairs to transmit the instruments to the Council of Ministers, and subsequently Parliament. Due to terrorism, it had not been possible to submit the instruments in time, but it should be possible to conclude the submission procedure before the end of the year.

A Government representative of Jamaica conveyed the deep regrets of her Government for its failure to comply with the submission obligation, which was due to the holding of general elections and the need to pass urgent legislation mandated by the International Monetary Fund Extended Fund Facility. The Cabinet had now approved the submission to Parliament of the instruments adopted at the 92nd, 95th, 96th, 99th, 100th, 101st and 103rd Sessions of the International Labour Conference and the corresponding Ministry Paper would soon be tabled.

A Government representative of Kuwait said that the instruments had been transmitted to the competent authorities in his country in order to finalize the submission procedure. The Government would fulfil its obligations regarding the presentation of reports in the near future.

A Government representative of the Lao People's Democratic Republic indicated that difficulties in reporting were due to the limited capacities of the administration, which needed technical assistance and advice from the Office.

A Government representative of Lebanon explained that the Ministry of Labour had had to deal with the influx of Syrian refugees, as well as with explosions close to its premises which had paralysed its activities. Lebanon had had no President for more than two years and Parliament

had suspended its work. The comments of the Committee of Experts had been examined even so, although the majority had not been translated into Arabic, which would have been desirable to facilitate their transmission to the social partners and competent authorities. Many reports had been finalized in recent days and would be sent to the Office as soon as possible.

A Government member of Libya said that the well-known situation in his country was responsible for the backlog in the execution of its obligations under article 19 of the Constitution. Despite that situation, Libya had transmitted four reports. Reports on nine Conventions had been prepared, but had not arrived at the ILO due to the electricity cuts in Libya, which had lasted several months. With regard to submission, instruments had been transmitted to the relevant ministries for examination prior to their submission to the competent authority, which still had to be determined between the National Conference and the Presidential Council. In a context epitomized by the fight against Da'esh terrorism, his country was committed to sparing no efforts to respect its constitutional obligations. For this purpose, the Council of Ministers had established a commission to prepare reports and replies to the comments of the Committee of Experts.

A Government representative of Nepal indicated that her Government had prepared replies to the comments of the Committee of Experts and that the reports would soon be forwarded.

A Government representative of Nigeria assured the Committee that her Government had endeavoured since 2011 to submit the backlog of reports due and intended to continue improving compliance with its reporting obligations. In relation to the reports due for the preparation of the General Survey, she recalled that Nigeria had ratified the Migration for Employment Convention (Revised), 1949 (No. 97), and that the report requested had been sent in September 2015.

A Government representative of Rwanda said that his Government was responsive to its reporting obligations and had submitted the seven reports requested. Turning to the question of unratified Conventions, he indicated that national consultations carried out since February 2014 had led to an agreement between government institutions, employers' organizations, trade unions and the civil society on the initiation of the ratification process for the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Labour Administration Convention, 1978 (No. 150), the Collective Bargaining Convention, 1981 (No. 154), the Occupational Safety and Health Convention, 1981 (No. 155), the Private Employment Agencies Convention, 1997 (No. 181), and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). A request for the ratification of these instruments had been made to the Prime Minister's Office. With regard to the failure to submit instruments to the competent national authorities, he said that a letter had been addressed to the Prime Minister's Office requesting submission of all Recommendations, Conventions and Protocols adopted by the Conference from 1993 to 2012 to Parliament for information.

A Government representative of Kazakhstan assured the Committee that all the information requested would soon be supplied in reply to the requests of the Committee of Experts.

A Government representative of Sudan indicated that her country was committed to complying with its constitutional obligation to submit instruments to the competent authority in accordance with article 19. The Ministry of Labour had submitted a report on the matter to the Council of Ministers, which had forwarded it to Parliament. Moreover, her country was currently finalizing the ratification of the Part-Time Work Convention, 1994 (No. 175), and the Maritime Labour Convention, 2006 (MLC, 2006).

A Government representative of Zambia said that his Government would endeavour to provide the requested reports and reaffirmed the Government's assurance of its highest commitment to its obligations to the ILO.

The Employer members expressed appreciation for the comments provided, but were troubled by the number of governments which encountered reporting difficulties and were not present during the Conference to discuss them. They urged governments to avail themselves of the technical cooperation of the Office in this regard and urged all governments to report as required by the ILO Constitution.

The Worker members thanked the governments present for the replies they had given during the discussion of cases of serious failure. Noting, however, the concern that certain governments had failed to provide information, they recalled that it was important for those governments to request technical assistance from the Office and to redouble their efforts to meet their constitutional obligations, so that the monitoring system could function effectively.

Conclusions

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

The Committee recalls that the submission of reports on the application of ratified Conventions is a fundamental constitutional obligation and the basis of the system of supervision. The Committee also stresses the importance of respecting the deadlines for such submission.

The Committee expresses the firm hope that the Governments of Afghanistan, Belize, Burundi, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Haiti, Saint Lucia, Sierra Leone, Somalia and Tuvalu will supply the reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to supply first reports on the application of ratified Conventions

The Committee recalls the particular importance of supplying first reports on the application of ratified Conventions.

The Committee expresses the firm hope that the Governments of Afghanistan, Equatorial Guinea, Kiribati, Luxembourg and Tuvalu will supply the first reports due as soon as possible, and decides to note these cases in the corresponding paragraph of its General Report.

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

The Committee underlines the fundamental importance of clear and complete information in response to the comments of the Committee of Experts to permit a continued dialogue with the Governments concerned.

The Committee expresses the firm hope that the Governments of Afghanistan, Belize, Burundi, Central African Republic, Comoros, Congo, Croatia, Democratic Republic of the Congo, Dominica, Equatorial Guinea, Eritrea, Gambia, Guinea-Bissau, Guyana, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Lebanon, Malta, Montenegro, Nepal, Papua New Guinea, Saint Lucia, San Marino, Sierra Leone,

Solomon Islands, Timor-Leste, Trinidad and Tobago, United Kingdom (Anguilla) and Yemen will supply the requested information in the future, and decides to note these cases in the corresponding paragraph of its General Report.

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

The Committee stresses the importance it attaches to the constitutional obligation to supply reports on non-ratified Conventions and Recommendations.

The Committee expresses the firm hope that the Governments of Armenia, Burundi, Comoros, Congo, Democratic Republic of the Congo, Equatorial Guinea, Ghana, Grenada, Guinea, Guinea-Bissau, Guyana, Haiti, Kiribati, Liberia, Libya, Malawi, Marshall Islands, Nigeria, Rwanda, Saint Kitts and Nevis, Saint Lucia, San Marino, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tuvalu, Vanuatu, Yemen and Zambia will comply with their obligation to supply reports on non-ratified Conventions and Recommendations in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Concerning the failure to submit instruments adopted by the Conference to the competent authorities

The Committee recalls that compliance with the obligation to submit Conventions, Recommendations and Protocols to national competent authorities is a requirement of the highest importance in ensuring the effectiveness of the Organization's standards-related activities.

The Committee expresses the firm hope that the Governments of Angola, Azerbaijan, Bahrain, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Dominica, El Salvador, Equatorial Guinea, Guinea, Haiti, Iraq, Jamaica, Kazakhstan, Kuwait, Kyrgyzstan, Libya, Mozambique, Pakistan, Papua New Guinea, Rwanda, Saint Lucia, Sierra Leone, Solomon Islands, Somalia, Sudan and Vanuatu will comply with their obligation to submit Conventions, Recommendations and Protocols to the competent authorities in the future. The Committee decides to note these cases in the corresponding paragraph of its General Report.

Overall, the Committee expresses *deep concern* at the large number of cases of failure by member States to respect their reporting and other standards-related obligations. The Committee recalls that Governments could request technical assistance from the Office to overcome their difficulties in this respect.

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. Conclusions should be read with the full minutes of the discussion of an individual case. Conclusions will no longer repeat elements of the discussion or reiterate government declarations which can be found in the opening and closing of the discussion set out in the Record of Proceedings. 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)

BELARUS (ratification: 1956)

The Government provided the following written information:

Belarus has staunchly and consistently supported the prohibition and eradication of forced labour. The prohibition of the use of forced labour is enshrined in the country's most important legislative instruments. Article 41 of the Constitution prohibits forced labour, with the exception of work or services required under a court ruling or in accordance with the Law on Emergencies and Military Status. The prohibition of forced labour is also covered in article 13 of the Labour Code, which defines forced labour as work which a worker is required to perform subject to the threat of violence, which includes: means of political leverage or indoctrination or punishment for the exhibition or expression of political views or ideological beliefs contrary to the established political, social or economic system; methods for mobilizing and exploiting the workforce for the needs of economic development; means of promoting workplace discipline; means of punishing people for their participation in strikes. However, the following are not deemed to be instances of forced labour: work performed as a result of a legally valid court ruling under the supervision of the authorities responsible for upholding the law governing the execution of court rulings; work to be carried out as a consequence of legislation on military service or emergency situations.

Convention No. 29 was one of the first to be ratified by Belarus immediately after it became a member of the International Labour Organization (ILO). The Convention entered into force for Belarus on 21 August 1956. In line with its obligations under article 22 of the ILO Constitution, Belarus regularly reports on legislation and its application to the Committee of Experts. Before this year, Belarus had not received any comments from the Committee of Experts regarding Convention No. 29. 2016 is the first year in which Belarus has received comments from the Committee of Experts regarding Convention No. 29, and the first in which Belarus has been included in the list of countries for examination of that Convention by the Conference Committee on the Application of Standards. The Government has paid great attention to the comments made by the Committee of Experts. It has analysed all of the regulatory instruments referred to by the Committee of Experts, including the aims and purposes of adopting the instruments and the practice of applying them, with the aim of harmonizing the provisions of those instruments with the requirements of Convention No. 29. As a result of this

work, taking into account the position of the Committee of Experts with regard to Presidential Decree No. 9 of 7 December 2012 on supplementary measures for the development of the wood processing industry, the decision was taken to start to repeal Decree No. 9. That decision has now been implemented. Presidential Decree No. 182 of 27 May 2016 has been adopted, which makes Decree No. 9 invalid.

The Government considers that the remaining three regulatory instruments mentioned by the Committee of Experts are not at variance with the provisions of Convention No. 29. Presidential Decree No. 18 on supplementary measures for state protection of children from dysfunctional families was adopted on 24 November 2006. One of the most sensitive issues in any society is the situation of children from dysfunctional families and families in which parents lead an anti-social way of life, are alcoholics or drug addicts. Unfortunately, the critical issue regarding children whose parents are alcohol abusers, drug addicts or substance abusers is often not simply their regular diet or attendance at school, but their very survival and the maintenance of their life and health. Broad public discussion was held prior to the adoption of Decree No. 18. Many Belarusian citizens have requested the State and society to play a more active role in tackling this important social issue. According to Decree No. 18, children are in a socially vulnerable situation if parents or a biological parent lead an immoral way of life that is harmful to the children, or if they are chronic alcoholics or drug addicts, or in some other way are unable to perform properly their obligations to raise and maintain children. These children are subject to state protection and are placed in state childcare facilities. The Decree defines a system by which state bodies may identify dysfunctional families and take decisions to place children in childcare facilities. Decree No. 18 focuses on working with parents. It is important to enable parents from dysfunctional families to turn away from their anti-social and, often immoral, way of life. This is the only way in which the children can return to their biological families. However, many of these parents do not have work. Many of them lost their occupational skills long ago. It is extremely complicated for them to find work independently, because employers are not interested in workers of this kind. Decree No. 18 therefore provides for a work placement mechanism for parents from dysfunctional families whose children have been placed in state childcare facilities following a court order. Job placements are arranged at workplaces defined in coordination with the local authorities. Since, in accordance with Decree No. 18, a portion of the citizen's wage is deducted to compensate for the expenses associated with maintaining their children, one of the conditions

in the selection of a workplace is that the wage level is sufficiently high. At the same time, if parents whose children have been placed in state childcare facilities have a job or find themselves work independently and can cover the costs of maintaining the child, no court decision is required. The main purpose of Decree No. 18 is to improve family situations so that children can safely return to their parents. During the time that Decree No. 18 has been in force (between 2007 and 2015), a total of 33,832 children have been recognized as needing state support, of which 19,162 children (more than 58 per cent) have been returned to their families and their parents. The Act of 4 January 2010 on the procedure and modalities for the transfer of citizens to medical labour centres and the conditions of their stay governs issues related to the transfer of citizens suffering from chronic alcoholism, drug addiction or substance abuse to medical labour centres. Not all individuals experiencing these problems may be transferred to medical labour centres, but only those who have repeatedly, three times or more in the course of a year, disturbed public order and been found in a state of intoxication from alcohol or caused by the use of drugs or other intoxicating substances. One further condition is that the individuals have already been warned about the possibility of returning to the centre if they commit further violations, but have nevertheless committed administrative offences for similar violations within a year of that warning. In addition, citizens may be sent to medical labour centres if they are obliged to compensate the child-rearing expenses incurred by the State and have twice violated work regulations during the year through alcohol or other substance abuse, and have furthermore been warned of the possibility of being sent to the centre, and yet have reoffended within a year of that warning. Citizens are sent to medical labour centres for a period of 12 months following a court ruling. The court may decide to extend the period of time spent in the centres or to curtail it by up to six months. Citizens placed in medical labour centres are required to undergo a medical examination to establish whether they suffer from chronic alcoholism, drug addiction, substance abuse or have any illness which might disrupt their stay in the centre. Citizens are placed in medical labour centres so that social and medicinal rehabilitation measures may be used in relation to them, including the provision of medicine and of medical and psychological assistance. For citizens who lead an anti-social way of life, one of the most important avenues to ensuring their social rehabilitation is through work. Under the Act, measures for medical and social reintegration also include career guidance, vocational training, retraining, the acquisition of additional qualifications and work. Finding work for citizens in medical labour centres depends on their age, fitness for work, state of health, specialization and qualifications. They are paid and granted leave from work and welfare-related forms of leave in accordance with labour law. The Act includes a provision on the possibility of using incentives for those who conscientiously fulfil obligations required of them, show initiative in their work or mastery of their profession; it also provides for disciplinary action for the refusal to accept work or the decision to discontinue it. The possibility of applying punitive measures is necessary to ensure that the provisions of the Act are enforced in practice. Taking into consideration the population category of individuals sent to medical labour centres and

their social and behavioural attitudes, it is practically impossible to carry out the social reintegration programme without specific restrictive measures. The Act has been considered by the Constitutional Court of Belarus as part of initial mandatory checks. In a decision of 24 December 2009, the Constitutional Court reached the conclusion that the Act was in line with the Constitution of Belarus with regard to the content of provisions, its form and the method of its adoption. The Constitutional Court in particular deemed that arranging work for citizens sent to medical labour centres on the basis of a court decision was legally justified, since work constitutes one of the means for the social and medical reintegration of citizens, alongside medical and other measures.

The main purpose of Presidential Decree No. 3 of 2 April on the prevention of dependency on social aid is to enable Belarusian citizens to fulfil their constitutional obligation to contribute to the financing of government expenditure. The social dimension is given great emphasis in the state policy of Belarus. The State spends considerable sums on supporting and developing the social infrastructure and many key services are provided to Belarusian inhabitants free of charge, such as education and health services. Belarusian inhabitants pay a significantly lower real price for public transport services and municipal utilities. Each year, some 50 per cent of the country's consolidated budget is spent on social goals. Obviously, the availability of funds and the possibility of achieving these high social standards depend on the common input of all Belarusian inhabitants. However, in recent years, a fairly large number of people have been recorded in reality as having considerable income flows which they conceal using various underhand schemes. Many of these citizens say that they do not work anywhere at all and have no income and therefore do not pay any taxes. At the same time, they are fully entitled to services provided by the State, including those which are free of charge. To make the situation fairer, Decree No. 3 compels all persons of working age who have been in Belarus for more than six months during the calendar year to contribute to the financing of government expenditure. This contribution may be through the citizen carrying out work on an employment or civil law contract, or any other activity which provides for the receipt of legal earnings. In this case, taxes are levied on the earnings accordingly. Citizens who do not carry out an income-earning activity and do not pay taxes are required to pay an annual levy to the tax authorities equal to the sum of 20 times the base reference value. In 2016, the base reference value was 210,000 Belarusian rubles, and the annual levy was therefore 4,200,000 Belarusian rubles. This is equivalent to approximately US\$200. Decree No. 3 does not provide for the compulsory labour of citizens, but deals with their financial contribution. Under Decree No. 3, it is taken into consideration that some citizens may perform independent, income-earning activities throughout the course of a year, or work on an employment contract only for a short period of time, that is, less than 183 days per year. The following procedures have been established for these cases: if the amount paid in taxes is over 20 times the base reference value, the citizen is exempt from paying the levy. However, if it totals less than 20 times the base reference value, the individual is required to pay the levy, although the figure

Forced Labour Convention, 1930 (No. 29)

Belarus (ratification: 1956)

is reduced by the amount paid in taxes. The Decree establishes an exemption from paying the levy for population groups which may have difficulties earning income due to reasons beyond their control. These categories include: citizens registered as unemployed; persons with disabilities; and one of the parents of a family bringing up a child of up to seven years of age, a child with disabilities or three or more minors, and a number of other categories. Decree No. 3 covers working relations since 1 January 2015. The levy for 2015 must be paid no later than 1 July 2016. People who do not pay the levy themselves are sent a notification by the tax office by 1 October 2016 for payment of the levy by 15 November. Non-payment or partial payment of the levy results in a fine of two to four times the base reference value, or up to 15 days of administrative detention. The courts decide on the specific penalty. Under the provisions of Decree No. 3, citizens must perform community service during the period of the administrative detention. In view of the above, the Government of Belarus emphasizes that the country's regulatory and legal instruments do not contain elements of forced labour. They are designed to address socially significant tasks, such as the protection of children and the prevention of alcoholism, drug addiction and tax evasion.

In addition, before the Committee, a **Government representative** welcomed the opportunity to explain the position of her Government and referred to the information supplied in writing. She assured the Committee that her Government would pursue its cooperation with the ILO to fully apply the Convention.

The Employer members recalled the importance of the Convention and the obligations that it created for the ratifying States. Welcoming the Government's detailed intervention, they noted the indication that national legislation prohibited forced labour and was fully in line with the Convention. Noting that this case had been designated as a double footnoted case by the Committee of Experts, thus denoting its serious nature, the Employer members recalled in detail the observations made by the Committee of Experts on the specific provisions under its examination. With regard to Presidential Decree No. 9 of 7 December 2012 on additional measures for the development of the wood industry, the Employer members understood that the Government had repealed section 1.2 of the Decree through Presidential Decree No. 182 and urged the Government to provide detailed and up-to-date information to the Office on this Decree. They noted positively this development, as well as the Government's indication that it would continue to cooperate with the ILO regarding the implementation of Presidential Decree No. 182. Turning to the question of Presidential Decree No. 3 of 2 April 2015 on the prevention of dependency on social aid, the Employer members expressed appreciation of the careful balance struck between, on the one hand, the Government's obligation with respect to social action, education, health care and transportation, most of which was provided to its citizens free of charge or at less than the actual cost and, on the other hand, the necessity of labour taxes paid by workers to support the system. They encouraged the Government to provide the Committee of Experts with information on how the Decree was enforced and on the individuals affected by the Decree, so that it could include this additional information in its observations and the Conference Committee could consider

this information in relation to its assessment of the application of the Convention in law and practice. They recalled that, by virtue of ratification, the Government had an obligation to suppress the use of forced labour in all areas in both law and practice.

Concerning Law No. 104-3 of 4 January 2010 on the procedures and modalities for the transfer of citizens to medical labour centres and the conditions of their stay, the Employer members noted the Government's indication that work was one of the measures through which individuals were reintegrated into society and that career guidance and skills training were provided to them. They requested further information on the nature of the administrative charges filed and on court decisions regarding these issues. They therefore encouraged the Government to provide the Committee of Experts with additional information, including on the status of court decisions that could result in an individual being sent to a medical labour centre and might involve an obligation to work during that period, as well as on the enforcement of these rules and the number of persons affected. Recalling Article 2(2) of the Convention, the Employer members considered that the issues needed to be examined more closely with more information provided by the Government. In relation to Presidential Decree No. 18 of 24 November 2006 on supplementary measures on state protection of children from "dysfunctional families", the Employer members noted the Government's explanation that the Decree had been a result of a broad civil process aimed at attempting to solve the social problem and that work placement was a component of the civil process. They also considered that additional information was required from the Government on the issues raised by the Committee of Experts in order to more fully assess situations in which persons were forced to work under the Presidential Decree and to better assess the application of the Convention in both law and practice. The Employer members recalled that, having ratified the Convention, Belarus was under the obligation to ensure that it suppressed the use of forced labour in law and practice and that the Government did not create legal mechanisms by which the State could exact forced labour from its citizens. They encouraged the Government to review all the facets of its national law and practice in order to assess whether these provisions created situations in which forced labour was permitted or required in the country and to work closely with the ILO to ensure full compliance with the Convention in both law and practice.

The Worker members observed that, according to the Committee of Experts, certain new provisions introduced in the national legislation could lead to situations amounting to forced labour. Presidential Decree No. 29 of 1999 had ordered the conversion of all employment contracts into fixed-term contracts and repealed the provision of the Labour Code prohibiting the conclusion of temporary contracts for permanent posts. A form of modern bondage had been introduced, as a temporary employment contract did not allow workers to leave their job before the end of the contract, except in the event of illness or inability to perform the work concerned, or in the event of a violation of labour law or collective agreements by the employer, or for other valid reasons that were not specified. Not only did the Government have no intention of amending the existing legal system, but it also continued to introduce new forms of

exploitation. The Belarusian Congress of Democratic Trade Unions (BKDP) and certain human rights activists had protested against these “innovations”, which in fact consisted of the restoration of practices dating from the Soviet era. In its report *Forced labour and the pervasive violation of workers’ rights in Belarus*, the International Federation for Human Rights (FIDH) provided a detailed examination of various forced labour practices. Decree No. 9 of 7 December 2012 suppressed in practice the right of workers in the wood processing industry to leave their employment freely. The Government indicated that the Decree had been repealed on the Friday before the beginning of the Conference. It was to be hoped that the Government would pursue its efforts to abolish forced labour in this sector in practice. Moreover, Presidential Decree No. 3 of 2 April 2015 on the prevention of dependency on social aid imposed an obligation on citizens who did not participate in the financing of Government expenditure for a year or participated in that funding for less than 183 days in the year, to pay an annual levy with a view to covering Government expenditure. Hence, the Decree applied in practice to thousands of people who did not have an income, without necessarily having an anti-social lifestyle, but who were unable to find decent jobs in their respective occupations. In this regard, an exception had been provided for citizens with disabilities, minors and men and women who had reached retirement age. The levy therefore had to be paid even by those who had chosen not to work, particularly for family reasons. Failure to pay the levy was punishable by a fine or administrative detention of up to 15 days. During the period of detention, citizens were obliged to carry out work in the public interest. Any person who refused to carry out work in the public interest was subject to additional coercive measures. Moreover, a period of detention did not release the person concerned from the obligation to pay the levy. Persons suffering from chronic alcoholism, drug addiction or substance abuse and who had faced administrative charges for committing administrative violations under the influence of alcohol, drugs or psychotropic, toxic or otherwise intoxicating substances could be sent to “medical labour centres” and be subject to compulsory labour or to imprisonment of up to ten days. This “rehabilitation” was applied to thousands of people (4,000 to 5,000 each year), who in reality needed medical or social assistance. There was virtually no public supervision of the medical labour centres or the working conditions in them, as they were closed institutions guarded by the police. Furthermore, it was reported that some of the centres had contracts with private sector companies for certain types of work. Confinement in the centres was decided by civil, not criminal, courts, so that the exception provided for by Article 2(1)(a) of Convention No. 29 did not apply. Presidential Decree No. 18 authorized the removal of children whose parents were leading “an immoral way of life”, or were chronic alcoholics or drug addicts, or in some other way unable to properly perform their obligations to raise and maintain children. The aim of the measures introduced by the Decree was to force persons deprived of their parental rights to be financially responsible for the education of their children under the threat of a penalty. Such persons were obliged to pay a monthly sum of money to compensate the Government for the care of their children in state childcare facilities. Those

who did not pay or were unable to pay were subjected to compulsory labour by court ruling. Employers, the police and government bodies responsible for employment worked together to monitor attendance at work. Parents who avoided such work might be held criminally responsible and be sentenced to community service or corrective labour for a period of up to two years, or even to imprisonment for up to three years.

Further situations of forced labour had been revealed by human rights activists, including the situation of conscripts obliged to do work that was not purely of a military nature, not only in the public interest, but also for the private sector. Compulsory labour was also imposed on prison inmates; young graduates from public educational institutions were obliged to work for one or two years at the end of their studies; and all enterprises and workers could be called upon to participate in unpaid days of work (*subbotniki*). The Worker members fully endorsed the appeal made by the Committee of Experts inviting “the Government to take all the necessary measures to repeal or amend the provisions in its national legislation which could lead to situations amounting to forced labour”, bearing in mind the clear connection with the absence of freedom of association and forced labour. Forced Labour would not be brought to an end as long as workers were not fully able to exercise their right to organize.

The Employer member of Belarus wished to clarify the purpose of the legislative texts referred to by the Committee of Experts. The aim of the Presidential Decree on social dependency was to ensure a fair balance between those contributing to the State budget by paying taxes and those who claimed benefits without contributing. The Presidential Decree on the state protection of children organized the protection of children whose parents were unable to care for them. The law on medical labour centres provided for the medical and social rehabilitation of alcoholics and drug addicts. All these measures were taken for the purposes of social protection and could not be considered contrary to Convention No. 29. Furthermore, taking into account the position of the Committee of Experts, Presidential Decree No. 9 had been repealed.

The Worker member of Belarus pledged the full support of his organization to the ILO’s efforts to eliminate all forms of forced labour. Forced labour was prohibited in Belarus by both the Constitution and the Labour Code. Through its participation in social partnership, the Federation of Trade Unions contributed to the enforcement of labour rights and the analysis of the comments of the Committee of Experts had led to the repeal of Presidential Decree No. 9. Presidential Decree No. 3 gave effect to the constitutional obligation for all citizens to pay taxes. Many people worked in the grey or informal economy without paying taxes. The small contribution, which was less than 5 per cent of the average wage, required only from persons able to work did not in any way contravene Convention No. 29. Presidential Decree No. 18 aimed at protecting children’s rights by ensuring the social rehabilitation of their parents. It provided that such measures could only be decided by a court and was not therefore contrary to the Convention. Preventive medical-labour measures also required a court decision, which was in accordance with the Convention.

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Belarus (ratification: 1956)

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Albania and Norway, said that the EU attached great importance to relations with Belarus and its people, as well as to improvements in respect for human rights, democracy and the rule of law in the country. Compliance with Convention No. 29 was essential in that respect. He noted with concern the observations of the Committee of Experts, which included references to the concluding observations of the United Nations Committee on Economic, Social and Cultural Rights⁷, as well as the report submitted by the United Nations Special Rapporteur on the situation of human rights in Belarus. The EU, in the same way as the Committee of Experts, called on the Government of Belarus to repeal or amend the provisions in its national legislation which could lead to situations amounting to forced labour. He welcomed the information received regarding the repeal by the Government of Belarus of Presidential Decree No. 9. The EU remained committed to its policy of critical engagement with Belarus and was ready to assist the country in meeting its obligations under the ILO's fundamental Conventions.

The Government member of Turkmenistan commended the Government of Belarus for its efforts to implement the Convention and welcomed the enhanced provisions introduced in the national legislation to that end, as well as the intensification of cooperation with the ILO. In view of these positive developments, the issue of application of Convention No. 29 in Belarus should be removed from the agenda of the Committee.

An observer representing the International Trade Union Confederation (ITUC) recalled that the Conference Committee had repeatedly discussed the situation of freedom of association in Belarus. This case concerning Convention No. 29 amounted to an escalation in the violation of workers' rights. Presidential Decrees Nos 3, 5, 9 and 29 aimed at imposing labour discipline by instilling a culture of fear among workers. The worst example was Decree No. 3, under which the unemployed were considered guilty rather than deserving of assistance, in a context in which unemployment stood at 37 per cent and unemployment benefits were as low as US\$13. Decree No. 29 appeared to impose the norm of temporary labour contracts on all workers. When included in the Labour Code, the provisions of Decree No. 5 would result in the imposition of heavy fines for vaguely defined breaches of labour discipline. Belarus was engaging in a very dangerous experiment of developing totalitarian labour standards that set the worst example for the region.

The Government member of Switzerland indicated that his country supported the statement of the European Union. It was a cause of concern that certain legislative provisions in force in Belarus contained elements which could lead to situations amounting to forced labour, in particular legislative provisions that imposed compulsory labour on certain categories of vulnerable persons. The fact of imposing a burden, whether financial or in the form of compulsory labour, on individuals who were unable to work a certain number of days per year constituted a sort of "tax on precarity" which was likely to make difficult personal and family situations even worse. The provisions imposing

compulsory labour on persons living with substance dependency who were interned in "medical labour centres" or who had been deprived of the custody of their child merely added to their suffering. Such persons would need genuine medical and social care, rather than the imposition of a penalty in the form of compulsory labour. Switzerland endorsed the position of the Committee of Experts and called on the Government of Belarus to amend the elements in its legislation which could lead to situations amounting to forced labour, some of which targeted the most vulnerable members of society.

The Worker member of Malaysia expressed support for the measures taken by the social partners in Belarus to address the observations made by the Committee of Experts, which had resulted in a positive outcome for the workers. Emphasizing that Presidential Decree No. 9 had been abolished as a result of rapid action by the social partners, he expressed the hope that all other legislative issues would be resolved in the same manner through cooperation among the social partners.

The Government member of the Russian Federation said that his delegation had listened with great interest to the explanations provided by the Government of Belarus. They bore witness to the openness of the Government to constructive dialogue with the ILO as a means of fulfilling its international obligations, as demonstrated by the repeal of Presidential Decree No. 9. The present Committee should refrain from artificially inflating the present case.

The Worker member of Poland referred to the pressure, particularly on pensions and health-care systems, resulting from the decrease in the "able-bodied" labour force. In 2000, the regime had tolerated shadow activities by citizens because the economy was supported by high subsidies. However, as the economy had worsened, the Government had sought new sources to remedy the budget deficit. Government data showed about five hundred thousand Belarusians (10 per cent of the active population) to be "spongers", who benefited from free education, health care and reduced fees for public services while contributing nothing to the state budget. At the same time, many Belarusians were leaving the country for better jobs abroad, resulting in a lack of skilled workers in some industries in Belarus. The 2015 policies of President Lukashenka targeting several groups of citizens, mainly "spongers", had had the effect of exacerbating forced labour in Belarus in various sectors and forms. Some examples were given in reports by United Nations agencies, such as the practice of *subbotniki*, which required government employees and workers in state enterprises and many private businesses to work occasionally on Saturdays and to donate their earnings to finance government projects. As 70 per cent of the Belarus economy was state-owned, the State was responsible for guaranteeing decent and safe working conditions, wages and protection for workers. The Government penalized with those who exacted forced labour, yet it was the main offender. The solution to forced labour lay in respecting human and workers' rights and international labour standards, introducing adequate employment policies and programmes, enabling people to work in friendly environments so that they could pay taxes and make economic growth possible, while reducing the "shadow economy". Forced labour was not the solution and workers were not a commodity.

The Government member of Kazakhstan said that the Government of Belarus had made strong efforts to combat all forms of forced labour. Measures to prevent trafficking and labour exploitation formed a central part of state policy. He noted that the Government had reviewed its legislation and implemented a number of changes, in accordance with the comments of the Committee of Experts. As a result, Presidential Decree No. 9 had now been repealed, and other measures were also currently being undertaken. He expressed his confidence that the Government would soon finalize the measures it was adopting to ensure full conformity with the Convention.

The Government member of Uzbekistan welcomed the will demonstrated by Belarus to fulfil its obligations under Convention No. 29 and to develop constructive cooperation with the ILO for the implementation of international labour standards. He supported the measures taken by the Government to eradicate forced labour, which was prohibited under the Constitution and in the Labour Code. Belarus was an active supporter of international efforts to combat exploitation and had joined the global partnership against slavery and trafficking. Belarus was not on the list of countries to be considered under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the examination of the present case by the Committee should be ended.

The Worker member of the Bolivarian Republic of Venezuela indicated that, for the workers of his country, it was important to use the opportunity to support the position of the Federation of Trade Unions of Belarus (FSB), as it was not the first time that the application of a Convention by Belarus had been discussed by the Committee. The country would certainly remain on the list of individual cases the following year, as that it was a political case, as was the Venezuelan case and those other countries that adopted an independent position. The Committee had examined the application of Conventions Nos 87 and 98 in the past, and this year it was examining the application of Convention No. 29. On these occasions, the number of the Convention was of no consequence and the country would remain on the list, unlike the serious cases of other countries, which genuinely needed the urgent help of the ILO. In Belarus, a civilized European country, there was no place for forced labour. It was a country with a long and tragic history, strong trade unions and social dialogue. There were excellent relations between Venezuelan workers and the FSB, the most representative workers' organization in Belarus, which carried out trade union activities. There were also Belarussian workers in Venezuela, who participated in the construction of housing and factories under cooperation agreements between the countries. This was not the first time that the case of Belarus had been discussed by the Conference Committee, without any note being taken of the positive changes in the country. In this Committee, there were always different opinions on the situation in the country, and there was a tendency to examine the same cases from different angles or to compare cases which were different in nature. The case was examined as if the situation were the same as in other countries whose cases had been discussed in the Committee the previous year. While there might be some specific cases which appeared similar because they fell under the same Convention, in this particular case there were no acts of sexual exploitation, child

labour, trafficking in persons, or forced migrant labour. In Belarus, as in the Bolivarian Republic of Venezuela, there were excellent labour laws and well-developed social dialogue. On many occasions, the country had demonstrated its willingness to make changes and its dedication to ILO principles. He expressed the hope that the Committee would take into account all the above and remain impartial in this case.

The Government member of China observed that the Government of Belarus had implemented numerous measures in response to the requests of the Committee of Experts, including the repeal of Presidential Decree No. 9. Affirming that member States were under a serious obligation to fully implement ratified Conventions, he noted that the Government had taken a considerable number of measures to fulfil this obligation. He considered that the ILO should provide all possible assistance for this endeavour.

The Worker member of the Russian Federation fully shared the conclusions of the Committee of Experts regarding the application by Belarus of Convention No. 29. He recalled that his Government cooperated with Belarus under an arrangement whereby an integration process was underway which might affect labour relations. It was regrettable that some practices in Belarus had been described as positive measures by the Employer representative of the Russian Federation, and particularly Presidential Decree No. 3 on the prevention of dependency on social aid. In 2012, a Coordination Council had been established between the trade unions of the Russian Federation and Belarus with the view to coordinating actions, including in the area of preventing the extension between countries of violations of labour rights. He noted in this regard that Presidential Decree No. 9, which had been the subject of comments by the Committee of Experts, had been repealed a few days earlier. While the repeal of the Presidential Decree was admittedly considered to be a positive result of many years of work by the international community, the whole range of measures contained in the national legislation adopted the previous year did not allow for optimism. This was due to the fact that Presidential Decrees Nos 3, 5 and 29 remained in force. Presidential Decree No. 3 on the prevention of dependency on social aid of April 2015 established taxes for the unemployed which, in the event of non-payment, resulted in serious sanctions leading to administrative detention. Presidential Decree No. 5, adopted in 2015, had also had the effect of increasing the number of unemployed in the country, as it provided employers with the power to impose heavy disciplinary measures on employees amounting to dismissal at short notice. It was therefore important not to refer to individual cases, but to examine the problems arising out of the system as a whole, which was giving rise to forced labour and making it commonplace. He called on the Government to take into account the conclusions of the Committee of Experts and to make the necessary amendments to legislation that was not in conformity with the Convention.

The Government member of the Bolivarian Republic of Venezuela welcomed the Government's statement concerning compliance with Convention No. 29. The updated information demonstrated the commitment to bring the national legislation into line with the provisions of the Convention. In light of this information, the comments made by the Committee of Experts on Presidential Decree No. 9

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Belarus (ratification: 1956)

were no longer applicable, as it had been repealed by Presidential Decree No. 182 of 27 May 2016. In view of the willingness and commitment shown by the Government, the Committee should keep in mind the positive aspects of the explanations and arguments submitted. He trusted that the Committee's conclusions, arrived at through debate, would be balanced and objective, which would surely enable the Government of Belarus to consider and assess them within the framework of compliance with the Convention, and he also trusted that there would be no need for the case to be considered again by the Committee.

The Government member of Azerbaijan said that the prohibition of forced labour was reflected in the legislation of Belarus and in the Labour Code, and that there was a social protection system for workers. The adoption of Presidential Decree No. 3 should not be considered as use of forced labour, but rather as a measure for the return to work of the unemployed. Referring to the information sent to the Committee by the Government, she said that the Decree provided social protection benefits and employment benefits. It also provided for capacity building and skills development, and could provide a psychological boost, which was a social assistance measure. Presidential Decree No. 18 on additional measures for state protection of children from "dysfunctional families" contained measures against the exploitation of human beings. The Government had taken account in detail of issues concerning human trafficking and had taken measures to repeal Presidential Decree No. 9. In conclusion, she asked for the application of Convention No. 29 by Belarus to be taken off the Committee's agenda.

The Government member of India commended the Government for its efforts to review all of the laws and regulations cited by the Committee of Experts, to ensure their conformity with the Convention. He particularly welcomed the repeal of Presidential Decree No. 9, pursuant to the recommendation of the Committee of Experts, which demonstrated the Government's commitment to ensuring compliance with ratified Conventions. The Government had also taken other action to prevent the occurrence of forced labour, such as the adoption of Presidential Decree No. 18 providing supplementary measures for state protection of children from "dysfunctional families", and Presidential Decree No. 3 on the prevention of dependency on social aid. He considered that the Government's prompt action in response to the comments of the Committee of Experts should be fully credited and expressed strong support for the Government's efforts to promote social justice and eliminate forced labour in all its forms.

The Government member of Cuba thanked the Government member of Belarus for the information provided, which illustrated the current situation in the country relating to the issues under discussion. If the ILO's supervisory machinery was to reinforce a culture of compliance with ILO Conventions and other standards, it was particularly important to ensure that considerations not directly related to major problems concerning employment, social welfare and respect for rights at work did not have the effect of undermining the climate of cooperation and respectful dialogue that should prevail in the Committee. She hoped that the efforts made by the Government would be recognized and supported by more technical assistance from the ILO.

The approach of dialogue was essential to promoting genuine international cooperation.

The Government representative emphasized that forced labour was prohibited by the legislation, including the Labour Code and labour relations laws. The recruitment of labour was based on the principle of free will including the freedom to conclude labour contracts. The types and terms of labour contracts were determined by the parties to the contract, taking into consideration the minimum guarantees established in the legislation. However, in practice, employers tended to opt for fixed-term contracts, as the most convenient type of contract, and employees were in agreement with this type of contract. She emphasized that, while the Government had established rules that created different types of labour contract, the parties concerned were not compelled to choose any particular type of contract. This principle was established in Presidential Decree No. 29. Furthermore, in the case of fixed-term contracts, the legislation requires the employer to provide additional guarantees, such as leave for five days and a salary increase of up to 50 per cent. In any case, employees who entered into labour contracts, whether fixed term or not, were considered to have entered into a formal employment relationship which entitled them to all the benefits guaranteed by national law, as opposed to workers in the informal economy. She observed that an earlier intervention indicating that the level of unemployment was 37 per cent was not accurate. She indicated that the level of registered unemployment in Belarus was 1 per cent in 2015, and 1.2 per cent in the current year of 2016. World practice demonstrated that women and men were currently subject to exploitation when they did not conclude formal employment relations with the employer. They thus became the victims of violence and deception. It should be acknowledged that the problem of trafficking over the past decade had been identified as a global challenge. In this regard, Belarus had been one of the first countries which had initiated the discussion on this issue at the United Nations Millennium Summit. In 2005, Belarus had also proposed to join the international action taken under the Global Partnership against Slavery and Trafficking in Human Beings in the 21st century. This initiative by Belarus had marked the beginning of the practical action taken by the United Nations, including the adoption of the resolution against trafficking by the General Assembly. In 2013, Belarus had adhered to the Council of Europe Convention on Action against Trafficking in Human Beings, making it the only country to have done so which was not a member of the Council of Europe. This active participation at the international level was supported by concrete action at the national level. In 2012, Belarus had adopted a law against trafficking which established a mechanism to identify and protect victims of trafficking. The result of the systemic work against trafficking had been a reduction in the level of trafficking in the country. For example, in 2005, 159 cases of trafficking had been identified, while in 2010 the number of cases identified was 39, with only one case detected in 2015. The comments of the Committee of Experts had led the Government to ensure additional protective measures in its national law and practice. Accordingly, Presidential Decree No. 9 had been repealed in its entirety. The text repealing Presidential Decree No. 9 had already been provided to the Office. Detailed information had also been provided on the

three other Decrees with gave rise to concern, including Presidential Decree No. 3. However, there was a need to provide clarification on certain provisions of these Decrees, in light of the comments made by previous speakers. For example, the fees established by Presidential Decree No. 3 had been incorrectly described as a labour tax. They were a tax on income which bore no relation to forced labour. Certain groups were excluded from the payment of the tax, including pensioners, the disabled, families with children, the unemployed and other vulnerable groups. It had been claimed that the deadline for the payment of the tax was set for November 2016. Hence it would only be after the deadline of November 2016, that information could be provided on the application of this tax in practice. In the Government's view, Presidential Decree No. 3 and the other laws were not in contradiction with the principles of Convention No. 29, as they related to a category of persons who needed special assistance from the State and from society for their rehabilitation into normal life. Work was one of the measures used for rehabilitation and reintegration. This approach was considered to be consistent with the comments made by the Committee of Experts in 1979 and 2007 on action to combat long-term unemployment. In conclusion, she once again reassured the Committee of Experts that the Government will be a firm and consistent supporter of ILO principles. She referred to the good experience of collaboration with the ILO and expressed determination to develop the system of industrial relations in Belarus.

The Worker members considered that the situation of forced labour in Belarus was related to the lack of progress made by the Government in guaranteeing the right to freedom of association under Convention No. 87, and they urged the Government to implement the recommendations made by the various ILO supervisory mechanisms in this regard. The Presidential Decrees imposed compulsory work, while several legislative texts and the effect given to them constituted a framework for the generalized use of forced labour, in flagrant violation of Convention No. 29. In order to ensure that workers had the right to end their employment relationship and to avoid them being forced to work, the Worker members urged the Government to amend its legislation, including Presidential Decree No. 29 of 26 July 1999 on supplementary measures to improve labour relations and strengthen labour discipline, and to amend or repeal Presidential Decree No. 3 of 2 April 2015, Presidential Decree No. 18 of 24 November 2006 and Law No. 104-3 of 4 January 2010. They also called on the Government to review section 10 of the Law on the status of conscripted personnel, which provided for the use of conscripts to perform work and other tasks not specific to military service, and to stop the use of *subbotniki*, which was a procedure through which workers were mobilized throughout the country to perform unpaid work. They also urged the Government to review the use of compulsory labour for individuals in preventative detention and to amend section 98 of the Code of Criminal Procedure to ensure that labour contracts were concluded directly with prisoners. Emphasizing the gravity of the situation and the flagrant human rights violations in Belarus, the Worker members considered that the Government should accept an ILO direct contacts mission, without hindrance, to correctional in-

stitutions, independent trade unions and civil society organizations. They also called for the situation in Belarus to be placed in a special paragraph of the Committee's general report.

The Employer members welcomed the Government's submissions and noted the efforts detailed therein to closely review its laws, an exercise which had yielded positive developments with regard to bringing the legislation into closer conformity with the Convention. They encouraged the continued analysis of relevant laws and regulations to identify inconsistencies in law and practice with the Convention.

Recalling the request by the Committee of Experts for further information on the operation of several laws, including Presidential Decree No. 18 of 2006, they urged the Government to suppress the use of forced labour in practice and to refrain from enacting legislation that could result in forced labour contrary to the Convention. They called upon the Government to continue its review of all legislation, including the Criminal Code and the sections of the Labour Code prohibiting forced labour, and to work constructively with the ILO in this respect.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the Government's explanation of the steps taken to repeal Presidential Decree No. 9 of 7 December 2012 by Presidential Decree No. 182. However, the Committee noted with deep concern the possible exaction of forced labour as a result of the operation of the other Presidential Decrees discussed by the Committee of Experts.

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

- take all measures to suppress the use of forced labour, and refrain from enacting legislation that may amount to the use of forced labour;
- prosecute and, if guilty, impose dissuasive civil and criminal sanctions on those responsible for the exaction of forced labour;
- provide to the Committee of Experts information confirming the repeal of Presidential Decree No. 9 by Presidential Decree No. 182 and information related to the operation of the provisions of Presidential Decree No. 182 in law and its effect in practice;
- provide to the Committee of Experts additional information on the operation in law and practice of: (1) Presidential Decree No. 3 of 2 April 2015; (2) Presidential Decree No. 18 of 24 November 2006; and (3) Law No. 104-3 of 4 January 2010;
- ensure that Decrees and national legislation are in full conformity with Convention No. 29, including:
 - Presidential Decree No. 3;
 - Law No. 104-3;
 - Presidential Decree No. 5;
 - Presidential Decree No. 18.
- accept technical assistance of the ILO in order to ensure that the Government ensures compliance with the obligations in Convention No. 29 in both law and practice.

In light of the serious issues raised in this case, the Committee strongly urged the Government to constructively engage with the ILO at the highest levels to resolve these issues before the next sitting of the Committee.

The Government representative attentively took into account all the comments and indicated his readiness to carefully analyse them at the national level.

MAURITANIA (ratification: 1961)

A Government representative, recalling that Mauritania had been called upon in 2015 to share with the Committee the efforts made in the context of the application of the Convention, thanked the Committee for the opportunity to provide information on the ever-increasing progress made in the promotion and defence of human rights, particularly with regard to combating slavery-like practices and the vestiges of slavery. In accordance with the Committee's recommendations of June 2015, the legal framework for combating forced labour had been reviewed and modernized in order to take comprehensive action against this scourge and be able to ensure the effectiveness of the objectives established by the electoral programme of the President of Mauritania in the quest for equality for all citizens, while placing particular emphasis on restoring dignity to the victims of a certain historical injustice. In that regard, the Government's report submitted to the Committee of Experts in September 2015 indicated the wide range of newly adopted legal instruments. In line with the amendments both to the Constitution, which classified slavery as a crime against humanity, and to the roadmap to combat the vestiges of slavery, adopted by the Council of Ministers on 6 March 2014, the new Act No. 2015-031 of 10 September 2015 criminalizing slavery and punishing slavery-like practices repealed Act No. 2007-048 of 3 September 2017, criminalizing slavery and punishing slavery-like practices and thereby confirmed the direction set by the Government. In line with the Committee's recommendations, the 2015 Act introduced a set of definitions which facilitated its application on the basis of clear and precise terminology relating to slavery; it incorporated the offences established by international Conventions relating to action against slavery while also declaring that they were imprescriptible; it established heavier penalties for slavery-like practices by aligning them with those prescribed for criminal offences; and it instituted the concept of *locus standi* for third parties, particularly non-governmental organizations (NGOs), which could now act as a civil party in any court action arising from the application of the Act, without this status giving them any pecuniary benefit. This major reform had been accompanied by the establishment of three special courts with nationwide jurisdiction for handling offences relating to slavery-like practices, resulting in the opening of 40 court cases concerning forced labour in the whole country in the previous five years. Two of the cases had yielded convictions, others had been dismissed, while the rest were still pending. Other items of legislation had been adopted to complement the new Act: Act No. 2015-033 of 10 September 2015 to combat torture, which repealed and replaced Act No. 2013/011 of 23 January 2013 punishing the crimes of slavery and torture as crimes against humanity; Act No. 2015-034 of 10 September 2015 establishing a national mechanism for the prevention of torture (MNP); and Act No. 2015-030 of 10 September 2015 providing for legal assistance. With regard to the recommendation calling on the Government to avail itself of ILO technical assistance with a view to the adoption of targeted measures against forced labour, the Prime Minister had made an official request to the ILO Director-General in February 2015, further to which a four-year project,

aimed at supporting the implementation of the Act criminalizing slavery and punishing slavery-like practices, had been launched on 2 May 2016, identifying all areas of action. In particular, it was designed not only to provide support for the special courts established for punishing crimes related to slavery-like practices, and for judicial officers, particularly lawyers assigned to investigations into the impact of slavery-like practices and the vestiges of slavery, but also to provide direct support for victims. Regarding certain cases pending in the courts relating to forced labour and children, Mauritania had adopted, with ILO support, a national plan of action for the elimination of child labour. This would be implemented once the necessary funding had been mobilized and, among other things, would contribute to combating the vestiges of slavery. Mauritania was one of the first five countries to have ratified the Protocol of 2014 to the Forced Labour Convention, 1930 (No. 29). Apart from its importance, the Government's initiative had the full support of the social partners and civil society, as had been observed during the wide-ranging discussions held before the ratification of the Protocol. That support would in due course enable the application of the instrument's provisions in the most appropriate conditions. Moreover, as part of the dissemination of the legislation concerning action against slavery-like practices, Mauritania had published, in partnership with the Office of the High Commissioner for Human Rights, a special issue of the Official Journal relating to ratified international human rights Conventions, which would allow the national courts to incorporate the instruments in the whole body of national legislation. Despite the great scope of the legal framework, it would not be able to deal alone with forced labour and the vestiges of slavery. Hence, further to the Committee's recommendations of June 2015, the Government had taken bold socio-economic initiatives, particularly through the creation of a national agency to combat the vestiges of slavery and for integration (the *Tadamoun Agency*). These initiatives were based on the implementation of a series of projects in priority areas which directly benefited population groups suffering from the vestiges of slavery in bridging the deficit in areas such as: education, through the construction of schools; health; water; social housing; market gardening; agricultural development; and also through modernization of the means of production with the distribution of animal-drawn ploughs for population groups who were victims of the vestiges of slavery; the purchase of tricycles in poor districts; and the setting up of hundreds of income-generating activities. These initiatives had significantly increased the standard of living of the population groups concerned while creating decent jobs, and information on them could be found on the Agency's website. With regard to raising awareness of forced labour, the Government had focused its efforts on training for the administrative, judicial and security authorities, while involving civil society bodies working in the field of the promotion or defence of human rights. A number of training sessions had been held for prefects (*hakem*), mayors, gendarmes, police officers, magistrates and judicial officers on the need for rigorous application of the legislative provisions criminalizing slavery and punishing slavery-like practices. Furthermore, awareness-campaign caravans, with a particular focus on reaching religious leaders and

traditional dignitaries, had covered the country to disseminate the fatwa adopted by the assembly of ulemas reaffirming the strict prohibition on any form of exploitation. The awareness-raising efforts would continue, including through the ILO-funded project to support the application of the Act criminalizing slavery and punishing slavery-like practices. In conclusion, emphasis should be placed on Mauritania's commitment to the promotion and defence of human rights, particularly through the mobilization of all the country's resources and efforts to this end. Mauritania remained open to all those who wished to contribute to achieving this ambition.

The Worker members recalled that the Committee had shown great patience towards the Government and observed that the reappearance of the case before the Committee was a sign of unacceptable inertia. Failure to apply the provisions of the Convention could not be justified by the difficult economic and political climate in the country, which was one of the last in the world where traditional forms of slavery persisted. The extreme vulnerability of victims of slavery – in particular the most vulnerable groups, such as the *Haratin* – required the authorities to mobilize strongly to protect them. Despite widespread international condemnation, the Government had not taken the necessary steps to wipe out the scourge. In 2016, slavery could no longer be tolerated, and it was urgent for the Government to take all necessary measures to eradicate it once and for all. While recalling that Act No. 2007/48 of 9 August 2007 criminalizing and punishing slavery-like practices had proven ineffective, the ratification of the Protocol to the Convention, and the introduction of certain legislative amendments were to be welcomed. Act No. 2015-031 of 10 September 2015 criminalizing slavery and punishing slavery-like practices and repealing Act No. 2007/48 reproduced the main provisions of the previous Act, but defined in greater detail the elements that constituted slavery, the cession of persons, serfdom and debt bondage, while increasing the related penalties. It also provided for the possibility for associations for the defence of human rights that had benefited from legal personality for at least five years to be a party to civil proceedings. Act No. 2015-032 establishing legal aid set up a system of legal aid to cover the costs normally borne by the parties for persons who were poor or with low incomes. While highlighting these positive steps, which were intended to strengthen the legal framework to fight slavery, it should be noted that Mauritania was not in a position to implement legislative reforms effectively as it faced difficulties frequently arising from the inadequacy of labour inspection mechanisms and monitoring of the application of laws. The Government was incapable of demonstrating that those responsible for crimes of slavery were systematically prosecuted and convicted or that access to justice for victims of slavery was guaranteed. Specific actions were therefore needed in order to guarantee such access for victims. The Government should take all the necessary steps to identify, free and reintegrate victims and to punish those responsible, through the strengthening of labour inspection mechanisms and the monitoring of the application of laws. With regard to the 40 cases of slavery-like practices that had been dealt with by the courts, the number was too low and it would be interesting to know how many acquittals had been handed down in those cases. The penalties imposed for crimes of

slavery were not harsh enough. The first conviction by the special tribunal to fight slavery in Nema in May 2006 had been very disappointing and an appeal had been lodged. It should be recalled that dissuasive penalties that were effectively applied were essential to eliminating such practices, in line with Article 25 of the Convention. The Committee of Experts had observed reticence by the administrative and police authorities to investigate cases of slavery brought to their knowledge by associations. There was still a frequent tendency to shelve cases without follow-up and to re-classify the facts, which posed a further obstacle to the prosecution of crimes of slavery. With regard to the Tadamoun Agency, it was regrettable that it was neglecting one of its initial objectives, namely to fight slavery, and was focusing in particular on developing social and economic projects, which responded only indirectly to the urgent need to bring an end to slavery practices. The Agency also suffered from a lack of resources to fight slavery. It was also regrettable that NGOs and trade unions were excluded from the workings of the Agency. Further to the recommendation made by the Committee in 2015 regarding the roadmap to combat the vestiges of slavery adopted in March 2014, the Government had established a technical follow-up commission for the roadmap and an Interministerial Technical Committee. However, communication between these two bodies, was uncertain, nor did there appear to be clear indicators to measure any changes. It was to be hoped that the Government would guarantee the proper functioning of these bodies and take appropriate measures to achieve concrete and swift results in practice. With respect to tradition and culture as deeply-rooted reasons for the persistence of serious and ongoing slavery practices in Mauritania, it was essential that profound social changes were made within society, first and foremost with the Head of Government, the President, who seemed to deny the reality. This denial of slavery discredited any actions taken by the public authorities to stem the scourge and required awareness on the part of the leader of the executive authority and a national survey to be conducted on bonded labour to enable the authorities to ascertain the extent of the phenomenon and define the specific measures to be taken. The Government should also launch broad promotional, awareness-raising and education campaigns for the general public and the administrative, police and judicial authorities so as to systematically combat all forms of forced labour. Lastly, the authorities should refrain from persistently hampering the action of associations, trade unions and NGOs working against slavery in Mauritania and elsewhere. In this regard, it was deeply regrettable that the Government had hindered the issuance of a visa for the secretary-general of the Free Confederation of Mauritanian Workers (CLTM), who had been prevented from coming before the Committee to present his view of the situation in the country.

The Employer members agreed with the statement by the Worker members and indicated that this session of the Committee was a follow-up to last year's discussion. The Convention had been ratified by Mauritania in 1961 and, since then, the case had been examined many times by the Committee, while 14 observations had been made by the Committee of Experts since 1997. There had also been ILO missions in 2004 and 2006, and a set of recommendations had been adopted accordingly. Despite being one of the

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most frequently discussed cases on forced labour, the Employer members underlined the lack of progress made. They thanked the Government for the information on the measures undertaken and for its efforts to fight slavery. In particular, they noted the 2007 Act, the 2015 Act, the roadmap to combat the vestiges of slavery adopted in 2014 and the establishment of the special court. They also noted that the Government had ratified the new Protocol to the Convention. However, they indicated that, although the Government had developed an extensive legal framework, the application of the law in practice remained weak and there were questions about the willingness of the Government to implement its obligations. In this respect, they expressed doubt that the ratification of the Protocol could resolve a problem of enforcement that had been persistent for the past 55 years. Referring to Article 25 of the Convention, the Employer members referred to the lack of adequate and strict enforcement of the penalties imposed by the law. In this context, the main difficulties were cultural obstacles, as well as the obstacles of national administration in terms of prosecution. 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 a result, out of 31 cases, only one case had resulted in imprisonment, which was an example of the ineffective application of the Convention. The Employer members concluded by reminding the Government that it was its duty to protect vulnerable citizens.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as Iceland, Norway and the Republic of Moldova, recalled the commitment made by Mauritania under the Cotonou Agreement to respect democracy, the rule of law and human rights principles, which included the abolition of forced labour. Compliance with the Convention was essential in this respect. He noted the positive developments regarding the adoption in 2015 of two new acts which criminalized and punished slavery, established special collegial courts to hear slavery-related cases and set up a system of legal aid. He welcomed the fact that 31 cases of slavery-like practices had been heard by the courts, some resulting in punishments, and that two cases of slavery had recently resulted in the imposition of five-year prison sentences. He encouraged the Government to pursue its efforts to ensure the full implementation of the new legislation, including by providing the relevant authorities with adequate means to rapidly and impartially conduct investigations and initiate judicial procedures. It was essential to ensure that victims of slavery had the ability to assert their rights and that perpetrators were duly punished with dissuasive sanctions. The Government was also encouraged to implement the 29 recommendations of the roadmap, adopted in 2014, to combat the vestiges of slavery, and to ensure that the Tadamoun Agency had the necessary means to work on all of the areas of its mandate. It was to be hoped that the Government would continue to raise public awareness and that of the relevant authorities with regard to the problem of slavery and the need to eradicate it. He expressed the continued readiness of the EU to cooperate with the Government in promoting the development and full enjoyment of human rights.

The Worker member of Senegal recalled that the case of Mauritania had been brought before the Committee on numerous occasions since 1990. The fact-finding mission that had visited the country in 2006 had made a series of recommendations which should have resulted in considerable progress. In 2010, the Committee had urged the Government to convey the imperative nature of the need to eradicate slavery to the general public and the authorities by adopting, as quickly as possible, a national plan to combat slavery, in close collaboration with the social partners, and by introducing measures to ensure that victims had proper access to the police and judicial authorities. He condemned the Government's lack of goodwill – as demonstrated by preventing Mauritanian workers from participating in the work of the Committee – and the lightness of the penalties it had imposed on individuals found guilty of slavery. The United Nations Special Rapporteur on contemporary forms of slavery had noted that although the 2007 Act criminalizing slavery and punishing slavery-like practices had been well publicized in order to raise awareness of the criminal nature of slavery, victims continued to face problems in being heard and asserting their rights with regard to both the administrative and judicial authorities. The establishment of the Tadamoun Agency in 2013 had been a positive development, but the Committee of Experts had questioned its ability to implement the roadmap to combat the vestiges of slavery. The Agency's mandate was limited to the vestiges of slavery and did not cover the continued practice of slavery. Lastly, although the introduction of a roadmap constituted a positive step, it did not establish specific protection measures for victims.

The Worker member of France emphasized that the ratification of the Protocol of 2014 to the Convention demonstrated that Mauritania hoped to adopt provisions to combat slavery and its vestiges. However, the effective application of the Protocol, through its incorporation into legislation providing for victims to claim their rights, had not borne fruit, and the police and judicial bodies had expressed reluctance in that regard. Attempts to account for the causes of slavery and the difficulties in eliminating it through socio-economic and cultural explanations did not make slavery acceptable, and efforts to tackle the consequences of slavery were not sufficient given the degree to which it was rooted in society. In its observations to the Committee of Experts, the International Trade Union Confederation (ITUC) had referred to the authorities' reluctance to investigate cases of slavery, the tendency of the judicial authorities to close cases without follow up and to reclassify the facts in order to avoid applying provisions that defined slavery as a crime. The lack of awareness of most victims of their situation, coupled with the reluctance of the authorities' were the two factors to be addressed. The Tadamoun Agency was struggling to improve the situation, despite its mandate, which jeopardized its credibility. Mauritanian workers often emphasized the lack of genuine political will and the Government wrongly continued to impose the burden of proof on victims and failed to launch education and awareness-raising campaigns, as required by Article 2 of the Protocol. Certain sectors of the economy were more vulnerable, and certain workers were exposed to greater risk. Competitive examinations for labour inspectors, magistrates and public authorities were also nec-

essary to meet the requirements of the Protocol. The mobilization of the competent authorities and of all society was imperative to improve the situation and respect victims' rights. Lastly, the institutions responsible for enforcing the application of the legislation, in law and practice, were essential to prevent legislation from remaining a dead letter.

The Government member of Algeria welcomed the efforts made by Mauritania to implement the Committee's recommendations, particularly through the adoption of the 2015 Act criminalizing slavery and punishing slavery-like practices, which had consolidated the measures taken by the Government since 2007. According to the Government's indications, in addition to the above Act, other legislative texts had been adopted, notably the 2015 Act to combat torture. He noted the cooperation between Mauritania and the ILO, aimed at reinforcing the Government's actions against forced labour. Socio-economic efforts had also been made to combat forced labour in areas such as education, health and the modernization of the means of production.

The Worker member of Argentina indicated that since the ratification of the Convention in 1961, the Committee of Experts had made around 20 observations and the case had been examined by the Committee on numerous occasions. At the national level, the Government had adopted laws, implemented plans and programmes and established bodies to combat forced labour, which affected a large part of the population and, according to information available, remained deeply entrenched in society. However, these measures had had little impact and victims were still facing difficulties in claiming their rights and obtaining reparation because complaints were either not investigated, or were not adequately followed up, and some cases were impeded by the authorities. People were therefore victimized twice: by their oppressors and by the authorities. The situation of children in bondage who worked for a master, carrying out domestic or agricultural work and with limited access to education (which was similar to the phenomenon in Latin America known as "*criadazgo*"), was a horrific crime which not only destroyed their childhoods, but also conditioned this and future generations by perpetuating situations of poverty and marginalization. This Committee had been recalling for many years that, in the face of this phenomenon, the Government should take action within the framework of a global strategy that addressed all aspects of awareness raising and prevention, civil society cooperation, and the protection and reintegration of victims into society. This should be a participatory process that included a wide range of sectors from society and made use of the assistance of the international community. The Government should consult and include the social partners in the development of plans to eliminate this scourge once and for all, and avail itself of ILO technical assistance. In addition, he urged the Government to meet its commitment towards the consolidation of the rule of law to ensure lasting social peace. All governments should ratify the Protocol to the Convention and commit to eliminating forced labour, which constituted a flagrant violation of human rights and dignity.

The Worker member of Italy said that, despite the abolition and criminalization of slavery in 2007, the United Nations Special Rapporteur on contemporary forms of slavery had found that around 20 per cent of citizens of Mauritania

were still denied their fundamental rights to freedom and self-determination, making it the country with the highest prevalence of slavery in the world. The Government had passed a new law in 2015 which made slavery a crime against humanity and doubled the prison term for such an offence. However, due to the commingling of powers and the conflicts of interest which existed within the political, military and judicial systems, no effective action had been taken to bring an end to slavery despite the existence, in theory, of the enforcement mechanisms required to do so. The country's elite controlled all of the national institutions and had no interest in putting an end to the pre-established order upon which its privileges and wealth were based. On the contrary, its interests lay in the use of its power and influence to crush the anti-slavery movement, all the while denying the very existence of slavery. In recent years, a considerable number of anti-slavery campaigners and activists had been arrested and condemned, police had used teargas on more than one occasion during anti-slavery demonstrations and participants had been beaten and tortured during their detention. The ethnic and historical factors of slavery still persisted, with a portion of the population suffering from degrading treatment, not being paid for their work, being excluded from education and politics and not being allowed to own land or inherit property. Women faced discrimination both for being slaves and because of their gender, and were frequently beaten and raped by "masters" who considered them to be their property. Their children were also considered to be their property and "masters" could rent or loan them, or offer them as gifts. It was therefore crucial for the Act of 2015 criminalizing slavery to be effectively enforced and for criminal prosecution to be carried out against acts of slavery, including through the Tadamoun Agency. Despite receiving nearly US\$25 million of public funding, the awareness-raising initiative of the Tadamoun had had little impact. She urged the Government to end the ambiguous behaviour regarding the fight against slavery in order to bring an end to the continuing daily abuses.

The Worker member of Japan noted that the Government had modified and adopted relevant acts to criminalize and punish slavery-like practices, as well as adopting the roadmap to combat the vestiges of slavery. He emphasized that the reforms were not effectively implemented and such practices persisted in the country. Despite the high number of people (4 per cent of the population) living in conditions of domestic or agricultural slavery, only limited cases had been brought to court. Referring to the incident of 27 January 2012, when the local authorities of Dar Naim had prohibited the holding of a rally organized by the CLTM, he said that anti-slavery activism was severely repressed by the authorities. Mauritania had been one of the first countries to ratify the Protocol to the Convention. However, if the principles of the Convention were not realized in national law and practice, the significance of ratification and the value of any ILO instruments would be reduced. He requested the Committee to recommend the Government to take immediate action to align its practices and to comply with the obligations under the Convention.

The Worker member of Burkina Faso recalled that slavery and human trafficking were recognized as crimes against humanity and that Mauritania had ratified the Convention

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in 1961: consequently, it must apply it rigorously. He wondered whether Mauritania was consciously or unconsciously encouraged in its practices by other States. In turning a blind eye to the non-application of the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Labour Administration Convention, 1978 (No. 150), a State left its labour inspectors and controllers at serious risk of all forms of repression by employers, which encouraged a culture of impunity and slavery-like practices. All forms of slavery, whether traditional or modern, were reprehensible. The speaker congratulated Mauritanian workers on their continued struggle to put an end to slavery and encouraged the governmental authorities to take the lead in applying ratified Conventions. Respect for the Convention in different countries needed to be examined with respect to the working conditions, independence and protection of labour inspectors, on the one hand, and respect for the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on the other.

The Government representative recalled the exhaustive presentation he had made to highlight the action taken since the previous session of the International Labour Conference, which had focused on the efforts made to respond to the Committee's recommendations. Traditional forms of slavery no longer existed in Mauritania, as had been pointed out by the President of the Republic, and every effort was being made to combat any modern forms of slavery that might persist. While the labour inspectorate was insufficiently equipped to combat forced labour effectively, a lack of resources of this kind was a common phenomenon in many African countries. Nevertheless, reforms had been made in the previous two years to respond to the pressing need for rigorous supervision of the application of labour legislation in this area. A support programme to strengthen labour institutions was being implemented with ILO support. Administrative and security authorities that failed to follow the procedures established by law when a case of slavery was referred to them were liable to disciplinary and criminal penalties. Contrary to what had been said, civil society was well represented in the Tadamoun Agency. Prosecutions and judicial proceedings had gone ahead. The Government representative had brought to the Committee's attention the cases that had resulted in convictions, as well as those which had given rise to acquittals for lack of evidence. If a number of Mauritanian workers had failed to obtain their visas in time to participate at the Conference, it was not the fault of the Government, which had fulfilled its obligations. Some members of the Government delegation had faced the same problem. In conclusion, he reiterated the progress made since 2015. Every effort had been made to combat this scourge. He regretted the fact that his country was appearing before the Committee once again, but this was undoubtedly due to external factors that had not been identified.

The Employer members thanked the Government for the comprehensive information provided on the actions it had taken since June 2015, including the enactment of the new legislation which provided for stricter penalties, and the ratification of the Protocol to the Convention. Notwithstanding the efforts that had been made in the past year, and considering that the situation had been discussed by the Committee for many years, a lot of work still needed to be

done in the country. The situation remained of great concern because of the vulnerability of victims of slavery. In the Committee's conclusions, the Government should be urged to: (i) effectively implement the new law, which had replaced the 2007 Act; (ii) effectively implement the national plan and roadmap to combat the vestiges of slavery, including by providing comprehensive victim support and processes; (iii) provide the resources necessary to properly fund the Tadamoun Agency and labour inspectors to enable them to do the necessary work in this regard; (iv) continue its programme of awareness raising, to be targeted towards the general public, the central authorities, religious authorities and the judiciary; and (v) avail itself of continued ILO technical assistance. The Government was also urged to report in detail to the Committee of Experts at its November 2016 meeting on the implementation of the enforcement measures, including statistics on the number of cases investigated and prosecuted.

The Worker members drew attention to the efforts made by the Government to establish the most comprehensive array of legislation possible in order to combat slavery. They welcomed the timely ratification of the Protocol to the Convention. However, it was deeply regrettable that the Government had been unable to implement and apply the legal instruments which it had adopted. It was futile to establish rights without ensuring that they could be exercised in practice, and the Government should take the appropriate measures to produce swift and tangible results. The first step would be to formally recognize the existence of slavery in Mauritania, after collecting detailed data on the nature and incidence of slavery, as recommended by the Committee of Experts. The Government should also establish procedures to follow-up on and evaluate the implementation of measures to eradicate slavery. The 2015 anti-slavery legislation needed to be strictly enforced in order to ensure that investigations were conducted and those responsible for the practices of slavery were prosecuted and received sentences that were commensurate with their crimes. The strengthening of the labour inspectorate and of mechanisms for supervising the application of the legislation were essential in that regard. The justice system should be provided with sufficient resources for prosecutions to be carried out within a reasonable period of time. The authorities responsible for conducting such proceedings should be trained and public awareness should be raised about slavery-related offences. The Government should implement the roadmap to combat the vestiges of slavery. It was also important to provide the Tadamoun Agency with the necessary support, and to allow civil society and the social partners to participate in its work. The development and implementation of campaigns to raise awareness among the general public, victims of slavery, the police, the administrative and judicial authorities and the religious authorities, was an indispensable measure for combating the practices of slavery that were embedded in culture and tradition. In order to promote the economic and social integration of persons subjected to slavery, the authorities should guarantee access to state resources and services for vulnerable groups. The authorities should also collaborate with associations, trade unions and NGOs that were combatting slavery, and cease to obstruct their work. The Government should avail itself of ILO technical assistance and

accept a direct contacts mission to help it take further action. The Worker members expressed the hope that the Government would submit a report on the measures taken, particularly the application of the 2015 Act criminalizing slavery, before the 2016 meeting of the Committee of Experts. Lastly, the absence of the Mauritanian worker delegates, who had set their hearts on being present to share their experiences with the Committee, was deeply regrettable.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted the information provided by the Government but expressed deep concern that, in practice, the Government had yet to take sufficient measures to combat slavery despite the numerous times the Government had been called before the Committee. In particular, the Committee was concerned that the Government had prosecuted very few of those responsible for the crime of slavery and had imposed light penal sanctions that have little, if any, dissuasive effect.

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

- Strictly enforce the 2015 anti-slavery law 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.
- Strengthen the labour inspectorate and other relevant enforcement mechanisms to combat the exaction of forced labour.
- Ensure that prosecutions at the special courts for slavery crimes are supported and processed in a timely manner, with training for law enforcement officials around the country on the identification and referral of cases, and with public awareness-raising campaigns around the convictions.
- Implement fully the Road Map to Combat the Vestiges of Slavery, including comprehensive victim support and prosecutions. 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 reintegrate into society;
 - awareness-raising programmes.
- Facilitate the overall social and economic integration of those subjected to slavery into society, including the Haratine and other marginalized groups affected by slavery and slavery-like practices, and ensure they have access to services and resources.
- Provide necessary support to the National Agency to Fight against the Vestiges of Slavery, for Social Integration and to Fight against Poverty, or “Tadamoun”, for its programmes to specifically focus on reaching, supporting and empowering slavery-affected communities and individuals; involve the social partners in the fight against slavery through those programmes and, in particular, in the working of the Tadamoun agency.
- Develop and implement awareness-raising campaigns for the general public, victims of slavery, police, administrative and judicial authorities and religious authorities.
- Collect detailed data on the nature and incidence of slavery in Mauritania, as recommended by the Committee of Experts in 2016, and establish procedures for monitoring and evaluating implementation of efforts to end slavery.

In this regard, the Committee urged the Government to avail itself of ILO technical assistance and of a direct contacts mission. The Committee also asked the Government to report in detail on the measures taken to implement these recommendations, in particular on the enforcement of the 2015 anti-slavery law, to the next meeting of the Committee of Experts in November 2016.

The Committee also noted with concern the fact that the Government failed to ensure that visas were provided to Workers’ delegates to allow them to participate in the work of the Committee.

The Government representative stated that he had followed with interest the Committee’s conclusions on the case under discussion. Most of the recommendations made had already been implemented or were in the process of being implemented. The issues raised formed part of the priorities of the Government, which would continue to work to address them. Regarding the allegations of obstructing the issuing of visas for the Worker representatives to the Conference, the Government had taken the necessary steps within the deadlines. In that respect, for the sake of the normal development of the trade union movement and promotion of social dialogue championed by the Government, it was desirable for the parties concerned to draw inspiration from the principles of the resolution concerning the independence of the trade union movement adopted by the Conference in 1952, including that: “when trade unions in accordance with law and practice of their respective countries and at the decision of their members decide to establish relations with a political party or to undertake constitutional political action as a means towards the advancement of their economic and social objectives, such political relations or actions should not be of such a nature as to compromise the continuance of the trade union movement or its social and economic functions”. Mauritania had provided tangible proof of its firm commitment to comply with ILO standards as an absolute priority.

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

BANGLADESH (ratification: 1972)

A Government representative referred to the Committee’s conclusions on this case in 2015 and indicated that the Government had accepted to receive a High-level Tripartite Mission, which had taken place in April 2016. The report of the Mission had been received by the Government only on 6 June 2016, i.e. two days prior to the discussion in the Committee, which was the reason why no comments could yet be made on the content of that report. In view of the strong commitment of the Government to engage and work with the social partners to improve rights at work, the inclusion of Bangladesh in the list of individual cases was unjustified. The Government was committed to uphold international labour standards through promoting freedom of association of workers in line with the ILO Conventions. The right to organize was enshrined in the Constitution, and, in addition, trade unions and their leaders were protected under various provisions of the Bangladesh Labour Act, 2006 (BLA). Anti-union discrimination and reprisals were contrary to the BLA and subject to stringent legal actions. Under the BLA, any aggrieved worker could submit a complaint on unfair labour practices or anti-union activities to the Department of Labour for remedial action, which

would be properly dealt with in an appropriate time frame. Of the 38 complaints received at the Department of Labour, 20 had been settled and 16 criminal cases had been filed, while one case was still being investigated. A helpline for workers had been operational since March 2015, and a total of 490 complaints from the ready-made garment (RMG) sector had been received between December 2015 and May 2016 through this helpline. The BLA had been amended in July 2013, including with a view to promote freedom of association and collective bargaining. After the amendment of the Act, trade union registration had increased significantly, with 899 new trade unions and 21 new trade union federations that had been registered, including 366 new trade unions in the RMG sector. Following the introduction of an online registration system in March 2015, 412 online applications had been received. Moreover, workers in the agricultural sector now had the right to form trade unions. Both the amendments to the BLA and the Rules implementing the BLA had been adopted upon consensus following a wide range of consultations with the tripartite stakeholders. Referring to various technical assistance activities with various actors, including the ILO, he emphasized that awareness raising and capacity building of workers about the right to organize and collective bargaining, especially in the RMG sector, was of high importance to the Government. Those positive initiatives should contribute to a qualitative change in the right to organize and collective bargaining. The export processing zones (EPZs) Workers' Association and Industrial Relations Act adopted in 2004 was the first legal instrument that granted workers in EPZs the right to organize. Subsequently, the EPZ Workers' Welfare Association and Industrial Relations Act (EWWAIRA) was adopted in 2010 to ensure freedom of association and collective bargaining of workers in EPZs in the form of workers' welfare associations (WWAs), which were acting as collective bargaining agents. Out of 409 eligible enterprises in the EPZs, referendums had been held in 304 enterprises. In 225 of these enterprises, WWAs had been established following the referendums held. Between January 2013 and December 2015, 260 charters of demands were submitted by WWAs and settled amicably with agreements being signed. This clearly showed that workers in EPZs were enjoying the right to organize and collective bargaining. Moreover, from January 2015, workers in EPZs were also enjoying the right to strike. The adoption of a comprehensive EPZ Labour Act was at its final stage, and a wide range of consultations had been held with the elected worker representatives of EPZs, investors and other relevant stakeholders. The draft Act had also been shared with the ILO. It was evident that since the existence of EPZs, the labour rights within these zones had been gradually improving, and the EPZ Labour Act was expected to provide an even more effective protection of workers. The effective enforcement of the BLA also played an important role in upholding freedom of association. Therefore, the recruitment of additional staff at the Department of Labour had been initiated. The trade union culture in Bangladesh was complex and awareness building of employers and workers played a vital role in building harmonious industrial relations. Since 2013, more than 14,000 workers and trade union representatives had received training on labour relations. In conclusion, the Government rep-

resentative expressed appreciation for the constructive engagement of the ILO and the development partners as well as for the technical cooperation provided, and stressed that there was a need for the greater engagement of the tripartite constituents in Bangladesh in the planning, designing and implementation of such technical assistance to promote rights at work.

The Worker members recalled that in more than three years since the Rana Plaza incident, the international community had repeatedly encouraged the Government to protect the right to freedom of association. However, despite *all* of the technical assistance and *all* of the resources provided, the Government had *utterly failed* to make any meaningful progress. The Committee of Experts and the Conference Committee had repeatedly expressed serious concern with regard to the exercise of the right to freedom of association. Recalling the main conclusions of the Committee on this case in 2015, they expressed the view that the Government had failed on all counts. Firstly, concerning the amendments to the BLA and the adoption of Implementing Rules, some amendments to that Act had been adopted in 2013. However, the revised BLA continued to fall well short of international standards with regard to freedom of association and collective bargaining. In its comments published in 2015 and 2016, the Committee of Experts had "regret[ed] that no further amendments have been made to the BLA on certain fundamental matters". The Committee of Experts had also underscored "the critical importance which it gives to freedom of association as a fundamental human and enabling right" and urged "that significant progress ... be made in the very near future to bring the legislation and practice into conformity with the Convention on all of the abovementioned points". In October 2015, the Government had finally issued the Bangladesh Labour Rules, many provisions of which violated the Convention. Of particular concern was that employers had a role in the election and filling of vacancies of *Worker* representatives in the participation committees. Workers on temporary contracts were unable to vote in such elections. Where no union existed, which was the case in the vast majority of workplaces, participation committees determined the representatives in the Safety Committees. The probability of management domination in these committees was high and clear and dissuasive sanctions for acts of interference appeared to be missing. Secondly, concerning freedom of association in EPZs, trade unions were banned and only WWAs were permitted in these zones. WWAs did not have the same rights and privileges as trade unions. While the EPZ authorities claimed that collective bargaining was permitted, this was not the case. There were also numerous cases in which leaders of WWAs had been laid off in retaliation for the exercise of their limited labour rights. On repeated occasions, the Committee had called on the Government to allow full freedom of association in EPZs. The Government had nevertheless refused to do so, pointing to the assurance given to investors years ago to keep these zones union free. The High-level Tripartite Mission "*observed with concern the separate legislation for factories in the EPZs and the limitations on freedom of association and collective bargaining in these zones*". In February 2016, the Cabinet had approved a draft Bangladesh EPZ Labour Act, which had been submitted to Parlia-

ment in April. However, the Government had failed to engage in consultations with Worker representatives concerning this draft. Under the proposed law, workers in the EPZs would still not be able to form unions. All the provisions of the 2010 law in relation to WWAs had been incorporated into the draft. The Government claimed that it could not allow unions because of prior promises made to investors, but this was no excuse. The Government's obligations and the tripartite conclusions concerning this case could not be clearer. Thirdly, with regard to the investigation and adjudication of cases of anti-union discrimination, there was a serious lack of commitment to the rule of law. At all levels, law enforcement was almost non-existent. Many union leaders of the unions registered after 2013 had suffered retaliation. Some union leaders had even been brutally beaten and hospitalized. Entire executive boards had been dismissed. In some cases, the police, at the apparent behest of factory management, had intimidated and harassed trade unionists. This was confirmed by the conclusions of the High-level Tripartite Mission report in paragraph 46, which "*noted with concern the numerous allegations of anti-union discrimination and harassment of workers*" as well as "*blacklisting, transfers, arrests, detention, threats and false criminal charges*". The responses by the labour inspectorate had been extremely slow, and most union leaders or members illegally dismissed for trade union activity had not yet been reinstated, nor had the employers been punished for those egregious violations. Police routinely failed to carry out credible investigations in cases of anti-union violence, if such investigations were carried out at all. The Worker members were aware of over 100 acts of anti-union discrimination in factories where new trade unions had been registered. In the few cases where workers had been reinstated, this was due to international campaign pressure on brands, not because of labour inspection and enforcement. They finally referred to a drastic case of anti-union discrimination, in relation to which several complaints had been filed with the Ministry of Labour and Employment to no avail.

Finally, with regard to trade union registration, the Worker members indicated that following the Rana Plaza collapse, the Government had temporarily reversed its no-union policy in the RMG sector in response to intense international pressure. Therefore, new unions had been formed and successfully registered. However, in 2016, the situation had nearly returned to the pre-Rana Plaza days. In 2015 alone, the Joint Director of Labour (JDL) had rejected 73 per cent of all new union applications, in particular from the most active independent garment federations. The approval of a union's application remained at the absolute discretion of the JDL, allowing it to reject legitimate registration applications. With regard to the number of newly registered trade unions since 2013, the Government had failed to mention that this number had decreased by over 100, as nearly 50 unions were now inactive due to anti-union retaliation and over 50 factories in which trade unions had been established were now closed. According to the mission report, the procedure for registering unions "had the likelihood of discouraging trade union registration" and various tactics that had been used which had led to the high rate of rejection of new applications. This was a deliberate policy of the Government and not a technical issue. With

increasing regularity, factory management were now seeking injunctive relief from the courts to stay union registrations that had been properly granted. This practice constituted a gross violation of the right to freedom of association; indeed, the post hoc resort to the courts itself was a highly questionable use of the judicial process to frustrate trade unions after the registrar had already found the registration application to be in order. The Government's hostility to freedom of association had been confirmed by the High-level Tripartite Mission. The Government had repeatedly broken the trust of the Committee with empty promises. It was time for this to finally change.

The Employer members thanked the Government for the detailed information provided. They recalled that following the 2016 observation from the Committee of Experts, the Government had accepted a High-level Tripartite Mission to the country in April 2016; the High-level Tripartite Mission's report had been provided to the Conference Committee in advance of the discussion of the present case. In its latest comments, the Committee of Experts had noted with interest the establishment of a helpline for labour-related complaints targeting the RMG sector in the Ashulia area. The Committee of Experts had also noted that the Bangladesh Labour Rules were published on 15 September 2015 as part of the implementation of the BLA, and had welcomed the issuance of the Rules, trusting that they would assist in the implementation of the BLA in a manner fully consistent with the Convention. The Employer members joined the Committee of Experts in welcoming these positive developments and encouraged the Government to expand the operation of the helpline to other areas of the country. With regard to the registration of trade unions, they noted that the High-level Tripartite Mission considered this process as heavily bureaucratic, and further recalled the concerns expressed by the Committee of Experts in respect to this overly complicated procedure. They urged the Government to establish standard procedures in order to ensure that the registration process would set out requirements of a purely formal nature and would not, owing to its bureaucratic nature, itself become an obstacle to the registration of unions. In respect of the Committee of Experts' comments on the minimum membership requirements for forming a trade union, they stressed that these requirements must be viewed in the national context. It was also important, in this regard, to consider that a proliferation of trade unions could be counterproductive to the development of healthy industrial relations and economic growth. The Employer members further urged the Government to provide information to the Committee of Experts on the steps taken to amend the BLA since 2013. They welcomed the initiative reported by the Government to provide training to workers and employers on the issue of anti-union discrimination, and asked the Government to continue with these capacity-building activities. With regard to the issue of the EPZs, they noted that a situation of separate legislative frameworks for enterprises within and outside the EPZs remained. The BLA applied to employers operating outside the EPZs, whereas a number of provisions of the EPZ Workers Welfare Association and Industrial Relations Act of 2010 collectively constituted a separate legislative scheme for employers operating inside the zones. The provisions of the Act did not allow workers and em-

ployers to form organizations of their own choosing. In respect to the EPZ concerns raised by the Committee of Experts, the Government had indicated that a draft of the EPZ Labour Act had been sent to the Ministry of Law for vetting prior to submission to Parliament. The Employer members noted that this draft law appeared to have been prepared with limited engagement of the national social partners, who indicated that they either were not consulted or were allowed very limited consultation in respect of this bill. They further noted that the High-level Tripartite Mission in its report had expressed concerns over the draft EPZ Labour Act, as it restricted the freedom of investor employers by requiring them to form central investors' associations, rather than organizations of their own choosing. While having noted the information supplied by the Government to the effect that the above-noted dual legislative framework had arisen out of concerns to ensure the attractiveness of the EPZs to foreign investors, they urged the Government to ensure that the draft EPZ Labour Act allowed workers and employers to establish organizations of their own choosing, and to fully consult with the national social partners in this regard. Finally, the Employer members asked the Government to provide information on the labour laws applicable to the special economic zones as the Committee of Experts had requested.

The Worker member of Bangladesh considered that despite its claims of progress, the Government still denied workers their right to freedom of association in law and in practice as confirmed by the recent report of the High-level Tripartite Mission. Workers in all sectors in Bangladesh who attempted to organize and form trade unions faced severe and, at times, violent retaliation from employers without the Government making any serious effort to hold accountable those who violated the law. Workers whose contracts of employment were terminated due to trade union activity were almost never reinstated, unless Global Unions undertook a lengthy international campaign against the global garment brands. Therefore, he was deeply concerned with the Government's continued denial of the right of freedom of association to workers in EPZs. In spite of several revisions to the Bangladesh Labour Rules, no guarantees had been provided to ensure the right of workers to establish and join organizations of their own choosing without interference from public authorities, which would restrict this right or impede its lawful exercise. The draft law prepared by the Government in 2016 and submitted to Parliament in April 2016, maintained the same exclusion of workers in EPZs from its scope of coverage. It was further stressed that WWAs were not unions, and collective bargaining in the EPZs was extremely rare. Moreover, workers who attempted to organize were dismissed, and prohibited by law from seeking the assistance of trade unions or non-governmental organizations outside of the EPZ. The new implementing Rules of the BLA were two years overdue and of poor quality. While trade unions had been consulted, the executive decrees created new obstacles to the right of freedom of association. For example, Rule 81 empowered the worker participation committee to elect the workers' representatives in the safety committees while RMG employers largely controlled the process of establishing worker participation committees, and by extension occupational safety and health committees in light of

Rule 82. The trade union movement in Bangladesh believed that there was no alternative to free trade unionism to ensure sustainable development, maintain industrial integrity and uphold democracy. In this regard, social dialogue was seen as important and the only way to achieve the desired goals. However, the Government had appeared before the Conference Committee both before and after the Rana Plaza disaster and continued to make promises that it did not uphold; the time has come to witness concrete results.

The Employer member of Bangladesh emphasized that, apart from being one of the most densely populated countries of the world, there were an additional 1.8 to 2 million youths every year joining the estimated 50 million economically active people in the labour market. Therefore the greatest challenge was not only to sustain the level of employment but also to create jobs for the millions who were joining the labour market and impart to them the right skills that would facilitate job search within the country and overseas. Recalling the fact that Bangladesh ratified 29 ILO Conventions within a year of its independence in 1971, the speaker indicated the full commitment of the country to safeguarding fundamental human rights, including freedom of association, and to ensuring compliance with international labour standards. With job creation, a greater space had been shaped for trade union rights and appropriate amendment to laws. Citing the economist, Dani Rodrick, the speaker referred to a time dimension as a prerequisite condition for achieving progress towards implementation of the Convention and indicated that the BLA, as amended in 2013, was to be considered one of the measures taken in this direction. He also mentioned that the tripartite partners would be continuously reviewing progress in line with the recommendations of the recent High-level Tripartite Mission. The speaker recognized activities of the ILO country office in Dhaka, seen as essential for the implementation of the Convention and aimed at promoting decent work in Bangladesh, fostering tripartism and building capacities of the social partners. Recalling the previous examinations and conclusions of the Conference Committee as well as the Committee of Experts, the Employer member brought attention to the issues raised in the last observations, specifically: the request to modify the law governing EPZs allowing for full freedom of association, including to form trade unions and to associate with trade unions outside of EPZs; harassment for participation in trade union activities; registration of union organizations without previous authorization; and excessive requirement for initial and continued union registration. He further noted that this case had not been the subject of a representation procedure under article 24 of the ILO Constitution. In the light of the recent High-level Tripartite Mission, which was welcomed by all the constituents, the speaker expressed his regret that this particular case had been shortlisted before the Mission had had the opportunity to share the findings in its report. The speaker commended the amended BLA, which had been done through tripartite consultations. Considering that Rules under the Law had been published in September, barely eight months ago, he suggested that the stakeholders ought to be allowed to observe implementation of the law for a reasonable time before making another attempt for further amendments. He

also believed that the complaints lodged by the International Trade Union Confederation (ITUC) would be verified through proper investigation by appropriate government agencies and further indicated that the registration process for trade unions had been made easy and open through the latest amendment to the BLA. Trade unions and their leaders were protected under various provisions of the BLA, including, inter alia, complaints procedures, anti-union discrimination penalties and remedies for aggrieved workers. The speaker strongly believed that the existing threshold of 30 per cent worker membership in an enterprise was realistic for union registration and lowering it would encourage a proliferation of unions without bringing any positive change to the bargaining strength. He also noted a particularity of the agricultural sector, 99 per cent of which was under small individual ownership and with a limited number of seasonal temporary workers. With regard to the request of the Committee of Experts to amend a number of sections of the Bangladesh Labour Rules, the speaker pointed out that a one-size-fits-all approach could not have been suitable and laws needed to be enacted in line with ILO Conventions as well as taking the socio-economic development of the country into account. A draft of the Bangladesh EPZ Labour Act, incorporating a provision for constitution of trade unions under the name of Shramik Kollyan Samity in the EPZs, was agreed by the Cabinet on 15 February 2016 and was expected to be enacted. The speaker concluded by reiterating the need for time in a process of development and expressed his hope for further support and cooperation.

The Government member of the Netherlands, speaking on behalf of the member States of the European Union (EU), as well as Albania, Iceland, Republic of Moldova and Norway, welcomed the Government's acceptance of a High-level Tripartite Mission in April 2016, and noted that progress on a number of issues had been achieved in the framework of the Sustainability Compact, which, inter alia, outlined concrete commitments in respect of freedom of association. For instance, an online registration system for trade unions had been established, as well as a helpline for cases of violence against trade unionists targeting the RMG sector in the Ashulia area. In respect of the latter, he encouraged the Government to expand the helpline nationwide and provide information on the follow-up given to the calls received. These positive developments notwithstanding, serious issues remained in respect of the application of the Convention. For example, the number of registrations of trade unions had dropped significantly in recent months, and a number of registered trade unions no longer operated in practice. In this regard, he called upon the Government to ensure that trade union registration would be carried out in a transparent and expeditious manner. It was equally important, moreover, to ensure that unfair labour practices would be effectively investigated and prosecuted. He also urged the Government to amend the BLA so as to:

- (1) lower the minimum membership requirement of 100 workers for establishing an agricultural trade union;
- (2) ensure that the definition of "supervisor" was limited to individuals truly possessing managerial authority; and
- (3) lower the 30 per cent minimum membership requirement for the establishment of a trade union.

He reiterated the call expressed by others in the Committee for the Gov-

ernment to review the draft EPZ Labour Act, so as to ensure full freedom of association rights to workers in the said zones, as well as to indicate which labour laws were applicable to the special economic zones. He concluded by affirming the EU's commitment to continuing its intensive cooperation with the Government in the framework of the Sustainability Compact – in which Bangladesh, the United States, Canada and the ILO were partners – and urged the Government to take all the necessary steps to ensure a sound industrial relations system premised on respect for freedom of association.

The Government member of Switzerland, expressing regret that the Committee must once again discuss the issue of respect of the Convention by Bangladesh, supported the statement made by the EU. Given that in 2015 Switzerland had expressed concern about acts of violence and harassment directed towards trade unionists, it was to be hoped that the proceedings under way would be successful and would result in sanctions. In supporting the recommendations made by the Committee of Experts and the conclusions of the High-level Tripartite Mission, there were two points to highlight. Firstly, noting the reduction in the number of trade unions, she urged the Government to follow the recommendations made by the tripartite mission in that regard and to develop standard procedures for a simple and transparent trade union registration process. Secondly, the importance of having strong and coherent labour laws should be stressed. Noting with concern the shortcomings with regard to freedom of association and collective bargaining in EPZs, she asked the Government to implement the recommendations of the tripartite mission on that issue.

The Worker member of Canada, jointly with the AFL-CIO, stated that labour reforms had been initiated by Bangladesh in the aftermath of Rana Plaza with the revision of the BLA being identified as a priority to create a solid foundation upon which safety in the RMG sector could be built. While the BLA was revised in 2013, the vast majority of the observations of the Committee of Experts relating to freedom of association had not been addressed. Bangladesh had not lived up to its commitment to take into account the Committee of Experts' observations under the terms of the Bangladesh Sustainability Compact, to which the EU, the United States, Canada, Bangladesh and the ILO were parties. Under the Compact, the Government had agreed to pass executive decrees to implement the BLA. The executive decrees of concern had been passed after a delay of two years, and even then, the Bangladesh Worker member noted that the executive decrees had actually created new problems with regard to the exercise of freedom of association. For example, some workers, who did not actually serve in a managerial capacity, were categorized as supervisors under the executive decrees, and consequently excluded from the BLA's coverage. The executive decrees also failed to outline procedures for the resolution of unfair labour practices. Rule 202, in a general manner, restricted the actions that could be taken by trade unions. The fact that the Rules were so deeply flawed, despite the substantial ILO technical assistance, was further evidence that the Government had no intention to respect the ILO supervisory system or the rights of its workers. The Committee should hold the Government accountable for its obvious lack of political will to comply with its legal obligations. Canada had been called upon to use its leverage, as

part of the Bangladesh Sustainability Compact, to promote compliance with the right to freedom of association in the “ready-made garment and knitwear industry” in Bangladesh, consistent with Canada’s commitment to improving conditions for workers in Bangladesh. Canada had also been urged to apply all the tools at its disposal to strengthen Bangladesh’s political will to advance workers’ rights and to achieve full compliance with the Convention, in all sectors in the country.

The Government member of the United States indicated that the Government of Bangladesh had been requested to appear before the Committee every year since the tragic Rana Plaza building collapse in April 2013 and underlined that this year was the third discussion on freedom of association. Noting the increased attention of the Committee to this case in recent years, she pointed out a lack of progress in this regard and recalled last year’s statement of the United States Government regarding a decline in the rate of union registrations, obstacles related to the application process as well as significant and worrisome reports of unfair labour practices, which included violence against trade unionists and unfair dismissals. Referring to the Committee of Experts’ recommendation that union registration should be a simple formality, she called on the Government to establish standard procedures for union registration that would be transparent and not subject to discretionary authority. Furthermore, she urged the Government to establish a system for the thorough and timely investigation of the mentioned unfair labour practices, and to provide for redress, including reinstatement. Recalling the increased attention to the issue of freedom of association in Bangladesh’s EPZs since 1991 of both the Committee of Experts and the Conference Committee, the speaker reiterated that WWAs, as provided in the current and proposed law, were not equivalent to, or substitutes for, trade unions that were free to organize their own activities and to affiliate with other organizations outside the EPZs and urged the Government to ensure that its laws would allow for full freedom of association in the EPZs, including private EPZs, and in future economic zones such as the planned special economic zones. The speaker urged the Government to amend the BLA and its regulations in line with the Convention and observations of the Committee of Experts. She concluded by inviting the Government to take full advantage of the technical assistance from multiple sources and to implement the recommendations of the High-level Tripartite Mission, and of this Committee, without further delay.

An observer representing IndustriALL Global Union explained that her organization represented over 50 million workers in 140 countries in the manufacturing, mining and energy sectors with affiliates in RMG and shipbreaking. The issue of the refusal to register trade unions was particularly endemic in the RMG sector. While in the immediate aftermath of the Rana Plaza disaster and due to international pressure, new unions had been registered in the RMG sector, it had become increasingly difficult to do so over the previous two years. According to the data compiled by the Solidarity Centre in 2015, 134 applications for registration were filed with 61 unions granted registration and 148 rejected; and as of mid-April 2016, 13 applications were submitted with three approvals and 14 rejections. It

was clarified that the sum of accepted applications and rejected ones did not add up to the total number of applications submitted, due to the fact that applications were kept pending from one year to the next. Moreover, the Government of Bangladesh made no progress in creating a database to track the registration process, and the Committee was urged to take note of this point. It also appeared from the data of the Solidarity Centre and the information provided by the affiliates of the IndustriALL (the National Garment Workers’ Federation (NGWF), the Bangladesh Garment and Industrial Workers Federation (BGIWF), Bangladesh Federation of Workers Solidarity (BFWS)), that applications filed by independent unions had a greater risk of being rejected even when they fulfilled all requirements. Ten of the IndustriALL affiliates submitted 61 applications in 2015, of which only 18 unions (with a total membership of 4,600) were registered and six applications remained pending with the JDL. The latter’s refusal of registration for various reasons showed the difficulties created in the registration process. One illustrative case was an RMG factory (Hanwen) where the JDL had rejected the application for union registration on the grounds that some workers claimed as members had not been aware of the union, and because the office bearers and some of the members had not belonged to that factory. The reality was that some of the workers were issued backdated termination letters after the union filed for registration, and new workers had been recruited just prior to the scheduled inspection required before registration. Therefore, the Committee was urged to take note that the JDL had absolute discretion in deciding applications for registration and that this issue was not addressed by the executive decrees issued under the BLA of 2013. Furthermore, the executive decrees of September 2015 made it mandatory to include the identity cards of all members whose names are part of the application for registration, giving rise to fears of harassment of union members. Further to the aforementioned obstacles, employers were approaching courts to seek injunctions on unions which had actually been granted registration with the result of *ex-parte ad-interim* orders being issued. These orders had the effect of not allowing a union to function, even after being duly registered. A case in point was that of a garment factory (Donglian Fashion) where the IndustriALL affiliate, the Sommelito Garment Sramik Federation (SGSF) had been organizing. The workers formed a union and managed to register it on 29 January 2015. The management filed Writ Petition No. 1244/2015 in the High Court alleging that registration to the union had been granted unlawfully by the JDL. The union had not been made a party to the court proceedings. Instead, the High Court, after hearing the employer, had issued an order on 30 November 2015 staying the registration of the union for six months pending the hearing of the Writ Petition. It was only following interventions from IndustriALL and affiliates in Japan, that there had been an agreement to withdraw the Writ Petition and to reinstate union activists who had been terminated earlier. With regard to the shipbreaking sector, affiliates organizing in the Sitakund yards submitted that shipbreaking yards were difficult for unions to access. In addition, the deaths of workers in shipyards had led to unions focusing more on safety issues. In conclusion, the Committee was urged to take note of the aforementioned

issues that adversely impacted on workers' rights to organize.

The Government member of Thailand welcomed the ongoing efforts of the Government to promote compliance with the Convention, as well as its commitment to promote labour welfare, trade union rights and collective bargaining through labour law reforms and an increase of minimum wages. The Government should be given appropriate time to carry on its efforts.

The Worker member of the Philippines recognized previous concerns raised by the Committee of Experts in relation to the issue of freedom of association in Bangladesh and failure of the Government to ensure the possibility for workers to exercise their fundamental rights in practice. Observing a continuous lack of commitment to the rule of law, particularly with regard to anti-union violence, the speaker indicated that the leaders of a range of unions registered after 2013 had been suffering retaliation, in some cases violent; had been physically assaulted; and most had been illegally fired for trade union activities. He mentioned as well a slow responsiveness of the labour inspectorate. The speaker provided three examples of individual cases in support of the statements mentioned above. The first referred to an assault of the trade union president of a garment company, who was attacked, together with her husband, by several armed men in August 2014. The second example illustrated the incidence of 60 workers being fired at the RMG Washing Plant with at least one being physically assaulted. The SGSF affiliated union indicated that the retaliation had escalated once the union made a request to management in March 2014 related to collective bargaining negotiations. The speaker mentioned that the management had filed false criminal charges against union leaders. Finally, the third case related to the termination of 48 union members, including most of the leadership, by the management of a factory in September 2014. The speaker indicated that a peaceful protest outside the factory resulted in a clash with the police, summoned by the management, after which five workers, including the union president, underwent medical treatment. The speaker referred to the report of the ITUC, IndustriALL Global Union and UNI Global Union containing more than 100 cases of anti-union discrimination in factories, where new trade unions had been registered and had been expressing criticism towards the Government for failing to guarantee freedom of association. He urged the Government to align its laws and practices, and comply with its obligations under the Convention.

The Government member of China commended the Government for having taken a number of positive measures to apply the Convention, such as having introduced amendments to the BLA and conducted training on anti-union discrimination. He also observed that workers in EPZs enjoyed freedom of association rights. The Government had made sincere efforts to fulfil its obligations under the Convention, these efforts needed to be recognized and supported with technical assistance of the Office.

The Worker member of Germany said that the Confederation of German Trade Unions (DGB) wished to address the issue of persistent violations of freedom of association in EPZs in Bangladesh. The freedom to form an organization in defence of one's rights was a universal right, and

Convention No. 87 was one of the fundamental ILO Conventions. This right should apply to all, but it did not exist in Bangladesh's EPZs. These zones were specially designated as industrial zones where enterprises could produce goods for export only. For these enterprises, labour, social and environmental laws had been redefined, and the right to organize did not exist. It should be noted that the same law should apply to all, throughout a territory; human rights should not stop at the gates of EPZs. It should be pointed out that WWAs were a parody of a replacement for trade unions and indeed could not replace them, given that they did not carry the same legal weight as a trade union and could be run by an employer. These associations could not therefore engage in collective bargaining, as an employer could not negotiate a collective agreement with itself or call for strike action against itself. Although the Government had referred to a draft EPZ Labour Act, this draft did not respect freedom of association in these zones and, consequently, the problem of applying the law would become worse. In 2015, US\$403 million had been invested in EPZs, so funding was available. In these zones, workers suffered physical and psychological violence and humiliation in the workplace because of the lack of workers' rights. It would be a mistake to consider the draft EPZ Labour Act as a step forward. Following the dramatic events of the past, a great deal of public attention was focused on working conditions in the textile industry in various countries. To conclude, an appeal was made to the Government as the German Government planned to invest in Bangladesh through the creation of the Vision Zero Fund. This would not be possible unless freedom of association was guaranteed for all workers in Bangladesh, in accordance with ILO Conventions.

The Government member of Cuba said that applying good practices in the area of cooperation would be advisable and encouraged the Government to continue moving in that direction through dialogue, information exchange, help for capacity building, and mutual recognition of progress made and challenges to overcome.

An observer representing UNI Global Union stated that violations of freedom of association were all too common in both the garment and telecommunications sectors. In both sectors, the Government refused to register trade unions and workers were dismissed with impunity for trying to organize. In respect of a trade union established by the employees of the nation's largest telecommunications company, he stated that the company had dismissed 163 employees, including seven union officers, the day after having learnt of the union's existence. The Government had also repeatedly refused to register the union and, after prolonged court proceedings, had appealed the Labour Appellate's court decision finding in favour of the union and ordering the latter's registration; a judgment of the appeal was still being awaited. Throughout these proceedings, he stated further, the company had maintained the untenable position that virtually all of its 3,000 employees could not form a union as they were all supervisors or managers. On 7 February 2016, workers at the second largest telecommunications company submitted an application to register the union, called BLEU. This effort drew immediate acts of reprisal from the company, including the dismissal of a union activist and threats made against union members. Further-

more the Government had refused to register the union, although it enjoyed a membership rate of 35 per cent. At a third telecommunications company, employees had managed to successfully register a union on 17 July 2014. However, shortly thereafter the company's management launched a campaign aimed at convincing members to leave the union. Additionally the union's treasurer was assaulted and dismissed, and on 27 March 2016 the Labour Directorate had informed the union that a case had been filed seeking the cancellation of the latter's registration. It was abundantly clear, thus, that the Government had no intention of ensuring respect for freedom of association.

The Government member of Sri Lanka observed that the Government had made substantial steps to recognize freedom of association rights and improve work safety in EPZs, and appreciated the measures taken to promote social dialogue among the stakeholders. He asked the Government to continue its efforts with the technical assistance of the Office.

The Government member of Canada commended the progress made to improve working conditions in the RMG sector, welcomed the information provided in the report of the High-level Tripartite Mission, and appreciated the cooperation of the authorities and stakeholders with the Mission. The speaker called on the Government to reaffirm its commitment to transform economically important RMG sector and to advance women's empowerment. The speaker indicated that freedom of association and collective bargaining, as fundamental elements of an effective labour relations system, needed to be further strengthened within the RMG sector and extended to other sectors of the economy, including EPZs and special economic zones. The speaker expressed concern in relation to the high rejection rates of trade union registrations in 2015 and 2016, despite an overall increase in registrations, and noted the High-level Tripartite Mission's finding regarding the related procedures and 30 per cent membership requirement that may have been seen as obstacles to trade union registration. He commended the Tripartite Mission's recommendations to Bangladesh. Recognizing the achievements made, he underlined the need to ensure an open and transparent environment in which trade unions and workers' committees can freely and effectively fulfil their roles. Regarding the BLA of 2013, he noted the Committee's request to make amendments in certain fundamental areas and urged the Government to work in a tripartite manner in order to bring forward amendments that are in conformity with the Convention. The speaker concluded by reiterating the commitment of Canada to work with all stakeholders to improve safety and workers' rights in Bangladesh, in particular in the RMG sector.

The Government member of India expressed appreciation regarding the follow-up made by Bangladesh on the main recommendations formulated by the Conference Committee in 2015 and for having accepted the High-level Tripartite Mission of April 2016. However, the report of the tripartite contact mission had been shared with Bangladesh only a few days after the admission of the case against it by the Committee, while the Government had been undertaking labour reform processes to harmonize its national laws with the Convention, as well as other steps to improve workplace safety and compliance. In this regard, reference was made to the specific measures initiated to strengthen

enforcement by increasing recruitment of labour inspectors, investing in their training while enhancing regular inspections of RMG factories and increasing access to complaint mechanisms through the hotline. The Government had been actively engaged with the ILO and had availed itself of technical assistance in implementing many of the aforementioned measures, including the development of the Tripartite National Plan of Action on Fire Safety and Structural Integrity in the RMG Sector. Bangladesh was also in the process of adopting a comprehensive EPZ Labour Act to further protect labour rights, including the right to form associations in the EPZ enterprises. The speaker trusted that the Committee would fully take into account the detailed responses provided by Bangladesh on its compliance with the Convention, when finalizing its recommendations.

The Government member of Egypt noted the steps undertaken by the Government to amend the BLA so as to ensure the protection of workers' rights in establishing and joining unions of their own choosing. The Government had stressed its complete respect for international labour standards and its full commitment to the Convention. Bangladesh was encouraged to pursue this course of action and to undertake additional steps in the framework of social dialogue, which guaranteed the participation of all parties. In this respect, it was hoped that the Office would provide the necessary technical support.

The Government member of Qatar expressed his gratitude to the Committee and the Government for the discussion and the detailed description of the measures taken. He welcomed the progress made.

The Government member of Malaysia commended the Government for having accepted the High-level Tripartite Mission in April 2016. She stated that she shared the Government's view that the Committee's decision to hear the present case was premature, given that the tripartite mission's work was still continuing. Nevertheless, the measures reported on by the Government signalled a strong commitment to protecting the rights and improving the welfare of workers. She called upon the Committee to recognize these measures as progress made in the implementation of the Convention.

The Government representative thanked the members of the Conference Committee for their constructive comments. With respect to the issues relating to EPZs, he stated that the social partners had been engaged in the drafting of the EPZ Labour Act. In March 2014, for instance, the Bangladesh EPZs Authority had consulted on that bill with representatives of workers' and employers' organizations in the EPZs. He underscored that the EPZ Act of 2010 ensured freedom of association and collective bargaining rights, and that 135 officials comprising 90 counsellors cum inspectors and 45 industrial relations officers were presently engaged in the EPZs to ensure compliance with the relevant laws. Seven labour courts and one labour appellate tribunal had been designated to address disputes in the EPZs. A total of 161 cases had been filed with the EPZ labour courts since their establishment in 2011, of which 86 had been settled. Intensive training programmes were also being carried out by the Bangladesh EPZs Authority on issues falling under the EWWAIRA, fire safety, health and hygiene safety, industrial relations, grievance handling procedures and social dialogue processes. In the period

2014–15 a total of 700 such programmes had been conducted. Referring to paragraph 40 of the High-level Tripartite Mission report, he stated that his Government had accepted to initiate the implementation of the social dialogue project in the RMG sector, focusing on: (1) improving social dialogue; (2) collective bargaining; (3) dispute prevention and resolution; (4) conciliation; and (5) arbitration, with special consideration given to female employees. He added that the project would continue to provide training to build the capacity of labour officers to handle cases of anti-union discrimination, and establish a “Workers’ Resource Centre” that would act as a centre of excellence for workers’ training and awareness building. On the registration of unions, the BLA had been amended to simplify the registration procedure. Moreover, an online registration system had been established with ILO technical assistance. He stated that in 2013, 64 trade unions had been registered, a figure representing 46 per cent of all applications. The rate of registration had been 42 per cent in 2014, and had dropped to 27 per cent in 2015. Nevertheless, the rate of registrations thus far was 64 per cent, and this increase was due to the awareness-raising measures the Government had undertaken. With regard to the harassment of trade unionists, notably in the RMG sector, the enforcement agencies were always mindful of the need to ensure workers’ welfare and handled reported cases in a manner consistent with national laws. In some cases, however, it had been trade unionists who had committed crimes by inciting violence in the industrial sector, blocking roads or vandalizing factories. In such cases, it had been necessary for the authorities to act to protect property and restore order; nevertheless the authorities always acted cautiously to ensure their actions did not result in the harassment of trade unionists or the disruption of trade union activities. In respect of trade unions in the telecom sector, he stated that at present there were two unions in one of the largest telecom companies in the country. In paragraph 40 of its report the High-level Tripartite Mission had welcomed the progress the country had made by, inter alia, the creation of a labour complaint helpline, the establishment of an online registration system and the implementation of numerous training and capacity-building programmes aimed at improving industrial relations. The Mission, moreover, had noted that through these initiatives the Government had demonstrated its commitment to improving the freedom of association situation in the country. He concluded by affirming his country’s readiness to work with the social partners, the ILO and all development partners in promoting freedom of association, in line with the national legislation and the Convention.

The Employer members thanked the Government for the detailed information provided and encouraged further co-operation with the social partners and the ILO with a view to ensuring that social dialogue would lead to changes in law and practice. They urged the Government to ensure the establishment of the standard procedures that would guarantee that the trade union registration process requirements were not overly bureaucratic and were not constituting an obstacle to such registration. They further urged the Government to ensure that the law governing EPZs allowed for freedom of association, providing employers and workers the right to establish and join organizations of their own

choosing. They also requested them to provide further information about the way Rules pursuant to the BLA were applied in law and practice. The Employer members called for implementation of the recommendations of the High-level Tripartite Mission without delay and urged the Government to make real and meaningful progress in this regard. Recalling the issues raised in their opening statement on this case, they urged the Government to achieve progress in relation to all the issues discussed through constructive social dialogue.

The Worker members recalled their experience in the country, as part of the High-level Tripartite Mission, and stated that the Government was making it nearly impossible for workers to organize or join a union. Workers were threatened and intimidated by management, and at times by police, local thugs and political operatives. In some cases, these threats turned into dismissals or into severe beatings. Some union activists were forced to sign blank pages, which were then turned into resignation letters. The labour inspectorate or the police did nothing to stop this, to punish an employer, to get a worker reinstated or to compensate for the harm caused to the workers. There appeared to be no labour justice for workers. Workers in all sectors were denied their right to form unions. The Government either delayed or denied new union registrations by using tactics such as disqualifying the signatures for the slightest mismatches, and by constantly invoking requirements that were not in the laws. The Government had failed to comply with nearly every international commitment. It had ignored the observations of the Committee of Experts, the conclusions of this Committee, the Bangladesh Sustainability Compact, and even its trade obligations. Every year, they told the Committee that they would do better, but returned the following year without having complied with the conclusions. This was not due to the lack of technical assistance or resources, as the ILO and numerous international donors had made welcome investments in industrial relations, but simply because there was no will. The Worker members urged the Government to comply with the 2015 conclusions of the Committee as well as with the recommendations of the recent High-level Tripartite Mission. They requested that the conclusions of the Committee be placed in a special paragraph.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the report of the ILO high-level tripartite mission and noted with deep concern that the Government has failed to make progress on the repeated and consistent conclusions of this Committee despite the substantial technical assistance and financial resources provided by donor countries.

Taking into account the discussion of the case, and taking into account the conclusions of the Committee of 2015, the Committee repeats its concerns and urges 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 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 the ability to form em-

employers' and workers' organizations of their own choosing, and to allow workers' organizations to associate with workers' organizations 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
- 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.

Further, we invite the Government to implement the recommendations of the 2016 high-level tripartite mission together with the social partners.

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

The Government representative underlined that the Government had just received the report of the high-level tripartite mission and had yet to discuss it with the relevant ministries and social partners. In view of the need to reflect on its content and continue the dialogue, he did not see any rationale behind proposing a special paragraph. This decision set a bad precedent.

CAMBODIA (ratification: 1999)

The Government representative stated that Cambodia fully respected the right to strike but that violent actions during strikes were prohibited. He pointed out that the right to strike provided under the Convention was subject to domestic law. According to article 37 of the Constitution, *"the right to strike and to non-violent demonstration shall be implemented in the framework of law"*. While exercising their right to strike, workers should respect the right to strike procedure as provided for by the domestic laws. The exercise of the right to strike should not cause any harm to the public order of the country. He affirmed that no worker who had not committed criminal acts, such as destroying public or private property or causing bodily injury to others had been arrested. The number of registrations of newly established trade unions kept increasing every year. In 2015, the Ministry had registered 237 new enterprise-based trade unions. As of today, 16 union confederations; 100 union federations; 3,434 enterprise-level unions; and eight associations of employers had been registered. The Ministry of Education, Youth and Sports organized annual, quarterly and monthly meetings with teachers' representatives. As of 2014, 121 non-governmental organizations (NGOs) and associations had signed the Memorandum of Understanding for collaboration with the Ministry. Teachers were not prohibited from joining a strike or demonstration so long as the exercise of this freedom complied with national procedures, such as the requirement for the provision of minimum services, which was in line with the principles of international labour standards. Teachers and civil servants were free to form associations of their own choosing under the Law on Association and Non-Governmental Organizations (LANGO) which aimed at ensuring the protection of the right and freedom of every citizen to form associations and NGOs for the protection of their legal interests and public interests. This freedom was also guaranteed under section 36 of the Law on Common Statute of Civil Servants and section 37 of the 2007 Law on Education.

Referring to the murders of the trade union leaders, the speaker indicated that the Special Inter-ministerial Committee established for the investigation of these cases was

diligently working, with strong commitment to bringing the real perpetrators to justice. Considering the crucial nature of the case, it was necessary to allow adequate time for the investigation process in order to ensure a fair and just conclusion. He hoped that the Committee and all stakeholders would recognize the Government's commitment in this regard.

The speaker regretted the incident that took place in early January 2014. However, he clarified that this incident was a riot, which had been instigated by some politicians who had used minimum wages as propaganda, and did not fall under the definition of a strike, as provided by international labour standards. The demonstrators had blocked public streets at midnight, thrown burning bottles of gasoline and destroyed private and public properties, with damages estimated at around US\$75 million. The Government had had to take action to restore peace and stability. He stated that a detailed report on this matter would be submitted to the Committee of Experts by September 2016.

A specialized labour court, in accordance with the provisions of the 2014 Law on the Organization of Courts, was being developed and would be operational in the near future. The Government, with the technical assistance of the ILO, was working on the draft Law on Labour Procedure of the Labour Courts. The tripartite consultation on this draft would take place by the end of 2016. The new Trade Union Law was intended to protect the rights and interests of workers and employers, guaranteeing the right to collective bargaining between workers and employers, improving industrial relations, and ensuring employment and national development. The entire drafting process had taken almost ten years and a long series of bipartite, tripartite, multilateral and public consultations had been conducted during this period.

A review of the implementation of this new law was also included in the Government's agenda to address any issues uncovered during its implementation. He expressed the Government's commitment to ensuring freedom of association through the implementation of all legislation and requested strong collaboration of the social partners in this regard.

The Employer members noted that this case had been examined six times by the Committee, the last time in 2014; that the Committee of Experts had made observations in this regard every year since 2007; and that the case had also been examined by the Committee on Freedom of Association. This case identified the need to look at the manner in which the Committee received and processed information. Until recently, this case had focused on a list of issues as opposed to focusing on the observed breaches of the Convention and evidence of progress, or lack thereof, on the part of the Government. The report of the Committee of Experts had observed the divergent information provided by workers' organizations and the Government regarding a number of issues and had recalled the necessity of a climate free from violence, pressure or threats to the exercise of freedom of association. These divergences made it difficult for the Committee to make concrete conclusions and, unless these divergences were reconciled with Cambodia's obligations under the Convention, the Committee would simply continue to request more information, which should be avoided. The citation by the Committee of Experts of

the conclusions of the Committee on Freedom of Association regarding the trials held following the murder of a trade unionist some time ago illustrated the need to focus on conformity with Conventions and accountability for their implementation. The Employer members, while emphasizing that they did not condone violence of any nature towards workers, unions or employers, wondered how the concerns of the Committee on Freedom of Association regarding the criminal process that applied to someone convicted of murdering a trade unionist were relevant to the consideration by the Committee of matters of freedom of association.

With regard to the freedom of association matters which had been the subject of earlier recommendations, they noted that the Committee had previously been informed that the Government had set up three committees to investigate a number of acts of violence during strike actions in 2014 over minimum wages, among other issues. The Employer members noted the Government's indication that it would provide the conclusions of these committees, which were still unknown, by the end of 2016. They also noted that progress had been made in addressing the concerns on the fragmented and disaggregated resources of the judicial process, including the availability of trained adjudicators. The Government had been providing training to adjudicators and had set up specialized labour units within the various levels of the judiciary, which should provide the specialized focus and experience necessary for labour issues to be expeditiously and effectively resolved. However, this was a work in progress. The new Trade Union Law existed against a background of complaints about poor treatment and harassment of trade unionists, apparent restrictions placed upon the establishment of new unions and in the context of the significant increase of new trade unions in the country in recent years. Both of these issues clearly needed to be managed. They noted that the Trade Union Law dealt in large part with the issues over which concern had been expressed and called upon the Government to fully implement the Law as soon as possible, in addition to providing a copy to the Committee of Experts. Unless evidence of non-compliance with the Convention could be uncovered, in which case such issues could be submitted to the Government for response, they deemed that the Committee should consider this particular issue as resolved.

Concerned about the restrictions that the Government had sought to place upon the engagement of union officials, specifically the literacy requirement which seemed to constitute a form of prior authorization contrary to Article 2 of the Convention, the Employer members urged the Government to review this and any other potential anomalies before it sought to give full effect to the Law. Noting that the Committee of Experts had requested information on any progress regarding the drafting of the guidelines on the operation of the Labour Court and the Labour Chamber, they suggested that the Government provide a brief report to enable any potential inquiries into the implementation of its various facets. Considering the journey of Cambodia to democracy, the steps it had recently taken were very significant, namely the introduction of a specialized labour court and the Trade Union Law, and it was therefore possible to consider Cambodia as a case of progress despite it not being characterized as such. The ILO had recently held con-

sultations in the country regarding labour courts and the related institutions and a process of consultation with the social partners had also begun. The Employer members considered that a reasonable time period should be given to Cambodia before it was asked to report in detail on the progress made with regard to the Committee's recommendations, which did not preclude raising issues of breach of the principles of freedom of association. They recommended that the Government be requested to provide a brief update on: (i) its activities with regard to the three investigative committees, as promised by the Government for December 2016; (ii) the establishment, resourcing and training of the labour court, while taking note of the active work done and the assistance of the ILO in that regard; and (iii) the implementation of the new Trade Union Law, taking into account the Committee's remarks in this regard.

The Worker members regretted that, despite repeated calls from the ILO, the Office of the United Nations High Commissioner for Human Rights, trade unions, leading clothing brands and civil society organizations, the Government had decided to adopt a thoroughly regressive law that violated the Convention in many respects. Like the LANGO, which was extremely restrictive and likely to be applied to trade unions in the informal sector that were not recognized under labour legislation, the new law reflected an increasing hostility towards trade unions and civil society. The numerous violations of freedom of association went unpunished. In May 2016, a joint statement of three United Nations Special Rapporteurs had stated: "We are ... troubled by the actions taken by Cambodian authorities to deter and disperse peaceful demonstrations and arrest individuals protesting what they see as the Government's mounting persecution of civil society and unjustified restrictions of fundamental freedoms in the country". Major reforms were therefore necessary.

The Worker members recalled that the trade unions had been consulted only once during the lengthy drafting process of the Trade Union Law, and that their opinions had not been taken into consideration. He also recalled the criticism that had been raised that the Law would be used to suppress the country's independent trade union movement, just as it was taking action to obtain pay raises and better working conditions. On frequent occasions, the ILO had drawn the Government's attention to a number of concerns and shortcomings, and the United Nations Special Rapporteur for Cambodia had drawn attention to several provisions that actually violated Cambodia's Constitution. The Worker members noted in particular: (i) section 3 of the Trade Union Law which excluded a number of categories of workers from its scope, including public servants, teachers, informal workers and domestic workers; (ii) section 14 which prohibited trade unions from concluding legal agreements before they were registered; (iii) section 17 which required trade unions to provide the Government with an excessive amount of information on their finances and activities, or face having their registration cancelled; (iv) section 20 which required trade unions to meet illegal criteria relating to age and literacy and subjected them to extensive criminal background checks that could disqualify persons who had participated in legitimate trade union activities; and (v) section 29 on requests for the dissolution of a trade union which did not specify who could make such a request. The penalties to which employers were liable under

the Law were too lenient to be dissuasive. They called on the Government to rectify the situation in order to bring the Law in line with the Conventions of the ILO.

With regard to the violence used against demonstrators in January 2014, which had resulted in five deaths and dozens of people being seriously injured and being arrested without warrant, the Worker members deplored the fact that no sanction had been imposed and called for an independent and credible inquiry into the incidents. They supported the Committee of Experts' request that the Government make public the findings and conclusions of the inquiry. Citing specific examples, they said that the criminalization of trade union activities dissuaded unions from freely organizing actions. As to the illegal resort to fixed-term contracts that was common practice in certain sectors, the Committee on Freedom of Association had recalled "that fixed-term contracts should not be used deliberately for anti-union purposes" and that "in certain circumstances, the employment of workers through repeated renewals of fixed-term contracts for several years can be an obstacle to the exercise of trade union rights". Yet, that was precisely the kind of contract which was used in the clothing industry. Despite the Arbitration Council's ruling that the law must be upheld, this was not the case and the Government had attempted to undermine the Council on several occasions.

The Worker members gave the example of a transport company's violation of freedom of association which they believed clearly showed the gross absence of workers' rights in Cambodia. Two union leaders had been arrested for organizing a peaceful demonstration calling for the recognition of a trade union and compliance with arbitration rulings. Criminal charges had even been brought against union leaders who had not been at the demonstration, while the management of the enterprise refused to implement the decisions of the Arbitration Council. That kind of behaviour needed to cease, and the Government was urged to put a stop to the repression and to respect freedom of association.

The Employer member of Cambodia stated that he was pleased that the Trade Union Law, which was in line with international labour standards, had been adopted after significant formal tripartite consultations. He considered that the procedure for the establishment of the specialized Labour Court, which was carried out with the support of the ILO and following tripartite consultations, would take significant time and requested that sufficient time be given to pursue these processes. The speaker highlighted the challenges which existed with the Cambodian union movement in enabling a healthy and respectful industrial relations environment, such as: (i) the existence of a fragmented union movement that was not representative that led to infighting and illegal behaviours among unions (this created great conflict within enterprises in particular because unions were representing personal agendas rather than workers); (ii) outside interference of unions in enterprises where they were not represented (outsourcing interference often resulted in intimidation and interference, disruption of the workplace, and the exploitation and threatening of workers); (iii) minority unions exploited the law for personal gain precisely because they were not representing the interests of workers; and (iv) the inability to use collective

bargaining agreements effectively and to realize their benefits for workers, employers and industry. Referring to the comments made by the Committee of Experts in 2015, he stated that the unions also had the responsibility to ensure that freedom of association was exercised in a climate that was free from violence, pressure or threats of any kind. Unions should exercise their rights within the laws of the country and should be held accountable, if their actions were illegal. The minimum wage negotiations of 2014 had been turned into political demonstrations that ended in violence. Employers did not support violence of any kind, and those who had committed crimes needed to be held accountable, regardless of whether or not they were an employer or worker. The protection of freedom of association for civil servants and teachers was stipulated under section 36 of the Law on Common Statutes of Civil Servants and section 37 of the Law on Education. He hoped that the Government would continue to report to the Committee on progress made and urged it to do so through the inter-ministerial committee responsible for reporting on ILO matters.

The Worker member of Cambodia recalled that Cambodia had ratified 13 ILO Conventions and that Convention No. 87 had been ratified in 1999. Although many laws were in force, which ensured trade unions' rights, law enforcement was still challenging. Independent trade unions still faced serious problems including murder, arrests, detention, union discrimination and interference in their activities. He recalled the murder in 2004 of Chea Vichea, Ros Sovanareth and Hy Vuthy, three trade union leaders. Since then, murders still occurred, as five workers had been killed in 2013. He also mentioned various cases in which trade union leaders had been injured, prosecuted, imprisoned or dismissed without reinstatement or compensation. Legal justice was rarely found in cases of discrimination of independent union leaders and members. The Law on the Organization of the Courts had been adopted in 2014 without consultation with unions. The drafting process of the Law on the Labour Procedure of the Labour Court was taking place. The Government was encouraged to start consultation with the unions with regard to this law. Regarding unfair dismissals of trade unionists, 80 per cent of workers were employed under fixed-term contracts which were used by the employers to easily terminate workers if they joined independent unions. Women workers were easily dismissed if pregnant. The speaker also recalled that in some cases, political parties and companies interfered with the activities of trade unions, and that these unions could therefore not be regarded as independent and autonomous, in violation of Article 3(2) of the Convention. Moreover, the Trade Union Act adopted in May 2016 was still very restrictive for trade unions: the quorum required for voting for a strike was 50 per cent plus one of the total members. Trade unions were also required to send financial reports to the Ministry of Labour. Also, the concerned parties had the right to audit trade unions' finances and dissolve unions. The Government was urged to take the necessary measures to: (i) ensure that trade unions were free from the threat of murder, violence and interference; (ii) guarantee that fair, independent and transparent investigations of the previous murder cases were carried out, perpetrators were punished and victims compensated according to the law; (iii) ensure that charges filed against the leaders of the six

national trade union centres were dropped; (iv) stop employers from using the judiciary against independent unions; (v) stop interfering in the activities of trade union organizations and protect trade unions from employers' interference; (vi) work in collaboration with trade unions to amend the Trade Union Law in compliance with international labour standards; (vii) provide for a duration of fixed-term contracts of not less than two years to avoid discrimination against trade unionists and pregnant workers; and (viii) ensure that the new Labour Court would have a tripartite composition and would be independent, professional, efficient and ruled by consensus in deciding labour cases, and that access to it would be quick and free of charge. The ILO should assist the Government to address these issues through a tripartite mission.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as Albania, Iceland, the Republic of Moldova and Norway, indicated that they attached great importance to human rights, including freedom of association, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The Government was urged to ensure that trade union rights be fully respected and trade unionists be able to engage in their activities in a climate free of intimidation or risk. In this regard, they hoped that the special investigative committee, established in June 2015 to resolve the criminal case regarding the murders of Chea Vichea, Ros Sannareth and Hy Vuthy, would keep the national employers' and workers' organizations informed of the progress of its investigation on a regular basis. Noting the recent adoption of the Trade Union Law, they expected the Government to implement it in a fair and impartial manner, and called upon the ILO to assess and ensure that all of its provisions were in compliance with the Convention. Encouraging the inclusion of civil servants, teachers and domestic workers in the scope of the new law, they called upon the Government to: (i) provide the information requested by the Committee of Experts on the measures taken or envisaged to ensure that the rights of these groups were fully ensured under the Convention; (ii) avail itself of the technical assistance of the ILO; and (iii) comply with its reporting obligations.

The Government member of Thailand, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), welcomed the information provided and the progress made by the Government. Expressing appreciation for the adoption of the Trade Union Law, he encouraged the Government to effectively implement it. He also commended the commitment and efforts of the Government to establish labour courts in the near future and to develop a minimum wage law, in compliance with international labour standards. Emphasizing the commitment of the Government to strengthen social dialogue in the country, he urged the Committee to take the significant progress made into account.

The Government member of the United States expressed concern about the persistent limitations on the right to freedom of association and the lack of protection for workers' rights in Cambodia. She referred to the allegations included in the recent observations of the Committee of Experts regarding ongoing impediments to the registration of new independent trade unions, and the persistent intimidation of

teachers from joining trade unions. Genuine freedom of association could only be exercised in an environment that was free from violence, pressure, and threats of any kind. While noting the information provided by the Government on the work of the three committees (the damages evaluation committee, the Veng Sreng road violence fact-finding committee, and the minimum wages for workers in apparel and footwear sector study committee) that were established in the wake of the serious episodes of violence, death and arrest of workers in 2014, she remained concerned by allegations of ongoing arrests and detention of workers engaged in demonstrations. She echoed the Committee of Experts' request for additional information on the conclusions and recommendations of the three committees and urged the Government to take all necessary measures to prevent violence against trade unionists, including through full and expeditious investigations and the prosecution of perpetrators. Since 2008, the ILO had been engaged with the Government and its social partners in drafting a Trade Union Law. Despite numerous consultations and recommended revisions over the years, the Government had adopted the Trade Union Law, which appeared to fall short of compliance with international labour standards. The main concerns were: (i) the exclusion of certain categories of workers from the right to join unions; (ii) the high threshold requirements for strike ballots; (iii) excessive and burdensome audit requirements and unclear provisions regarding the relevant parties that may request an audit of union activities; (iv) the ability of courts to interfere in the dissolution of trade unions, which should instead be determined by the union's statute and bylaws; and (v) the lack of sufficiently dissuasive penalties for non-compliance. She urged the Government to submit a copy of the Trade Union Law to the Committee of Experts for review in 2016, and to take immediate action with the technical assistance of the ILO and in full consultation with the social partners to address issues of non-compliance with the Convention.

The Worker member of Australia recalled that under article 36 of the Constitution, Khmer citizens had the right to form and join trade unions. Although that could be considered a decent starting point for a legally guaranteed right to freedom of association, the reality was that in recent years there had been a multifaceted, sustained and even deadly attack on the rights of workers to associate and organize. The uneven application of criminal law was an indicator of the deteriorating situation. There had been violent attacks and trade union leaders had even been murdered. However, perpetrators had gone unpunished in most cases. Nevertheless, criminal law had been invoked repeatedly and enthusiastically by the Government against workers and trade union leaders. No fewer than six leaders of the national trade union centres had been charged for intentional violence and with regard to damages after the 2014 strike. The President of the Cambodian Labour Congress was currently under court supervision, which restricted him from taking part in protests or approaching workers in designated areas, leading strikes and demonstrations or changing his home address. Up to 198 other criminal cases involving workers and unions mostly in the textile and clothing industry, were also pending. According to an analysis of the new Trade Union Law by the Office of the United Nations High Commissioner for Human Rights in Cambodia, there were a number of key areas where the application

of criminal law held direct implications with regard to the ability of people to form and join trade unions. These included: (i) the mandatory requirement that trade union leaders declare that they had never been convicted for any criminal offence; and (ii) the capacity for the new Labour Court to dissolve entire trade unions where individual officers had been found to have committed an offence or even serious misconduct. Any political effort to criminalize unionization and to invoke criminal law as an instrument to repress union organization would only damage Cambodia's international reputation and the Government was urged to reject that approach.

The Worker member of the Republic of Korea recalled that in its report adopted in March 2016, the Committee on Freedom of Association had indicated that fixed-term contracts should not be deliberately used for anti-union purposes and could be an obstacle to the exercise of trade union rights. Many garment factories had built an entire workforce by employing workers through repeatedly renewed fixed-duration contracts (FDCs) of short duration. While violating the Labour Law, this phenomenon was widely applied in practice and was increasing. The legal implications of employment under FDCs were numerous, including fewer rights and benefits for workers; easier dismissal and shorter notice periods; difficulties in proving anti-union retaliation; reduced compensation upon termination of contract; and limited access to maternity leave benefits. The use of FDCs created great instability for workers, who reasonably feared that their contracts would not be renewed if they failed to obey the employer or if they joined a trade union. Furthermore, in a situation where the majority of contracts were FDCs, it was difficult to identify trade union leaders, who would not be able to complete a two-year term. The one-year work experience required for trade union leaders by the labour legislation could be hard to accrue under FDCs. A Memorandum of Understanding in the garment industry had been signed in 2012 between the Garment Manufacturers' Association in Cambodia (GMAC) and several trade unions, and included a commitment to reach a separate agreement on this issue. However, no negotiations had been initiated on this matter. Supporting the recommendations of the Committee on Freedom of Association, the speaker therefore urged the Government to take all appropriate measures to promote these negotiations with a view to reaching an agreement on the use of FDCs and ensuring that workers in the garment industry were able to exercise their trade union rights freely.

The Government member of Canada strongly encouraged all member States to respect the terms of the Convention and recalled that the onus to ensure that freedom of association be exercised in a climate that was free from violence, pressure or threats of any kind was on governments. While some positive steps had generally been taken, further action was required and information had to be provided, as highlighted by the Committee of Experts. The concerns on the Trade Union Law were mainly related to insufficient protection of the right of all workers and employers to freely set up organizations of their own choosing, and to the right of these organizations to decide on internal matters without interference. In this regard, the Government should reopen discussions through social dialogue and within the National Assembly with a view to revising the

law. He also expressed disappointment regarding the LANGO, which was restrictive of civil society, as its application to occupations not covered by the Trade Union Law could constitute a violation of the Convention. Finally, looking forward to the conclusions and recommendations of the committees regarding the incidents of violence of 2014, he emphasized the urgent need to ensure the effectiveness of the judicial system as a safeguard against impunity, and as an effective means to protect workers' rights during labour disputes.

The Worker member of the Philippines identified with the widespread anti-union discriminatory practices experienced by workers in Cambodia. Union and federation members and leaders who were independent and critical of employers were increasingly becoming the target of harassment, discrimination and unfair dismissals by their employers. Since the end of 2013, 867 worker members of the Cambodian Labour Confederation (CLC) had been dismissed due to their union membership and activities, and only 67 of them had been reinstated. The rejection by employers of the arbitration award on reinstatement, in addition to the lack of government will with regard to enforcement, was seriously undermining the unions freely chosen by workers. The speaker gave the example of the November 2014 strike at the Siem Reap Airport, a ten-day protest during which replacement workers had been hired and following which seven union leaders were terminated for organizing the strike. Airport management had asked the union's deputy chair to stop addressing complaints against the company and had offered to reinstate him in exchange for his cooperation. Instead of rectifying the unfair dismissals, the Ministry of Labour requested the employer to give monetary compensation to the dismissed union leaders, who to this day had not been reinstated and were unemployed.

The Worker member of Japan expressed concern that section 29 of the Trade Union Law guaranteed the right to "concerned parties", or 50 per cent of the total members of a union to take the initiative of filing for dissolution of the trade union to the Labour Court. In the interest of industrial relations, the dissolution of a trade union should only be taken as a last resort, and after exhausting other possibilities with less serious effects for the organization as a whole. Moreover, the dissolution of a trade union should be dealt with according to the provisions of the union's constitution and bylaws. The provisions of the LANGO concerning the mandatory registration for all domestic and international associations, the unfettered discretion of the Ministry of Interior over union registration, and the requirement of "political neutrality" applicable to all associations and organizations, constituted violations to the right to freedom of association. He urged the Government to consult with the trade unions and to consider the revision of these laws in order to be fully consistent with the Convention.

The Government representative thanked his ASEAN colleagues, in particular Thailand, for their support and encouragement for better freedom of association in Cambodia. He noted all of the constructive comments made by the respective representatives of employers and workers, as well as other Government delegates, which could serve as valuable inputs to achieve their ambitious agenda in building a future with decent work. The Government had been

working actively in developing a strong legal framework through the adoption of laws and regulations. The Trade Union Law had been recently adopted, its implementing tools were being developed, and the drafting process of the Law on Labour Procedure of the Labour Court was under way. The Government was working closely with Better Factories Cambodia and the ILO Better Work Programme, to improve and strengthen labour inspection in order to ensure better working conditions. For further improvement of the effective implementation of international labour standards, as well as national laws and regulations, the participation and collaboration of all parties concerned was a necessity. While reiterating the commitment of the Government to fully complying with its reporting obligations, he assured that a detailed report would be submitted to the Committee of Experts by September 2016.

The Worker members indicated that the members of the Committee could only encourage the Government to make rapid progress on the path towards freedom of association. However, they had heard from many delegates, and especially from the Worker member of Cambodia, a description of the situation which remained very serious. They recalled that, concerning the murders of Chea Vichea, Ros Suvannareth and Hy Vuthy, the Committee on Freedom of Association had had to resort to the exceptional use of paragraph 69 of its Procedures for the examination of complaints alleging violations of freedom of association in order to invite the Government to appear before it and to provide missing information. The Government had accepted the invitation to provide information in May 2015. Noting that more than a year had passed, they emphasized the importance of replying to the requests made by the Committee on Freedom of Association. Impunity remained a critical issue.

They recalled that Cambodia had been under the constant supervision of the Committee since 2006 for the application of this Convention, of the Worst Forms of Child Labour Convention, 1999 (No. 182), or for its failure to submit reports. Every year, the issues remained the same: unpunished acts of violence against trade unionists (including murder); anti-union dismissals; harassment and intimidation by state officials; prohibition of the right to free speech and assembly; and a legal framework which was not in compliance with the Convention. Fixed-duration contracts, the subject of the 2015 observation of the Committee of Experts and the 2016 conclusions of the Committee on Freedom of Association were routinely used to frustrate trade unions. These problems were compounded by a politicized judiciary that did not guarantee justice. They reiterated their concerns that, despite the intervention of the ILO, the UN, the Global Unions, and the global garment brands, the Government had missed yet another opportunity to pass a law compliant with the Convention and had instead adopted a law which contained numerous provisions which violated the Convention. Workers had been attacked and assaulted when they had peacefully protested following the adoption of the law.

Global brands had joined workers on repeated occasions to express concern regarding the negative environment in the country for workers. The country could and should immediately change its course and establish a legal environment enabling the full exercise of the right to freedom of association, which should also be ensured in practice. The

Worker members called on the Government to: (i) bring the Trade Union Law into full conformity with the provisions of the Convention, in cooperation with the social partners and with the further technical assistance of the ILO; (ii) ensure that the rights under the Convention of teachers and civil servants, as well as workers in the informal economy who were not covered by the trade union legislation, were fully ensured; (iii) conduct full and expeditious investigations into the murders of the trade union leaders mentioned in the Committee of Experts' report and prosecute not only the perpetrators but also the instigators of these crimes; (iv) ensure that the Special Inter-Ministerial Committee kept the national employers' and workers' organizations informed on a regular basis of the progress of its investigations, with a view to promoting social dialogue and putting an end to the impunity surrounding the acts of violence against trade unionists; (v) conduct an independent investigation into the episodes of violence perpetrated against trade unionists on 3–4 January 2014, including injuries and deaths, and prosecute both the perpetrators and the instigators of these crimes; (vi) ensure that workers were able to engage freely in peaceful public demonstrations; (vii) drop criminal charges against trade union leaders for their participation in peaceful demonstrations; and (viii) ensure the application of Arbitration Council decisions with respect to fixed-duration contracts, limiting the combined time employed under these contracts to two years. In light of the lack of progress since this Committee had last heard this case, and given the multiple times this case had been before the Committee in recent years, they urged the Government to accept a High-level Tripartite Mission in 2016.

The Employer members recalled the history of this case and the concerns raised by the Workers with regard to the lack of progress on some of the issues discussed and the changes initiated by the Government. On the other hand, the Government had provided information on the recent initiatives it had taken, including: (i) the introduction and on-going implementation of the new structure for the labour courts and labour chambers, and its commitment to the development of these institutions; (ii) the introduction of training and resources in the labour courts and labour chambers; and (iii) the adoption of the Trade Union Law and its commitment toward effective implementation. They echoed the Workers' call for the expedited completion and implementation of these initiatives, but considered that considerable progress had already been made and that Cambodia should be given latitude to prove it could bring these initiatives to a rapid and successful conclusion, namely the completion of the investigations of the three committees into the 2014 murders, due to be completed this year; the completion of the guidelines and the manner in which they would operate; and the effective implementation of the Trade Union Law through an approach which balanced workers' and employers' rights. They believed the country should be given leeway but urged the Government to provide a report to the Committee, as soon as possible, on the actions it had taken to fully implement the initiatives it had undertaken.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted the Government's proposal to establish new labour courts, as well as noting continued issues regarding the freedom of association for workers organizations.

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

- ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers, and act accordingly;
- ensure that the Trade Union Law is in full conformity with the provisions of Convention No. 87 and engage in social dialogue, and with the technical assistance of the ILO;
- ensure that teachers and civil servants are protected in law and practice consistent with Convention No. 87;
- undertake full and expeditious investigations into the murders of and violence perpetrated against trade union leaders and bring the perpetrators as well as the instigators of these crimes to justice.
- ensure that the Special Inter-Ministerial Committee keeps the national employers' and workers' organizations informed on a regular basis of the progress of its investigations; and
- report to the Committee of Experts before its November 2016 session with up-to-date information on its activities with regard to the three investigative committees already established, on the establishment, resourcing and training of the labour jurisdiction, and on the implementation of the new trade union law.

The Government should accept a direct contacts mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

The Government representative indicated that, regarding the Committee's proposal to accept a direct contacts mission, it was necessary to first consult the relevant government institutions. His Government would contact the ILO in due course.

EL SALVADOR (ratification: 2006)

A Government representative said that her participation in the Conference as Minister of Labour and Social Welfare demonstrated the importance her country attached to the Organization's activities, especially progress on trade union rights, the promotion of decent work, dialogue and tripartite consensus, which were the cornerstones of its activities and constituted a guarantee of labour rights. With reference to the application of the Convention and the questions raised by the Committee of Experts in its observation, it was regrettable that so far even the Office of the Attorney General had not been able to identify the causes and perpetrators of the murder of Victoriano Abel Vega. Meetings had been held with both the previous and current Attorneys General, and both had agreed that the case needed to be solved and the investigation closed. However, it was well known that the Government of El Salvador was taking steps to combat crime and to prosecute offences with the aim of giving the Salvadorean people better and broader public safety. Every effort would continue to be made to ensure that Mr Vega's death did not go unpunished. In relation to the 19 decrees adopted to expand and democratize the representation of employers' and workers' organizations in joint and tripartite bodies, an analysis had been undertaken revealing that at no time had those measures, by making slight changes to election processes, restricted the independence of employers' or workers' organizations. On

the contrary, they were fully functional, with the participation of various employers' and workers' organizations. In the case of the tripartite bodies, it was regrettable that the National Business Association (ANEP) continued to express its disagreement, given that it currently enjoyed active representation in the country's tripartite bodies. In order to guarantee such participation, the Government set aside a significant amount each year to cover the expenses of both worker and employer representatives. However, in reply to the observation of the Committee of Experts, the request to hold consultations on these reforms would be taken into account.

In relation to the activation of the Higher Labour Council (CST), resolving the dispute that prevented the CST from becoming active because of the persistent disagreement between the country's most representative trade union organizations on their representation was one of the priorities of the Ministry of Labour. In that respect, various steps had been taken, including requesting mediation, for which the Office had provided technical cooperation, so as to have an external party who was completely neutral and could contribute to identifying a consensus solution to the dispute. Mediation had taken place in February 2016, with the participation of the ILO and a consultant who had held meetings with the various groups of the federations and confederations which had submitted their respective representation lists to the CST. The consultant, in his report, had noted, at the request of the trade union organizations, the complexity of the problem and the difficulty of reaching an agreement, which was one of his main findings. He had also said that, in view of its independent nature, the dispute was one that should be resolved directly with the Ministry of Labour and that mediation was not necessary. Acting on the findings of a consultant, in the first week of April 2016, with the Office of the Human Rights Ombudsman as mediator and the ILO, bilateral meetings had been held with each of the trade union groups. A joint meeting had also been held, facilitated by the Ombudsman and attended by the ILO, to seek an understanding and an agreement, but a solution had yet to be reached. In the absence of a mechanism for electing labour representatives, participating organizations had been asked to form an interim committee to revise and formulate a proposal for new regulations, specifically concerning trade union election procedures, which had been rejected by the complainant trade unions in this case, which considered that the regulations in question could only be revised by the CST. Although the Committee had emphasized that a single list should not be required, it was important to take into account the fact that, in view of the right to autonomy of trade union organizations, ignoring the representativity of organizations that were at dispute and convening the Council without the agreement of all parties would run totally counter to the practices and rules that determined trade union autonomy. At no time had the Government impeded the activation of the CST. On the contrary, it had sought viable democratic options that were in line with Conventions and legislation in force so that a solution could be found. Efforts would continue to be made to find a solution.

In a recent ruling, the Constitutional Chamber of the Supreme Court of Justice had produced a detailed analysis of a request for constitutional protection (*amparo*) submitted by the complainant organizations, seeking to be named as

the only trade union representatives on the CST and asking that the request of other nationally representative trade union organizations should not be taken into account. The Chamber, in *amparo* ruling No. 951-2013, had ruled that “the Ministry of Labour and Social Welfare does not have the power to appoint the members of the Higher Labour Council, to change the list of the workers’ organizations in question or to remove them if they are already members of the Council”. It had also considered that “... the submission of a single list of appointees to the Council is the expected result of a democratic and representative election process carried out by trade union federations and confederations in order to guarantee the participation of workers in the national body ...” and insisted “... that the Minister of Labour and Social Welfare, by requiring agreement to be reached in election procedures and favouring a definitive list of appointees was not imposing a restriction or arbitrary condition that prejudiced the organizations in question or those persons proposed independently or by any organization in exercise of their right to freedom of association on the terms set out above, for which reason it must be found that there are no grounds for the *amparo* petition.” At the same time, the Government would continue to take action and to request support and cooperation from the ILO in identifying solutions, both to the issue of the CST, and other requests made by the Conference Committee. In relation to the requests to reform various provisions of the Constitution, the Labour Code and the Civil Service Act, inter alia, reforms to a range of legislative acts were being examined. Recently, at the initiative of the Parliamentary Group of the Farabundo Martí Front for National Liberation (FMLN), in the Legislative Assembly, a request had been made in November 2015 for sections 204, 211, 212, 219, 529 and 553 of the Labour Code to be reformed to expand trade union rights. Those and other initiatives that were being examined by the Legislative Assembly would be facilitated by the support provided by the technical cooperation requested from the ILO and the inter-institutional teams created to examine the initiatives. With regard to refusals of registration received by trade unions, from June 2015 to the present, legal personality had been granted to 45 trade union organizations, of which only five had been refused for failure to meet legal requirements, which did not mean that they could not resubmit their documents and request registration, for which reason, even though the law allowed six months for them to amend their request, the 45 submitting organizations had been dealt with in 20–25 working days on average. The Government of El Salvador was committed to complying with ILO Conventions, not only Convention No. 87 but also others that contributed to moving forward on labour rights in the country and promoting social dialogue, which were consistent with Government policy, as well as with other forums for discussing matters of national interest, for example, the National Council for Citizens Security and Coexistence, in which various national actors were participating, including ANEP, and others relating to the promotion of investment and the inclusive economic development of the country. Significant measures had been taken to ensure access to dignified and decent work, and 35,248 jobs had been created by 3,000 private enterprises through the National Employment System, 75 per cent of which were for young people, of whom 49 per cent were women. Employability

training had been provided for 223 people and 27,241 inspections had been carried out, covering over 500,000 workers. The aim was to build a productive, educated and safe country for the Salvadorean people, for which purpose integrated public policies were being promoted and established, focusing on ensuring the well-being and improving the living conditions of the Salvadorean population. The Ministry of Labour and Social Welfare was committed to making every effort necessary to comply with the observations and recommendations made by the Committee of Experts in line with current legislation, consistent with the ILO’s vision of dignifying the rights of workers and creating decent work and productive jobs and the firm commitment to join forces with workers and employers to ensure effective protection for labour rights in the country.

The Worker members once again expressed their deep concern regarding the political situation and the murders committed, and the issues relating to Convention No. 87 in El Salvador. Recalling that the situation had not improved since 2015, they indicated that the country remained a hotbed of intense violence and urged the Government to continue its efforts to reduce violence. This situation needed to be seen in relation to freedom of association. Violence against workers’ representatives was common and instigated by gangs, particularly in export processing zones. In January 2010, Victoriano Abel Vega, Secretary-General of the Union of Municipal Workers of Santa Ana, had been murdered. The Committee of Experts had condemned this act, the Committee on Freedom of Association had taken up the case and the Conference Committee in 2015 had requested the Government to take all measures without delay to identify those responsible. Despite the acceleration in the action taken, the authorities had still not identified those responsible and the accomplices of this abject act. Case No. 2957, as well as eight other cases, were also being examined by the Committee on Freedom of Association. They concerned the detention of a trade union representative and anti-trade union action. The Worker members considered that national regulations were not in line with Article 2 of Convention No. 87, in particular the limit required before a new request could be submitted where registration had been rejected, the possibility for a worker to join several organizations, the registration procedure, and the need for a trade union to certify the status of its members. With regard to the time before a new request for registration could be made, section 248 of the Labour Code provided that a new request to establish a trade union had been made at least six months after the previous one. In 2008, the Committee of Experts had noted that the Ministry was in the process of establishing a special commission entrusted with formulating a proposed amendment in that regard. In 2009, the Government had indicated that it had made the commitment, as reflected in the report known as the White Paper, to modify the labour legislation and amend section 248 of the Labour Code. A draft decree to that effect had been submitted to the CST for consultation. Following the 2015 Conference Committee, the Government had proposed an amendment but, in 2016, section 248 of the Labour Code remained unchanged. In view of the Government’s repeated promises and the failure to amend section 248 of the Labour Code, the Worker members expressed concern and hoped the problem would be solved as soon as

possible. With regard to the possibility of joining several trade unions, they recalled the need to amend section 204 of the Labour Code, which prohibited membership of more than one trade union and ran counter to Convention No. 87. Further to the examination by the Conference Committee in 2015, even though the Government had reported on a draft text to reform section 204 of the Labour Code, no information on a legislative amendment had been provided. With regard to the registration procedure, section 219 of the Labour Code provided that, within the context of this procedure, the employer must certify the status of the founding members as employees. As in 2015, the Worker members called on the Government to take measures to amend this provision, for example by enabling the Ministry of Labour to draw up the certificate. In conclusion, they drew the attention of the Committee to the non-conformity of article 47 of the Constitution, and sections 225 of the Labour Code and 90 of the Public Service Act with Article 3(1) of Convention No. 87. These provisions made it necessary to be Salvadorean by birth to be a member of the executive board of a trade union. Recalling that national legislation should permit foreign workers to have access to trade union office, at least after a reasonable period of residence in the host country, they noted that the Government had not yet amended these provisions. While expressing their profound concern about this issue, they emphasized that a swift legislative amendment was more than necessary and hoped that the technical assistance requested by the Government would contribute to that.

The Employer members welcomed the information provided by the Government and noted that this was an important case for the Employers' group. Convention No. 87 had been ratified in 2006. The Conference Committee had examined the case in 2015, and the Committee on Freedom of Association had examined the application of the Convention on various occasions. In 2015, the International Trade Union Confederation (ITUC), the International Organisation of Employers (IOE) and the ANEP had communicated their observations on the application of the Convention. The Committee of Experts, in its latest observation, referred to various issues and followed up on the conclusions of the examination of the case by the Conference Committee in 2015. With regard to the murder of the trade union leader Victoriano Abel Vega in 2010, which was the subject of Case No. 2923 before the Committee on Freedom of Association, five years had elapsed and the perpetrators of the crime had still not been found. The Government should be urged to take all necessary measures to determine criminal liability and to punish the perpetrators of this crime in the near future.

With regard to the autonomy of employers' and workers' organizations to appoint their representatives in joint and tripartite decision-making bodies, the President continued to appoint at his discretion the private sector representatives to those bodies. Since this matter had been discussed in the Conference Committee in 2015, the situation had worsened and a person who was not representative of the private sector had been appointed to the governing board of the Development Bank of El Salvador. With reference to the 19 decrees adopted on 22 August 2012 (Decrees Nos 81–99), which provided that the employer representatives who were to sit on the executive councils should be chosen and appointed by the President of the Republic

from an open list of candidates from employers' organizations which had duly approved legal personality, and which should select their candidates in accordance with their internal regulations, it was regrettable that no progress had been made to overcome the situation. This was a very serious case of interference which affected the autonomy of the private sector and violated Article 3 of Convention No. 87. Furthermore, they rejected the Government's statement that ANEP was not representative of small and medium-sized businesses in the country. The criteria of the most representative organization to be followed was that of the ILO. As indicated by the Committee of Experts, progress needed to be made in law and practice, in consultation with the workers' and employers' organizations, to amend the 19 decrees adopted on 22 August 2012.

With regard to the failure to appoint the worker representatives to the CST, the Council's regulations provided that trade union federations and confederations appointed their representatives. In 2013, two federations submitted a list of representatives, but the Government had since then been trying to reach a consensus. In November 2015, the Government had requested ILO mediation, which had not borne fruit. This situation also violated the autonomy of the workers' organizations and Article 3 of Convention No. 87. The criteria of the most representative should be applied, based on specific, predictable and objective criteria. There were other concerns, such as difficulties in determining the national minimum salary. The issue had been politicized and acts of violence occurred on the wage council and in the actual ANEP headquarters. Therefore, in addition to the violation of Convention No. 87, the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) had been affected due to the misrepresentation and the failure to implement and promote social dialogue within the framework of the country's labour relations system, which undermined the legitimacy of the country's labour standards and practices. In its direct request, the Committee of Experts referred to the issue of the right to strike. The position of the Employers' group on this subject was known and reference had been made to it. Notwithstanding, it was a matter of concern that not only was information requested from the Government, but also that action had been suggested relating to the amendment of several legislative aspects.

The Worker member of El Salvador voiced her indignation at the delay by the State in investigating the murder of Victoriano Abel Vega, which had occurred six years earlier, and that the perpetrators had still not been brought to justice. She added that Mr Vega had received death threats from mayors in the west of the country because of his trade union activities in the municipalities. Attempts were being made to divert attention away from this line of investigation by suggesting that the murder could have been the result of common crime or committed by gangs. She also referred to another example of the anti-trade union culture that prevailed in the country: the case of Juan Antonio Hernández, Secretary-General of the General Union Federation of Salvadorian Workers (FUGTS) who, on 21 December 2015, had been attacked in a union office by heavily armed men, beaten and driven to an area controlled by gangs. His vehicle had appeared on National Civil Police premises where seized objects were kept. The Government

was still interfering in the election of worker representatives to tripartite dialogue bodies, which had prevented the Higher Labour Council from meeting. In a blatant violation of trade union autonomy, the Government had refused to accept the membership of representatives of federations and confederations which had obtained the highest number of votes in legal elections and had demanded a single list. Following the mediation of the ILO, as requested by the Ministry of Labour, a series of very positive recommendations had been adopted, which could only be implemented once the Higher Labour Council was operational. Furthermore, the ruling of the Supreme Court of Justice on this matter could not take effect until the Council met and, as it implied that consensus would need to be sought in future elections, could be a violation of the Convention. The fact that the Council had not been convened made it impossible for it to issue opinions on the draft reform of the labour and social welfare legislation and to recommend that the Government ratify the ILO Conventions that it considered appropriate. The Government had recently presented a proposal to the Legislative Assembly for the reform of the pension system, which had not been subject to consultation with the social partners. In addition, the Government had refused to set up a tripartite forum on the establishment of a new pension system based on the ratification of the Social Security (Minimum Standards) Convention, 1952 (No. 102), with ILO technical assistance. One of the obstacles to the exercise of freedom of association was the inclusion in the Labour Code of a requirement for the members of all trade union executive bodies to be elected every year, as well as the ridiculous requirements that the Ministry of Labour imposed on a daily basis through the National Department of Labour Organizations. Furthermore, as from 1 June 2016, it was necessary to submit an attendance list duly signed by members present at general, sectoral, federal or confederal assemblies, organizations failing to comply with the new rule were refused certification, and remained leaderless. Many unions were currently leaderless because they had refused to comply with any requirements that were not specifically set out in the Labour Code. The Ministry of Labour was according itself the right to interpret several rulings handed down by the Supreme Court of Justice as it saw fit, and also to adopt laws, by establishing new requirements without first amending the existing labour laws. The Government needed to amend the legislation in order to remove the obstacles to freedom of association, including those referred previously, and to reduce the number of members required to establish a trade union, in order that employees in municipalities with more than 35 workers could exercise their right to organize. Moreover, the requirement that, to be a member of a union executive board, a worker had to be a citizen of El Salvador by birth prevented Honduran and Nicaraguan immigrants employed in the construction industry and in the agricultural sector from holding union office. In addition, they were only permitted to join one trade union. That was the type of generalized violation of freedom of association by public and private institutions that Salvadoreans were constantly confronted with.

At the request of the Trade Union of Employees of the Office of the Ombudsman for Human Rights of El Salvador (SEPROHEDES), a complaint had been lodged with the ILO on 30 May 2016, by employees of the Office of

the Ombudsman regarding the violation of Convention No. 87, the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Workers' Representatives Convention, 1971 (No. 135). That was unprecedented, as the Office of the Ombudsman had been established specifically by the peace agreements to protect human rights. The Government was reducing membership of trade unions to favour other organizations, which was undermining the autonomy and freedom of trade unions. These cases highlighted the Government's lack of will to engage in social dialogue and the absence of any democratic labour policy. For the workers, the priority was the struggle to find decent jobs and working conditions that could lift them out of precarious employment. In conclusion, she emphasized that it was essential to develop industrial relations and respect for the legal framework to guarantee: the promotion of freedom of association, collective bargaining and the strengthening of industrial relations; the conclusion of collective agreements between employers and workers at the industrial branch level under the auspices of the Government, as part of a national employment policy; and the operation and reinforcement of the CST as the tripartite instance of the country for discussions on labour policy and all issues relating to the labour market.

The Employer member of El Salvador summarized the complaints submitted against the Government by the Salvadorean employers concerning violation of freedom of association (Cases Nos 2930 and 2980) and the recommendations that the Committee on Freedom of Association had adopted on the subject in 2015. The violations had referred to the Committee of Experts and formed the basis of its observations on the Convention. In a clear violation of the Convention, the Government had submitted draft legislation to the Legislative Assembly that had resulted in 19 decrees reforming the country's autonomous institutions, so that private sector representatives on their executive bodies who were in the minority were appointed directly by the President of the Republic at his discretion. Although there had been a change of Government, the new Minister of Labour had regrettably maintained the practice of the previous Government of ignoring the regulations of the Higher Council of Labour. She continued to require all the trade unions to reach an agreement among themselves, despite the fact that in the conclusions it adopted in 2015 the Conference Committee had clearly called on the Government not to demand a consensus in the election of representatives of the social partners. The employers of El Salvador were drawing attention to the illegality of those elections because they concerned private organizations, with the result that the National Council of Labour had not been able to convene since 2013. No solution had therefore been found to the question of autonomous institutions, in which private representatives continued to be appointed by the President of the Republic. For the employers, the fact that the Government had not convened meetings of the Council was a ploy to prevent it from concluding agreements, notably those concerning means to end the violation of employers' freedom of association and to ensure that the employers' representatives on the 19 autonomous organizations could be freely appointed. In June 2015, the employers had asked the Conference Committee for ILO technical assistance in finding a mediator who could help the Minister of

Labour to reactivate the Higher Council of Labour, an institution that had originated in the peace agreement as a means of promoting dialogue on labour issues between the Government and the employers' and workers' organizations. In February 2016, an ILO consultant had visited El Salvador to provide international mediation concerning these issues. However, in spite of the outcome of that mediation and of the conclusions of the Conference Committee in 2015, the Minister of Labour had persisted in her strategy of paralyzing the Council on the grounds that, notwithstanding her best efforts, not all the trade union organizations had been able to agree.

He also denounced other acts of interference by the Government in the activities of labour organizations which made it difficult for tripartite bodies to operate. According to the media, the Ministry of Labour had been manipulating the registration of union members according to whether they were supporters of the Government or not. In recent months, the Government had delayed the adoption of agreements to increase the minimum wage by refusing to attend meetings of the Higher Council on the minimum wage so that there would not be a quorum. It had also launched a political campaign and encouraged demonstrations by activists linked to the FMLN party. A month earlier, the Minister of Labour had allowed a group of demonstrators to enter the Council's premises, where they had threatened employers' members, telling them that they knew where they lived. That was nothing short of class hatred. Finally, the employers and workers had recently reached an agreement on the minimum wage, and it was hoped that the President's approval would not be blocked by the Minister of Labour. In conclusion, he requested a direct contacts mission to assess the many violations of the Convention by the Government.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as Norway, wished to recall the commitment undertaken by El Salvador under the trade pillar of the EU–Central America Association Agreement to effectively implement the fundamental Conventions of the ILO, including Convention No. 87. He acknowledged the progress made by El Salvador in recent years, but also called on the Government to rapidly bring to justice those responsible for the murder of the trade union leader Abel Vega, a case which had remained unresolved for five years. Delays in the investigation and punishment of those responsible created a climate of impunity. The Government should be encouraged to respect the autonomy of employers' and workers' organizations to appoint their representatives to joint and tripartite decision-making bodies and, more specifically, to accelerate the mediation process so as to ensure the appointment of workers' representatives to the Higher Labour Council. The amendment of the legislation on the right to freely establish and join organizations was key to achieving compliance with the Convention. He welcomed the request by the Government for ILO technical assistance and hoped that work in this regard would be initiated shortly. In conclusion, he said that the EU and its Member States remained committed to cooperation with the country to enable it to address the issues raised by the Committee of Experts.

The Government member of Mexico, speaking on behalf of the group of Latin American and Caribbean (GRULAC)

countries, thanked the Government for the information that it had provided on the exercise of freedom of association and the protection of the right to organize embodied in the Constitution, in national legislation and in Convention No. 87. Regarding the observation by the Committee of Experts, attention should be drawn to the investigations conducted by the police, the steps taken by the Prosecutor General of the Republic, and the role of facilitator assumed by the Government, with ILO assistance, to find a solution to the dispute that had arisen in the National Council of Labour by holding statutory meetings and advocating mediation. The Government had demonstrated its openness and willingness to engage in dialogue with all social and economic sectors. GRULAC reiterated its commitment to freedom of association and trusted that the Government would continue its efforts to comply with the terms of the Convention.

The Government member of Panama supported the statement of GRULAC, and emphasized that the Government of El Salvador had expressed a genuine willingness to follow through with its commitments and to comply with the recommendations of the Committee of Experts. As *pro tempore* President of the Council of Ministers of Central America and the Dominican Republic, the Government of Panama expressed its concern at the inclusion of El Salvador in the list of individual cases, along with Guatemala and Honduras. There was still a lack of objective criteria and transparency in the choice of such cases, which was evident from the regional imbalance. The technical assistance provided by the ILO to the countries of the Central American region had not been valued, since three of the seven countries concerned were in the list of individual cases. The countries of the region recognized the positive results derived from the ILO support and the useful exchange of experience that took place with a view to the effective application of international labour Conventions. A cross-cutting regional plan of action had been approved by the Council of Ministers of Labour of Central America and the Dominican Republic. He welcomed the additional efforts that had been made in this context with respect to labour legislation, the elimination of child labour, social dialogue, employment policy and labour mobility.

An observer representing the International Organisation of Employers (IOE) voiced great concern at the violations of the Convention by the Government of El Salvador, and in particular its continued and serious interference in the autonomy of employers' and workers' organizations and the arbitrary appointment of employer members to tripartite institutions by the President of the Republic. Nineteen decrees had been adopted unilaterally and without consultation in 2012 to bolster these arbitrary prerogatives to interfere in the autonomy of the social partners, in violation of the Convention, and in disregard of the real institution for social dialogue, the Higher Council of Labour, the activities of which had been suspended since 2013 on purely procedural grounds and on the pretext that the criteria of representativity had not been respected. He also referred, as examples of an attitude that should not be overlooked, to: the lack of appropriate protection for the premises of ANEP, which was the most representative employers' organization; the failure to follow up the recommendations of the Committee of Freedom of Association; and the Government's lack of consideration of the conclusions of the

Conference Committee. The Government needed to take immediate steps to remedy the situation and submit a detailed report to the Committee of Experts for examination at its next session. Regrettably, in view of the repeated violations of the Convention and the increasing lack of respect for freedom of association, it was also important for a direct contacts mission to be sent to El Salvador. The case should be included in a special paragraph of the Committee's report.

The Worker member of Guatemala said that the situation regarding the violation of the freedom of association in El Salvador was similar to that of Guatemala. Violations of the Convention included the dismissal of an elected worker, the Secretary-General of the Trade Union of the Municipality of San Martín, and the dismissal by the security company C.V. COSASE of officials of the Union of Workers' of Private Security Companies (SITESPRI). The establishment of a trade union in the catering, public transport and private security sectors was now almost a crime. Shifts of more than 12 hours were worked for the minimum wage without overtime pay. Many workers had no social security and very few were able to contribute to a pension scheme. The contractual labour situation in the public sector was the result of the absence of social dialogue and of a policy for the democratic management of industrial relations. Union leaders in the public sector were subject to arbitrary reductions from their wages and sanction procedures as a result of being denied union leave. Some union officials of the Union of the Workers of the Bloom Hospital (SITHBLOOM), for example, had not received their wages for six months. The Ministry of Labour refused to register the collective agreement that had been negotiated by the Union of the National Commission of Micro and Small Enterprises, even though it met all the legal requirements. Finally, the Workers' Union of the Secretariat for Social Inclusion had lodged a complaint that the workers had been treated with verbal disrespect and arrogance by the management, were isolated, regularly reassigned, and were victims of physical aggression and wage inequality.

The Government member of Cuba endorsed the statement by GRULAC and welcomed the information provided by the Government of El Salvador and its willingness to comply with its commitments in relation to the ILO. She emphasized the measures that were currently being adopted, including the process of mediation to reactivate the National Council of Labour, legislative measures and the Government's request for ILO assistance. She called on the Government to continue its efforts and the ILO to continue providing technical assistance and cooperation.

The Employer member of Belgium recalled that freedom of association was a fundamental principle of the ILO and suggested that the same term be used in French and Spanish as in English ("freedom of association"). Workers' and employers' organizations were entitled to autonomy in their organization, management and functioning, and she condemned State practices that curbed the autonomy of employers' organizations, as was the case in El Salvador, where the Government appointed in an authoritative manner employers' representatives or tripartite bodies. The executive had no right to act in place of the social partners, and the public authorities must refrain from any impediment to the legal exercise of the right of employers' and

workers' organizations to elect their representatives freely. The suspension of the National Council of Labour by the Government was a violation of Article 3 of the Convention; she called for the independence of employers' and workers' representatives to be guaranteed as an essential prerequisite for effective social dialogue at all levels.

The Government member of Honduras emphasized that the Government had shown its full willingness to honour its commitments and to continue complying with the recommendations of the Committee of Experts. He therefore endorsed the statement of GRULAC.

The Worker member of Uruguay recalled that the case was being examined for the second consecutive year by the Committee and deplored the fact that mediation had failed to yield any results. He expressed solidarity with the workers of El Salvador with regard to the complaints made concerning situations of violence against trade union leaders, the threats that hampered the development of trade union organizations and the anti-union dismissals. Requirements for trade union registration were excessive and constituted a form of undue interference by the Government. Even though mechanisms and bodies existed which would be suitable for conducting good social dialogue, problems persisted in relation to the definition of the forms of representation in these bodies. As it had not been convened, the Higher Labour Council could not give its views on the labour issues on the agenda. He reiterated the need for technical collaboration with the ILO to enable amendments to the regulations that could be agreed with the social partners with a view to establishing transparent methods for determining representativeness that enshrined the principle of independence from the Government.

The Employer member of Guatemala noted with deep concern the statement by the Minister of Labour, as she had reiterated the arguments put forward when the case had been examined by the Committee the previous year. He recalled that the case was being discussed by the Committee for the second consecutive year, and that the situation under discussion had been going on for four years. Despite the comments of the ILO supervisory bodies, the Government was not showing the will to resolve the situation, and the conclusions and recommendations of the supervisory bodies were being ignored by the national authorities. The crisis appeared to have taken a serious turn for the worse and posed a threat to the integrity of employers' organizations in El Salvador. He referred in particular to the powers of the President of the Republic to appoint the representatives of employers' organizations to bipartite and tripartite bodies, which amounted to a clear violation of the Convention and placed these bodies under the control of the Government, thus constituting an extremely serious act of interference. Lastly, he called for a direct contacts mission to be sent to the country and for the conclusions on this case to be placed in a special paragraph of the Committee's report.

The Government member of the Dominican Republic endorsed the statement of GRULAC and welcomed the information supplied to the Committee by the Minister of Labour. The Government of El Salvador was showing goodwill and was making efforts to honour its commitments taken on in the context of the ILO through action for the observance of standards, the promotion of fundamental

rights and the strengthening of social dialogue and negotiation. The ILO should continue to support the Government and give it technical assistance.

The Government representative said that she had listened attentively to all the statements, which were consistent with the interests represented. With regard to the murder of Abel Vega, the Government, having asked the Office of the Public Prosecutor to investigate, was calling for a pooling of efforts with the social partners to resolve the case. The Government had identified social dialogue as a pillar of the drive for consensual policies, as shown by the dialogue round table which had been set up recently to establish a joint agenda with the ANEP, an organization that participated in all tripartite forums in the country. Efforts were being made to identify short- and medium-term solutions regarding trade union representation on the Higher Labour Council, for which the will of the organizations concerned was required to ensure representation on an equal footing. The Government was open to overcoming any limitations in the exercise of trade union rights, within the requirements and procedures necessary to safeguard legal security. Moreover, the appointment procedures to joint bodies were not in contradiction with the autonomy of employers' and workers' organizations, and tripartite bodies were governed by regulations that had been adopted by previous administrations with the agreement of the social partners. Efforts had been made over the previous five years to give full access to the right to organize, as shown by the existence of over 200,000 trade union members and more than 450 active trade union organizations. The Government trusted that the actions in the context of the project supported by the ILO and the Generalized System of Preferences of the EU would contribute to improving in compliance with the Convention, as the current cooperation with the ILO was doing.

The Employer members expressed deep concern at the fact that, despite the time that had elapsed, there was no sign of real progress towards resolving the instances of non-observance of the Convention. So the time had come to face facts, and the Committee, in its conclusions, should: (1) note with extreme concern the lack of progress with regard to the issue of the autonomy of employers' and workers' organizations to appoint their representatives to joint and tripartite decision-making bodies, and urge the Government, in consultation with the social partners, to take the necessary steps without delay to amend the 19 decrees adopted in August 2012; (2) urge the Government to reactivate without delay the Higher Labour Council, which constituted the principal forum for social dialogue and tripartite consultation in the country; (3) urge the Government to ensure adequate protection for the premises of ANEP, which was the most representative employers' organization; (4) request the Government to provide information on all progress made in that regard in a report to be examined at the next meeting of the Committee of Experts; and (5) in view of the seriousness of the violations and the lack of firm action by the Government to ensure observance of the Convention, request the establishment of a direct contacts mission and include the case in a special paragraph of the Committee's report.

The Worker members expressed agreement with the Employer members regarding the major importance of the case. The Government had requested assistance from the

ILO to rectify the legislative problems. Such cooperation was necessary with regard to the procedure for the registration of trade unions and the obligation to certify the status of trade union members, two points on which the Government had shown a positive attitude. The Government also needed to take action quickly concerning the access of foreign workers to trade union office and the membership of more than one trade union. The Government should also report on the murder of Victoriano Abel Vega, as the de facto impunity enjoyed by those committing crimes against trade union leaders was aggravating the climate of violence and insecurity, which was extremely prejudicial to trade union activities. The Worker members expressed their disagreement with the Employer members regarding the direct request addressed to the Government. The Workers' group was of the view that the right to strike was protected by the Convention. The Employers' and Workers' groups had recognized in the joint statement of 23 February 2015 that "[t]he right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation. This international recognition by the International Labour Organisation requires the workers and employers groups to address the mandate of the CEACR as defined in their 2015 report". The Committee of Experts had defined its own mandate as having to "determine the legal scope, content and meaning of the provisions of the Conventions", which had been approved by the Governing Body. It was therefore part of the mandate of the Committee of Experts to request all information that it considered useful regarding the fulfilment by the State of its obligations arising from a ratified Convention.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with concern the lack of progress both in law and in practice with respect to the issue of the autonomy of employers' and workers' organizations to nominate their representatives to joint or tripartite decision-making bodies and again urged the Government, in consultation with the social partners, to take all measures necessary, without delay, to amend the 19 Decrees adopted on 22 August 2012, so as to bring them into line with the guarantees set out in the Convention.

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

- **take all measures necessary, without delay, to identify those responsible for the murder of Mr Victoriano Abel Vega and punish the perpetrators of the crime;**
- **reactivate, without delay, the Higher Labour Council (CST), the work of which had been suspended since 2013 and which was the main forum for social dialogue in the country and for tripartite consultation. The Government must abstain from requiring consensus among trade union federations and confederations in designating their representatives to the CST;**
- **ensure full autonomy for employers' and workers' organizations;**
- **ensure adequate protection for the premises of the National Business Association (ANEP), the country's most representative organization of employers;**
- **report on all progress with regard to the issues discussed in a detailed report to the Committee of Experts, to be considered at its next meeting.**

In the face of the Government's failure to take action to apply the provisions of the Convention effectively in law and in practice, the Committee requested that a direct contacts mission be sent to El Salvador.

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

The Government representative regretted that, despite all the Government's efforts to guarantee and extend trade union rights, there was no mention of that fact in the conclusions. Her Government nevertheless took note of those conclusions and would examine them closely. Regarding the request of the ANEP that a direct contacts mission be sent to El Salvador, it would seem that the Association was being seriously challenged by the workers and social organizations over the agreement it reached with trade union represented on the National Minimum Wage Council, when it offered them a miserable increase of just 20 cents a day for agricultural workers, 33 cents for workers in maquilas, 37 cents for workers in trade and services and 41 cents for industrial workers over three years. That was nothing short of insulting for people who contributed to the country's economic development by the sweat of their brow, and it did not comply with the provisions of article 38 of the Constitution or sections 145 and 146 of the Labour Code. The Government confirmed its willingness to continue receiving the technical assistance that was being provided by the mediator in the dispute between the trade unions that were seeking membership of the CST, as well as other support that it was being given to improve the labour rights of Salvadorean workers. In the short and medium term, the Government would certainly be providing additional information which would show clearly the progress that had been made. As a progressive Government it was committed to ensure that the workers were able to exercise their rights fully. There had been no breakdown in social dialogue in the country, and it was part of the President's policy and the Government's plan that there should be a constant dialogue between all the social partners and labour, political and economic sectors, in which the trade unions and ANEP both had an active role to play.

GUATEMALA (ratification: 1952)

The Government provided the following written information.

Progress in compliance with the road map resulting from the complaint of non-observance of Convention No. 87, presented under article 26 of the ILO Constitution. Investigation of murders and of rulings handed down to date. The Government of Guatemala expresses its concern at these acts and, through the Special Investigation Unit for Crimes against Trade Unionists, which is part of the office of the Public Prosecutor, is continuing its investigation with a view to the conviction of the perpetrators of the crimes concerned. In March 2016, the 326th Session of the Governing Body was informed of 14 convictions. Since then there has been further progress in the investigation. The Special Unit of the office of the Public Prosecutor has made progress in its inquiries into the case of Bruno Ernesto Figueroa, who was a member of the healthcare integration system subsidiary of the National Trade Union of Health Workers of Guatemala (SNTSG) (Case No. 2609 of the Committee on Freedom of Association), as follows: (a) on 14 April 2016, formal charges were brought and the opening of proceedings was requested against four persons

for the crimes of murder, attempted murder and criminal association; (b) on 16 May 2016, the Department of Guatemala Tenth Court of First Instance dealing with drug trafficking and crimes against the environment accepted the charges and criminal proceedings were opened; (c) the hearing for the start of the public trial of one additional person charged with obstruction of justice and criminal association is due to take place on 29 August 2016.

Progress relating to the cooperation agreement between the International Commission against Impunity in Guatemala (CICIG) and the Special Investigation Unit for Crimes against Trade Unionists of the Office of the Public Prosecutor. On the basis of the cooperation agreement between these two bodies, four meetings have been held to follow up the investigations and solve the crimes. Observations and recommendations were made during the meetings with regard to a number of cases, resulting in a five-year sentence for Gerardo Aníbal López (convicted) in the case concerning Marlon Dagoberto Vásquez (victim) and the termination of criminal proceedings in the case concerning Jorge Ricardo Barrera Barco (victim) relating to the death of the trade unionist Rómulo Emanuel Mejía Peña. Recently, the Ministry of Labour held several meetings with the office of the Public Prosecutor and the CICIG to follow up the former's inquiries, and the CICIG was asked to cooperate to speed up and give priority to the investigation of these cases. The Commissioner and Public Prosecutor said that they fully supported the efforts to solve the crimes.

Compliance with General Instruction No. 1-2015 to improve the effectiveness of investigations into the murder of union officials and members. The case of Mynor Rolando Castillo Ramos. Since General Instruction No. 1-2015 came into force, the Special Investigation Unit has complied with the investigation procedures established in the Instruction, as shown by the investigation into the death of Mynor Rolando Castillo Ramos, a member of the Jalapa Municipal Workers' Union, which occurred in 2015. The investigation, which was quickly undertaken, enabled the office of the Public Prosecutor to bring formal charges and the trial to begin. On 18 May 2016, the Department of Jalapa Court of First Instance dealing with drug trafficking and crimes against the environment accepted the charges and opened criminal proceedings against one person charged with murder and attempted murder, who had previously been under psychiatric treatment.

Risk assessments for union officials and members and adoption of protective measures. First quarter of 2016. The Ministry of the Interior reported that in the first quarter of 2016 that it received 14 complaints/requests for safety measures, in response to which the Risk Assessment Department of the Personal Protection and Security Division of the National Civil Police analysed the risks incurred and concluded that the level of risk was low. Consequently, no protective measures were granted.

Requests for the application of the preventive security mechanism according to the Protocol for the Implementation of Immediate and Preventive Security Measures for Human Rights Activists, made by the Office of the Public Prosecutor. In the first quarter of 2016, the office of the Public Prosecutor, through its Special Unit, requested the Ministry of the Interior to issue seven personal preventive security measures for trade union leaders and members. In

addition, requests were made to the National Civil Police for eight perimeter security measures.

The free 1543 emergency number to report acts of violence or threats against human rights activists. The specialists working on the 24-hour emergency number coordinate immediate support through the National Civil Police and by activating the Protocol for the Implementation of Immediate and Preventive Security Measures for the victims concerned, while the risk assessment is being carried out. During the first quarter of 2016, calls to the emergency number gave rise to two complaints to the office of the Public Prosecutor, which are being investigated by the Special Investigation Unit for Crimes against Trade Unionists and the Special Investigation Unit for Crimes against Journalists.

Training on freedom of association for officers operating the 1543 emergency number. On 29 March 2016, with technical assistance from the ILO, the Ministry of Labour and Social Welfare provided training on the right to freedom of association, the right to organize and the right to collective bargaining for officers operating the 1543 emergency number of the Ministry of the Interior, advisers at the Ministry of Labour call centre and other officers of the National Civil Police. A total of 50 persons were involved in the training, which aimed to equip them with the tools to apply the necessary mechanisms to ensure the safety of individuals associated with trade unions in Guatemala.

Progress in relation to the Protocol for the Implementation of Immediate and Preventive Security Measures for trade union members, officers, activists and leaders, and labour rights activists, and on the provision of premises for their activities. On 23 February, 16 March and 17 May 2016, round table meetings attended by the institutions concerned and trade unions were held to revise the Protocol for the protection of trade unionists. On 23 February, it was agreed to wait for observations from the trade unions before continuing to draft the Protocol; these observations were sent on 1 March. The purpose of the 17 May meeting of the round table on trade union matters was to present, revise and discuss the draft Protocol of the Ministry of the Interior. At the meeting it was agreed that the trade union federations would submit their comments and observations by 24 May, with a view to reaching agreement and signing the Protocol. However, on 23 May, the Autonomous Popular Trade Union Movement and Global Unions of Guatemala sent a note stating that the Protocol had been imposed upon them, that no account had been taken of the claims of the unions, and that if these were included in the instrument, they would be in a position to study it and possibly give their approval. The Government therefore made further arrangements for the trade unions to make their comments and express their views so that the terms of the Protocol could be agreed upon. The Government therefore convened more meetings so that the trade unions could express their views and make comments and the Protocol could be agreed upon and approved. It reviewed the dialogue and the related proceedings to make it clear that it was not imposing a Protocol without its endorsement by the unions, taking into account its sustainability and implementation by the Ministry of the Interior.

Establishment of a budget item to cover the costs of National Civil Police officers assigned to personal protection duties. It is important to emphasize that no one benefiting

from security measures is required to pay for food, lodging or other expenses for the officers assigned to them. The procedure is currently being assessed to improve the financial conditions of officers assigned to the Personal Protection and Security Division, as the budget allocated to the National Civil Police and the Ministry of the Interior is not sufficient to cover these costs. A special bonus payment for the officials is under examination.

Legislative reforms. A consultant has been engaged under contract to draw up the preliminary draft text of the reforms of the Labour Code in relation to freedom of association and collective bargaining with a view to bringing its provisions into conformity with Convention No. 87. It is planned to submit the draft reforms to Congress following consultations with the workers and employers at the end of September 2016. The Labour Commission of the Congress of the Republic has been approached concerning the harmonization of the legislation with international labour standards, starting with public campaigns on the importance of the reforms to the Labour Code, involving joint communication and analysis by the Ministry of Labour and Social Welfare and the Labour Commission. A preliminary draft has also been prepared of a legislative initiative to amend the Labour Code in relation to the application of administrative penalties for labour law violations covered by the General Labour Inspectorate, which will be submitted for tripartite consultation as soon as possible before being tabled in the Congress of the Republic.

Registration of trade unions. The Ministry of Labour, through the General Directorate of Labour, receives applications for the registration of trade unions and the recognition of their legal personality. There has been a significant increase in the registration of trade unions, with 52 unions being registered in the last quarter of 2015 and 61 in the first quarter of 2016.

Review and settlement of disputes by the Committee for the Settlement of Disputes in the area of Freedom of Association and Collective Bargaining. The Dispute Settlement Committee which has been operating since 2014, is reviewing 18 cases, in nine of which there are complaints pending before the Committee on Freedom of Association, while nine complaints have been brought directly to the Dispute Settlement Committee. The cases have been reviewed and examined by the Mediator and the Technical Secretariat to identify those which could be resolved by the Dispute Settlement Committee. Information will be provided on the outcome of this work.

Awareness campaign on freedom of association and collective bargaining. Work has begun on launching and promoting the awareness campaign, translated into the Maya, Kaqchikel and Kiche languages, through community radio broadcasts throughout the country that reach eight million listeners, as well as other initiatives to promote freedom of association and the right to bargain collectively. The campaign is aimed at sectors where there are few trade unions, such as the maquila sector. Information is available on the websites and social media of 14 government institutions: the Secretariat of Planning and Programming of the office of the President; the Secretariat for Food Security and Nutrition; the Secretariat for Peace; the Civil Aviation Authority; the Ministry of Culture and Sport; the Ministry of the Economy; the Ministry of Agriculture and Livestock; the

Ministry of Social Development; the Ministry of Communication; the Ministry of Finance; the Ministry of the Interior; the Ministry of Foreign Affairs; TGW Radio; and the Government television channel. In conclusion, it is important to note that, in addition, the Government has submitted an amendment to Congress to the Act for the approval of the annual Budget that increases the financial resources of the judiciary so as to allow it to deal with and resolve the cases before it, reduce impunity and facilitate access to justice in Guatemala. This is all part of a process of short-, medium- and long-term structural reform in the country. A national dialogue, under the leadership of the Presidents of the three highest bodies, was therefore launched in May 2016 to strengthen action to combat impunity, under the slogan “For a reform of justice in Guatemala”.

In addition, before the Committee, a **Government representative** said that her Government was committed to complying with the obligations set out in the ratified Conventions. That commitment had already been demonstrated in a letter from the President of Guatemala to the Director-General of the ILO in March 2016, in which he also expressed his commitment to complying with the Memorandum of Understanding and the roadmap to address the issues regarding the Convention raised in the complaint lodged under article 26 of the ILO Constitution. At its 326th Session, the Governing Body had welcomed this communication and the report submitted by the Government, which described the progress made in the first weeks since the Government had taken office. She referred to the action taken from March to June 2016, which would continue to be implemented in preparation for the report that would be submitted to the Governing Body in November 2016. With reference to the role of the three branches of the State, she said that she was accompanied by a delegation from the Congress of the Republic, led by the President of the Labour Commission, with whom an intense process of coordination and cooperation had been initiated to promote the alignment of the legislation with the international labour standards, which would involve the participation of workers and employers. The strategies developed by the new Government for the 2016–20 period included: (1) combating corruption, modernizing the Government and strengthening the labour inspectorate by increasing its transparency and effectiveness; (2) guaranteeing food security, comprehensive health care and education, particularly through the reinforcement of the occupational safety and health system, with action and strategies relating to prevention and worker protection, and plans to combat and eliminate child labour through the management mechanism established in the roadmap to ensure that Guatemala is a country free from child labour; (3) promoting decent work on the basis of an update and definition of the national policy on employment as the general framework for the implementation of actions, plans and programmes aimed at reducing the decent work deficit in the country, decreasing informality in the labour market and increasing competitiveness and economic development in general; (4) combating poverty and extreme poverty; and (5) enhancing national security through the establishment of mechanisms that create decent work opportunities in the country to prevent crime and migration. These strategies were based on fundamental principles, such as dialogue,

consensus and inclusion of stakeholders, and the legality, comprehensiveness and holistic perspective of public policy, while giving priority to the most vulnerable groups, including women, indigenous peoples, migrants, children, adolescents and young people. With regard to the application of the Convention, she said that, in her capacity as Minister, she had attended meetings at trade union offices, and the President had met with trade union leaders on several occasions. That demonstrated the commitment of the Government to building trust, promoting dialogue and seeking a common agenda. Furthermore, 61 trade unions had been registered in the first few months of 2016. The Government recognized the challenges presented by the situation of historic violence in the country, which also affected the lives of trade unionists. These challenges required profound structural changes. To that end, the “National dialogue: Towards the reform of the justice system in Guatemala” had been launched, with the aim of strengthening action against impunity in the country.

The CICIG Commissioner and the Chief Public Prosecutor had expressed their full commitment to convicting the perpetrators of criminal offences, having recorded 14 convictions so far. Progress had also been made in some pending investigations that were being examined by the Committee on Freedom of Association. She also referred to progress in the cases dealt with by the Dispute Settlement Committee. For example, in the case of the municipality of Masagua in Escuintla, the basis for a payment settlement of 7 million quetzals had been developed for 41 workers for unpaid wages, putting an end to a four-year dispute. All these achievements showed that the President and the Government remained firmly committed, despite constraints arising from the general situation in the country. The Minister appreciated the Director of the International Labour Standards Department having accepted her invitation to visit the country in July 2016. Finally, she reiterated her Government’s concern at the simultaneous use of several mechanisms to investigate the same allegations in relation to a particular country against which a complaint was being considered by the ILO Governing Body. She considered this to be a duplication of mechanisms, which undermined the functioning and credibility of the ILO supervisory bodies.

The Worker members emphasized that the case of Guatemala had been discussed by the Committee on 22 occasions in the last 25 years because of the country’s systematic refusal to take action in response to the serious observations and conclusions of the ILO supervisory bodies and because murders of trade unionists were continuing in a situation of almost total impunity. In September 2015, Mynor Rolando, a member of the Jalapa Municipal Workers’ Union, who had been unfairly dismissed and whose reinstatement had been ordered by the labour court, was shot dead (as another nine activists had been previously), while waiting for implementation of the reinstatement order by the mayor of the municipality and the payment of outstanding wages to the illegally dismissed employees. Instead, he had been targeted and harassed on account of his trade union activities and because he had filed a complaint in 2013 with the Committee on Freedom of Association, which had urged the Government to take the necessary steps to ensure the safety of trade unionists who were under threat. The Government had given no indication of any measures taken,

even though the issue of the violence and impunity with which trade unionists were confronted in the country was well known to the ILO supervisory bodies. In its report, the Committee of Experts noted the “tragic” lack of progress in that area, which was an appropriate term to describe the fact that almost all the perpetrators and instigators of the murders of 74 trade union leaders and members were at liberty in a situation of total impunity. Of even greater concern was the fact that the office of the Public Prosecutor had called into question the anti-union motives for the murders, while recognizing that the appropriate investigation procedures had not been carried out. The Government was failing to protect trade unionists who were harassed, as the trade union leaders who were granted protection had to meet the cost of food and accommodation for their bodyguards and sometimes chose to discontinue the protection because of its cost. Despite the establishment of a telephone emergency line to report such acts of violence, it was clear that not all risks had been properly assessed, and that many threats against trade union leaders and members had not resulted in any prosecution by the office of the Public Prosecutor. The Government also remained indifferent to repeated requests from the trade unions to participate in the drafting of the protocol on the implementation of security measures. On the contrary, the Government had presented workers’ representatives with a *fait accompli* by inviting them to meetings at very short notice to sign draft documents in the preparation of which they not been involved.

Moreover, no progress had been made in the implementation of many other key elements of the roadmap agreed with the ILO. For 25 years Guatemala had been asked to amend provisions of the Labour Code which were contrary to the fundamental right to freedom of association, but the current Government appeared to be choosing to go down the same route as that taken by previous governments by failing to amend: section 215(c) of the Labour Code, which established the requirement for “50 per cent plus one” of those working in the sector in order to be able to establish a sectoral trade union; sections 220 and 223, which established the requirement to be of Guatemalan origin and to work in the relevant enterprise or economic activity to be able to be elected as a trade union leader; and section 241, under the terms of which, in order to be lawful, strikes had to be called by a majority of the workers, and not by a majority of those casting votes; and by failing to ensure that various categories of public sector workers enjoyed the guarantees established by the Convention. The proposals made by the national trade unions reflected the observations of the Committee of Experts, but had also been ignored. It was to be hoped that the employers’ organizations would also play a more constructive role in pursuit of the common goal. However, a number of encouraging signs gave grounds for optimism, such as the abandonment of the decree on differentiated minimum wages, which aimed to fix a lower wage for the poorest municipal workers in the country, and the Ministry of Labour had begun to take measures to process applications for trade union registration. The Worker members also welcomed the launch of the campaign to raise awareness of freedom of association, which however remained on a very limited scale, since no use had been made of the mass media to reach society as a whole. However, in practice, while promoting freedom of association, the Government was stigmatizing collective

bargaining for public sector unions and had published a list of collective agreements concluded with various government institutions that were supposedly detrimental to the state budget. It was unacceptable to hold the workers and collective agreements responsible for several decades of financial mismanagement and corruption. In conclusion, despite the significant efforts that had been made, they said that the situation remained extremely serious and all stakeholders needed to intensify their efforts to ensure the implementation of the roadmap without delay.

The Employer members said that this case was the one that had been examined more than any other in the history of the Committee. In that regard, they expressed concern at the fact that the case was being examined simultaneously by different supervisory bodies and questioned the articulation of these mechanisms. The Government had sent information on the measures taken to implement the roadmap agreed with the social partners. Social dialogue was becoming more fluid, and there had been progress since the case had been examined by the Committee of Experts. The dialogue between the President, the Minister of Labour and workers should be highlighted, along with the dialogue between the CICIG, the Public Prosecutor and the public prosecution services on the clarification of acts of violence. However, it was to be regretted that more cases had not been solved. Measures were needed in that regard, as well as to guarantee better protection for trade unionists under threat. It was impossible for them to provide for their own protection, and resources should be allocated for that purpose. With regard to legislative issues, particularly the requirement to be Guatemalan in order to hold trade union office, there needed to be a balance between trade union rights and the sovereignty of the State. They emphasized that there had been an increase in trade union registration. The Tripartite Commission on International Labour Affairs appeared to be making progress in its work, and employers and workers had both submitted draft reforms of the Labour Code to Congress. The Disputes Settlement Committee was an excellent mechanism, but better results were needed. In that regard, priority should be given to dialogue within the country. The Employer members rejected the suggestion that the application of the Convention should be examined from a sectoral point of view, particularly in the *maquilas*, as that was not provided for under the Convention. They highlighted the cooperation agreement signed with the European Union, but said that the Government should say whether the project would fund the continued presence of the representative of the Director-General’s in the country.

The Worker member of Guatemala emphasized that, in spite of the ILO’s efforts, the authorities were not abiding by their commitments, and systematic violations of the Convention continued. Trade unionists were still being subject to coercion, threats, persecution, intimidation, discrimination and unjustified mass dismissals. The situation was one of the most serious in the world, as reflected in the Global Rights Index 2016 report of the International Trade Union Confederation (ITUC), and trade union organizations had reported the murder of 74 trade union leaders, 18 of them since January 2013. The use of anti-union dismissals was also customary practice. The State was failing to conduct investigations, shed light on the facts, convict those responsible or even make enterprises reinstate trade

unionists when final rulings required them to do so. The severity of the situation had been reiterated by the ILO supervisory bodies, and, within the framework of the Central America and Dominican Republic Free Trade Agreement (CAFTA-DR), the Government of the United States had requested that an arbitration panel be set up to deal with repeated violations of labour rights, highlighting the situation of freedom of association and collective bargaining. Technical round tables and the Disputes Settlement Committee had not produced the desired results. The presence of the Office of the Representative of the ILO Director-General in Guatemala was important, no progress had been seen with regard to the State's commitments under the roadmap. Although minimal steps had been taken on the awareness-raising campaign, at the same time the Government and the office of the Public Prosecutor were conducting an open campaign against collective bargaining, with many collective agreements being called into question and legal action taken against workers engaged in bargaining. The Government's actions and omissions demonstrated its lack of interest in finding a solution to the serious situation. The Government had a historic opportunity to implement the roadmap in practice, but if the failure of compliance persisted, the trade unions, while offering their support to make those commitments a reality, would insist on the appointment of a Commission of Inquiry.

The Employer member of Guatemala drew the Committee's attention to the simultaneous recourse to several supervisory mechanisms. The case under discussion was part of a complaint presented under article 26 of the ILO Constitution that was currently before the Governing Body. Considerable progress had also been made over the years on the issues raised by the Committee of Experts. Regarding the killings of trade union leaders in recent years, he reiterated his indignation at such acts and called for them to be elucidated and the perpetrators punished. However, he welcomed the strengthening of the country's institutions, both the office of the Public Prosecutor, which was responsible for bringing criminals to trial with the assistance of the CICIG, and the judiciary. Although few and far between, there had recently been convictions in some of the cases under review. But the lines of inquiry should not be restricted to anti-union cases, as the level of violence in Guatemala was high. He denied that anti-union violence as such was endemic in the country. He also regretted that workers refused to include employers in the inter-institutional coordination machinery that dealt with the problem, which would provide them with access to information and allow them to contribute to resolving a highly complex issue. He supported every effort to strengthen Guatemalan institutions with a view to elucidating the cases under discussion with the collaboration of the office of the Public Prosecutor and the CICIG, and though the establishment of special tribunals to deal expeditiously with crimes against trade union leaders, and the adoption of the necessary protection measures for trade union leaders and members who felt threatened in the exercise of their functions. As to the non-compliance with the Convention of certain provisions of the Labour Code and Political Constitution, he said that the process of consultations on the proposed reform had begun at the end of 2015 with the comments that the employers had sent to the workers, who had in turn submitted

a very comprehensive draft incorporating their suggestions. It was to be hoped that, with the support of an independent expert provided by the ILO, the Government would shortly be in a position to present a final text to the Tripartite Committee which, after it had been duly discussed, could be placed before the Congress. He also drew attention to the public awareness campaign on freedom of association that the three parties had agreed upon, and to the work of the Disputes Settlement Committee. The employers participated in that Committee and considered it the best way of settling differences. It would be useful to have the same commitment by the workers in that and other bipartite and tripartite bodies. In conclusion, he expressed the gratitude of the employers of Guatemala for the ILO's work in the country, especially that of the Representative of the Director-General in Guatemala.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Norway and the Republic of Moldova, reaffirmed the engagement of those States to promote the universal ratification and effective implementation of the fundamental ILO Conventions. These States attached great importance to all human rights, including freedom of association, and recognized the important role played by the ILO in developing, promoting and supervising international labour standards. The EU and its Member States had followed closely the discussions and expressed their views on the case of Guatemala in the Governing Body with regard to the implementation of the 2013 roadmap and its indicators. He welcomed the strong commitment of the new Government of Guatemala to taking the necessary measures to enable full implementation of the Convention and the positive steps recently taken in this regard. He also welcomed the increased cooperation with the ILO, and invited the Government to step up its efforts, with the assistance of the ILO and in consultation with the social partners, in the following priority areas. First, there was a need for protection and to combat violence and impunity against trade union representatives. Despite some measures taken by the Government in this area, impunity persisted. It was therefore crucial to ensure proper follow-up of cases of killings of trade union officials and members, as well as the timely prosecution and conviction of the perpetrators. It was also crucial and urgent to ensure greater protection of trade union representatives at risk. Second, legislative reforms should be undertaken to bring the legislation into line with the Convention, with the assistance of the ILO. Finally, welcoming a significant increase in the registering of trade unions in the second quarter of 2015, he called on the Government to continue taking further steps to enable the unimpeded registration of trade unions. The EU and its Member States expressed their readiness to continue supporting Guatemala in its efforts to comply with the Convention.

The Government member of Mexico, speaking on behalf of the group of Latin American and Caribbean (GRULAC) countries, welcomed the political will of the new Government demonstrated in the first few months since it had taken office. The Government had shown signs of its commitment to guarantee labour rights, including the right to organize, and to promote the creation of decent work in the country, in cooperation with the ILO. That commitment had been reiterated in the letter of 9 March 2016 from the

President to the ILO Director-General, which had been submitted to the March 2016 session of the Governing Body for its consideration. He urged the Government to redouble its efforts to clarify acts against trade union leaders and to provide the necessary guarantees to protect freedom of association. He also noted the actions carried out by the new Government to make progress in the implementation of the roadmap and timetable, presented at the 326th Session of the Governing Body in March 2016. At that session, the Governing Body had once again urged the Government to take, without delay, all the measures necessary to fully implement the key indicators and the roadmap, including the priority areas that continued to require additional and urgent action; and had deferred to its 328th Session (November 2016) the decision to consider the establishment of a Commission of Inquiry. It had finally invited the international community to facilitate the necessary resources to enable the Office of the Representative of the Director-General in Guatemala to strengthen its support for the tripartite constituents in the implementation of the Memorandum of Understanding and the roadmap. He called on all the parties to continue working together on the implementation of the measures adopted and future measures agreed in a tripartite setting with a view to identifying sustainable solutions and the full application of the Convention in the country. He recalled that the observance of the fundamental rights at work, particularly freedom of association and collective bargaining, was an essential component for achieving decent work. He therefore supported the work and the technical assistance provided by the Office of the Representative of the Director-General in Guatemala and called for its continuation for the full implementation of the roadmap in Guatemala. He concluded by reiterating his concern about the simultaneous use of supervisory bodies to address the same allegations relating to a country that were already being examined by the Governing Body. Such a duplication of mechanisms could weaken the functioning of the ILO supervisory bodies.

The Government member of Panama welcomed the efforts made by the Government with regard to the handling of criminal cases and the support provided for the Disputes Settlement Committee, as well as the commitment to making progress in implementing the roadmap and timetable, as reported to the Governing Body at its 326th Session in March 2016. Furthermore, he highlighted the valuable technical assistance provided by the ILO with regard to the recommended legislative reforms. On the other hand, he expressed concern at the fact that the situation was being examined by several supervisory bodies at once. Moreover, the Government of Panama, as extempore chair of the Council of Ministers of Central America and the Dominican Republic, reiterated its concern at the inclusion of Guatemala and two other countries in the region, namely Honduras and El Salvador, in the list of individual cases to be examined by this Committee. There was a lack of objective and transparent selection criteria. It seemed that the Committee did not value all the support that the ILO gave to countries in the region.

An observer representing Public Services International referred to threats to the life of many trade union leaders and the protection available to them, which they had gained through their own efforts and through the existence of international solidarity. However, these protection measures

came with a cost, as trade unionists had to pay for the food and transport expenses of those responsible for their protection. In some cases, they even had to forego the protection, which demonstrated the existence of a structural problem that prevented the exercise of freedom of association. In the public sector, the gravity of the situation highlighted by the Committee of Experts continued to persist. There had been no progress in the investigation of threats to the life of trade unionists, and there was a deliberate campaign to abolish collective bargaining in the public sector, where 19 collective agreements were being renegotiated. In other cases, collective agreements were alleged to be unconstitutional. The media were also being mobilized against freedom of association, and trade unions that had concluded collective agreements were being attacked. There were still instances of anti-union dismissals, unions were being refused registration and a union leader had been arrested. However, he knew nothing about the initiative to amend the provisions of the Labour Code relating to freedom of association. For years there had been talk of organizing bipartite dialogue for the public sector to resolve these and other issues, but nothing had come of it. The workers were open to dialogue with international support in order to bring an end to the attacks on public sector trade unions and on public services. Urgent action was still needed to remedy corruption and to reinforce public investment and financing, decent work and the legitimacy of trade unionism in the public sector.

The Worker member of Colombia said that the fact that the case had been under consideration for years proved the existence of one of the clearest, most persistent and most systematic violations of freedom of association. In its comments, the Committee of Experts had referred to: (1) the need to investigate and prosecute those responsible for acts threatening the life or physical integrity of trade union leaders and members; (2) the protection of trade union leaders and members through real and effective measures; and (3) the adoption of legislation that was in line with the provisions of the Convention, which promoted and guaranteed the existence of trade union organizations without undue interference from employers or the State. He added that the case was similar to that of his country. It concerned continuous violations of freedom of association. These were not isolated events. The violations formed part of a legal and institutional structure to restrict the growth and existence of trade union organizations. An ambitious plan was needed to guarantee freedom of association that had a real impact on the ground by reducing the endless violations of freedom of association, promotion of the right to organize and bringing to an end the impunity for crimes against trade unionists. According to Guatemala's trade union organizations, there had been no meaningful progress in the investigation of acts of violence against trade unionists. The protection measures that the Government said it had taken were not effective. He concluded by expressing the hope that the Committee would set deadlines and specific action to overcome the problems identified.

The Employer member of Mexico expressed regret at the violence of which trade unionists were victims, but said that it was occurring in the context of the violent situation in the country. He considered that action aimed at a solution to the problems needed to be supported. He neverthe-

less regretted that the examination of the same situation before different supervisory bodies was duplicated, and considered that this did not contribute to solving the problems.

The Government member of Canada referred to a number of issues raised by the Committee of Experts in its comments and the article 26 process, including the agreed action called for in the roadmap. Expressing strong support for the completion of the roadmap, she called on the Government of Guatemala to spare no effort in making demonstrable progress towards legislative reforms. Her Government was troubled by the additional allegations of serious acts of violence against trade union officers, as outlined in the report of the Committee of Experts. She called for adequate investigatory, prosecutory and protective measures to be undertaken without delay in order to allow the free exercise of labour rights. Reaffirming the commitment of her Government to respect human rights through the full application of international human rights instruments, such as Convention No. 87, she urged the Government of Guatemala to translate into action its commitment to the implementation and respect for these instruments.

The Worker member of Spain, speaking on behalf of the General Union of Workers (UGT) and the Trade Union Confederation of Workers' Commissions (CCOO), considered that Guatemala was the most blatant example of the systematic violation of fundamental rights and failure to respect the principles of good faith which should prevail in the application of international treaties. He regretted the lack of progress in a case that had been examined by the Committee on 18 occasions in the past 25 years. In addition to the most extreme forms of violence against the trade union movement and the climate of impunity, there were still many other violations of freedom of association such as the criminalization of union activities, the ineffective judiciary and labour inspectorate and the lack of protection against acts of intimidation, interference and anti-union discrimination. While on the one hand, it was launching a timid public-awareness campaign on freedom of association, on the other, the Government was engaging in reprehensible efforts to discourage workers from joining trade unions through threats, persecution and dismissals. The right to bargain collectively was also being infringed by the office of the Prosecutor-General which was taking legal action against collective agreements that had been negotiated with State institutions and municipalities. In this context, he called on the Government to bring an end to restrictions on: the establishment of trade unions and the right to elect union leaders freely; the right of organizations to carry out their activities, including the possibility to impose compulsory arbitration in the public transport sector and to impose sanctions, including penal sanctions, in the event of strike action or other forms of trade union protest by public employees or workers in certain enterprises; the denial of trade union rights in practice for many public sector workers engaged under budget item 029; the restrictions on the right to strike; the deliberate delay in reinstating trade unionists who had been dismissed; and the restrictions on collective bargaining in the public sector and the maquila sector.

The Employer member of Panama said that the ILO was acting in a contradictory manner regarding countries that were trying to resolve conflicts through tripartite social dialogue. On the one hand, for over ten years, the ILO had

promoted the establishment of tripartite dialogue round tables in member States with the aim of addressing and resolving existing differences at national level by means of dialogue and negotiation between the social partners. He emphasized that this methodology had proven to be an appropriate way to resolve disputes, as demonstrated by the experiences of the tripartite dialogue round tables created by Colombia and Panama. The Government, with support from the ILO, had decided to follow this path by establishing a tripartite dialogue round table and developing a roadmap aimed at resolving conflicts and complaints brought before the Organization. On the other hand, by including countries that were taking this route on the list of cases to be discussed by the Conference Committee, the ILO was sending a discouraging message that it was not worth making the necessary efforts to strengthen tripartite dialogue round tables. He emphasized that, on the contrary, the ILO should redouble its efforts through the provision of technical assistance to obtain positive results from tripartite dialogue round tables in countries where they had been established.

The Worker member of the United States indicated that, while ILO member States increasingly ratified trade agreements which included commitments to honour ILO Conventions and declarations referring to them, the reluctance and ineffectiveness of governments to use ILO instruments to protect workers' rights in the framework of international trade was still a cause of concern. Guatemala and the United States were two such governments. The CAFTA-DR had taken effect between the United States and Guatemala in 2006. The Agreement required the parties to recognize and protect freedom of association and other rights included in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. While the fact that the United States had not ratified most of the core Conventions at the heart of the Declaration was itself a problem. Guatemala had ratified, but persistently failed to comply with the Convention under discussion, but still continued to receive the trade benefits stemming from the CAFTA-DR. Last year, before the Conference Committee, information had been shared on the tortuously long seven-year path travelled by Guatemalan workers to begin the CAFTA-DR dispute resolution process. One year ago, the arbitration panel had heard arguments touching almost entirely on the Convention. Since the arbitration had begun, Guatemalan workers had experienced new delays. The initial dispute settlement panel report was now expected later this month, over eight years after the Government of the United States had received the workers' petition. Guatemalan workers had documented many violations of the Convention, including union leaders being offered bribes to quit their jobs and to convince workers not to join unions; workers being fired for union affiliation or for not disbanding unions; non-enforcement of relevant laws; and a lack of investigations, prosecutions and punishment of the perpetrators of violations of freedom of association. Violations had continued while the petition had been under consideration. During the eight years that the petition had been pending, 61 trade union leaders and members had been murdered. The great majority of the perpetrators and all instigators of murders of trade union officers and members remained at large. The ILO had made clear on numerous occasions the connection between anti-union violence and the ability to

exercise freedom of association. While the staff of the United States Trade Representative had suggested to leaders of the United States labour movement that murdering a trade unionist or perpetuating violence against a trade unionist did not violate the labour standards in the trade agreement with Guatemala, the ILO had long been clear on the matter. Anti-union violence was a violation of the Convention.

The Government member of the United States, referring to the information provided to the Committee by the Government representative, welcomed the Government's new perspective and commitment to address the long-standing issues in this case. She was confident that the Government would provide the necessary resources and enforcement tools for the Ministry of Labour to implement the measures needed to protect workers from all forms of anti-union discrimination and to ensure full remedies under the law when such violations occurred. The serious issues in the case before the Committee had been well-documented and discussed for many years. The new procedures established by the Government to improve the investigation of murders of trade unionists had been noted. The establishment of those procedures was an important step, but she remained deeply concerned at the high degree of impunity that persisted. The Government was encouraged to strengthen the application of these procedures, continue and enhance cooperation with the CICIG and provide additional resources for the investigation and prosecution of violence and threats against trade unionists. The recent efforts by the Ministry of Labour to reduce the backlog of pending union registrations were welcomed. She looked forward to the institutionalization of efforts to produce systemic change to expedite the registration of unions and collective bargaining agreements in future. However, she was particularly concerned at the very low rate of union and collective bargaining agreement registration in the maquila sector and the recent challenges in the public sector. The fact that the Government had sought ILO support to better educate members of the judiciary about international labour standards was a positive step. However, to date, training had not yet translated into increased compliance with labour court orders for victims of anti-union dismissals. The Government was urged to give immediate attention to this matter and to take all necessary steps, including criminal prosecutions, to ensure full compliance with labour court orders, in particular reinstatement orders, within the legally established time frames. Similarly, Guatemala's recent request for ILO technical assistance to develop legislation that addressed the recommendations of the ILO supervisory bodies was welcome. She looked forward to the expeditious introduction of legislative proposals to address the specific issues of non-compliance in law raised by the Committee of Experts, as well as a proposal to restore authority to the Ministry of Labour to impose sanctions directly. She urged the Government to take full advantage of ILO technical assistance and to seize the opportunity to ensure respect for workers' rights in Guatemala by issuing additional legal instruments and introducing tangible improvements in labour law enforcement, and by allocating the necessary resources for that purpose.

The Worker member of Italy, recalling the repeated presence of the case before the Committee, as well as the high number of cases concerning Guatemala examined by the

Committee on Freedom of Association, said that effective and real action had to be taken urgently. The figures for murders and violence against trade unionists were a shocking indictment of the situation faced by workers in Guatemala every day for over 25 years. In this sea of violence, the Government continued to be inactive, resulting in a worsening of the situation with regard to both criminal and labour law offences, for which there would never be convictions, while offenders benefited from impunity and the absence of the rule of law. The international labour community needed to act, as the rights enshrined in the Convention had been denied every day for over two decades. In conclusion, she called for: the appointment of a Commission of Inquiry with no further delay; the development by the office of the Public Prosecutor of an integrated investigation policy allowing a modernization of investigation techniques to be applied in cases of violence against trade unionists; major cooperation between the office of the Public Prosecutor and the CICIG to punish acts of violence against trade unionists; and a protection plan for worker victims of anti-union violence in order to ensure their personal integrity.

The Government member of the Dominican Republic said that her Government aligned itself with the statements by GRULAC and the Government of Panama. She expressed her support of the Ministry of Labour and recognized the Government's willingness and efforts focused on achieving decent work, social dialogue and respect for freedom of association, in accordance with the commitments deriving from ILO Conventions. She requested ILO support for the work of the Conflict Resolution Committee so it could achieve positive results.

The Government representative reiterated that the Office of the Public Prosecutor had brought charges and initiated proceedings against the perpetrator of the murder of Mynor Rolando, and that the public authorities were determined to shed further light on the case and on the other cases of murder of trade unionists. Together with the trade union organizations, budgetary alternatives were being sought to ensure that the expenses were covered of officers in the National Civil Police who were assigned to protect individuals. Regarding collective agreements in the public sector, she recognized that the Government needed to overcome a series of challenges, but said that the social partners should adopt the same approach and contribute to developing a joint strategy to overcome the challenges. Corruption in Guatemala had also found its way into the trade union organizations, although it was not fitting that the actions of a few individuals should damage the entire trade union movement. She therefore invited the social partners to work together to find the right path for the good of the country, taking into account the reality of the current situation. She shared the concerns voiced by the Worker member of Guatemala regarding the very high level of violence in the country. However, violence was a historical issue, which could not be resolved overnight and needed to be addressed by everyone. She reiterated the Government's total commitment combat impunity. Concerning the protocol for the protection of trade unionists, trade union organizations were fully aware that a technical round table had been set up with the Ministry of the Interior, at which months of discussions were being held on the content of the protocol. Although consensus had not been achieved

owing to a lack of maturity and objectivity, the Government had decided that, despite certain disrespectful comments and attitudes on the part of the workers, it would keep the round table open in order to continue receiving the views of the workers. The Government had decided to decentralize the administrative procedures related to the registration of trade union organizations, thereby making the procedures easier for users and avoiding the unnecessary costs incurred by the intervention of third parties. Government procedures complied with the law at all times, which meant that the law applied to everyone equally. In that regard, the proceedings involving the dismissal of the trade unionist Erick Colmenares, initiated in 2014 under a previous government, had followed the appropriate judicial procedure, and had resulted in the authorization of the dismissal by the highest judicial body in Guatemala. She therefore requested the trade union organizations to support compliance with the law. With regard to the requested legislative reforms, she reiterated that the appointment of an expert to prepare a draft law was part of the technical assistance provided by the ILO. After having listed a number of initiatives that had been notified to the Tripartite Commission on International Labour Affairs, she gave the floor to the President of the Labour Commission of the Congress of Guatemala. The President of the Labour Commission said that there was political will in Congress to reform the national labour legislation and that his Commission was fully prepared to work with the Tripartite Commission and the ILO.

The Worker members emphasized that the new examination of the case of Guatemala was a result of the Government's persistent failure to implement the conclusions adopted by the Committee and other ILO supervisory bodies. Guatemala remained one of the most dangerous countries in the world for trade unionists. The Governing Body had endeavoured to launch a constructive dialogue with the Government with a view to finding practical solutions to extremely serious violations. However, in reality serious violations were continuing without respite and without incurring any significant penalties, thereby creating a situation of virtual impunity. The Committee of Experts had reflected the seriousness of the situation in its comments and described the lack of progress as "tragic". The Worker members would take every possible action, at the ILO and elsewhere, to bring an end to violence and impunity. They noted the Government's indications concerning the small number of court judgments that had resulted in convictions or acquittals. However, it was unacceptable that all the perpetrators and instigators of the murders of 74 trade unionists were at liberty in a situation of total impunity. Furthermore, it was particularly worrying to hear that the anti-union motives for the murders were being questioned. By claiming that these crimes were due to the general climate of violence in the country, the Government was shirking its own responsibility and thus helped to perpetuate the situation of impunity. They emphasized that the Government had once again failed to take the necessary steps to amend the national legislation in order to bring it into line with Conventions Nos 87 and 98, further to the observations of the Committee of Experts. Guatemalan trade unions had put forward a series of proposed amendments to the legislation that were strictly in line with the recommendations of the Committee of Experts, but the proposals had been

ignored. They welcomed the fact that a number of trade unions had finally been registered, but it was regrettable that little progress had been made towards removing the obstacles to registration. They also deplored the blatant attempts to stigmatize collective agreements in the public sector by holding the public sector workers responsible for the disastrous state of the economy and for the financial mismanagement of the national budget. Finally, they urged the Government to: provide rapid and effective protection for all trade union officers and members at risk, by increasing the budget allocated to protection programmes for trade unionists so that the latter were not obliged to cover the costs of their own protection; submit a bill to Congress by September 2016 at the latest, based on the comments of the Committee of Experts, to bring the national legislation into conformity with Conventions Nos 87 and 98; remove the various legislative obstacles to the freedom to establish trade unions and, in consultation with the social partners and with the support of the Special Representative of the Director-General of the ILO in Guatemala, review the procedure for processing applications for trade union registration; ensure large-scale dissemination in the media of the awareness-raising campaign on freedom of association; and bring an immediate end to the stigmatization and denigration through the same media channels of the collective agreements in force in the public sector.

The Employer members highlighted the significant progress made in the case, including the support that the ILO had provided to the Government to take positive measures to resolve disputes and the registration of new trade union organizations. However, there were still some problems to solve, such as the investigation, identification and prosecution of those responsible for the murder of trade unionists, risk studies for the protection of trade unionists and the adoption of legislative reforms. With regard to the legislative reforms, they expressed two reservations concerning the issues raised by the Committee of Experts. The first concerned the scope attributed to the Convention in relation to strikes. Recalling that the position of the Employers on this point had not changed, they did not support the request made for legislative reforms in this regard. The second reservation concerned the request by the Committee of Experts' to remove the prohibition on foreigners or those who were not of Guatemalan origin from holding trade union office. In the view of the Employer members, the Government must have full sovereignty over whether or not to grant this right. In addition, they said that they wished to see progress in the coordination with the Conflict Resolution Committee through the appointment of a person who enjoyed the trust and recognition of the parties and could resolve the issues. They took note with interest of the mass awareness-raising campaign on freedom of association and collective bargaining. Recalling that the application of the Convention would be analysed by the Governing Body in November 2016, which meant that expectations of progress were extremely high, they emphasized that it was important for the Special Representative of the Director-General in Guatemala to be able to fulfil his mandate fully with the aim of strengthening social dialogue. They said that, on the basis of the above, the conclusions in the case should include the following elements: highlight the need for greater involvement of the public prosecution services in

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

Indonesia (ratification: 1998)

cases of trade unionists being murdered; encourage Congress to pass the relevant legislative reforms, with the reservations expressed above; take note of the public awareness-raising campaign and call for it to be undertaken more actively; encouraging the Conflict Resolution Committee to deliver positive results; and emphasize the need for the steps set out in the roadmap to be successfully implemented.

Conclusions

The Committee took note of the information provided by the Government representative, in the presence of Congress representatives, and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the national awareness-raising campaign on freedom of association which was being supported by the Special Representative of the Director-General.

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

- investigate, with the involvement of the Public Prosecutor's Office, all acts of violence against trade union leaders and members, with a view to determining responsibilities and punishing the perpetrators, taking the trade union activities of the victims fully into consideration in the investigations as one of the possible motives;
- provide rapid and effective protection to all trade union leaders and members who are under threat, increasing the budget allocated to protection schemes for trade unionists so as to ensure that protected individuals do not personally have to bear any costs arising from those schemes;
- submit to the Congress, before September 2016, a draft law related to the number of workers to constitute a trade union and the categories of workers in the public sector to ensure the conformity of national legislation with Convention No. 87;
- eliminate the various legislative obstacles to the free establishment of trade union organizations and, in consultation with the social partners and with the support of the Special Representative of the Director-General, review the handling of registration applications;
- disseminate in the national mass media the campaign on freedom of association and collective bargaining supported by the Special Representative of the Director-General and ensure that there is no stigmatization whatsoever against collective agreements existing in the public sector;
- continue to support the work of the Committee for the Settlement of Disputes before the ILO in the area of Freedom of Association and Collective Bargaining;
- continue taking the necessary steps to fully implement the roadmap adopted on 17 October 2013 in consultation with the social partners.

The Government representative noted the Committee's conclusions and reiterated her Government's responsibility for and commitment to complying with ILO standards. It was important to work and coordinate with the social partners in an objective and mature manner in order to make progress in that regard.

INDONESIA (ratification: 1998)

A Government representative reiterated her Government's strong commitment to the implementation of the Convention, and to the fulfilment of the rights of workers, including the right to freedom of peaceful assembly and of association in accordance with national laws and regulations. Turning to the request by the Committee of Experts

to provide information on the serious allegations of acts of violence against peacefully striking workers committed on 31 October 2013 by paramilitary organizations and on 2 July 2014 by the riot police, she emphasized that striking was one of workers' rights resulting from failed negotiations between workers and the employer which should be conducted in an orderly and peaceful manner, in compliance with Indonesian law. Act No. 13 of 2003 clearly established the definition and mechanism of strikes in order to ensure that their exercise did not disrupt public order. In particular, trade unions should not carry out sweeping activities, block roads, carry weapons or other sharp devices that might harm others, or commit acts of anarchy. However, the strike on 31 October 2013 had not been conducted in a peaceful manner, as the demonstrators had passed through residential areas, blocked public roads and provoked tension and clashes between them and the local community, including community organizations, which were not "paramilitary organizations", as indicated in the report of the Committee of Experts. Considering that the use of the term "paramilitary organizations" was misleading, as such organizations were not recognized in Indonesia, she asked for clarification from the Committee of Experts on the use of that term. She further stated that the police had expeditiously investigated the case and held the perpetrators accountable, and that the trade union and the community organizations involved in the incident had also amicably and peacefully resolved the case. With regard to the strike at an Indonesian food packaging company on 2 July 2014, she indicated that, although the employer had tried to find a solution to the call by the workers for new minimum wages through a series of constructive engagements, there had been no sign of agreement between the parties, the situation had become increasingly hostile leading to violence, criminal acts and damage to the company's property, and the company had therefore requested the police to address the situation using the least disruptive means possible, even as the situation continued to deteriorate, hampering public order. Concerning the allegations of violence against striking workers, acts of intimidation against union leaders, excessive violence and arrests in relation to demonstrations and police involvement in strike situations, she reaffirmed the Government's commitment to ensuring freedom of speech in line with Act No. 9 of 1998. Moreover, the Indonesian National Police had established procedures to ensure that freedom of expression in public could be conducted in a peaceful manner. In particular, the Chief of Police Regulation No. 7 of 2012 on procedures for services, safeguarding and handling of expression in public spaces required demonstrators to submit early notification to the local police before a demonstration was carried out to allow them to provide sufficient security protection for the demonstrators and the surroundings. However, when demonstrators did not express their messages peacefully and created an imminent threat to public order, the police had to intervene and could take serious measures to ensure the safety and security of the public. Recognizing that capacity building of the police was a key factor in addressing demonstrations effectively, a series of training activities had been developed to enable the police to better handle demonstrations and strikes.

With regard to the request by the Committee of Experts to repeal or amend sections 160 and 335 of the Penal Code,

she said that a comprehensive review of the whole text of the Penal Code was ongoing, but that it required careful and in-depth discussion and consultations at the national level. Concerning the right to organize of civil servants, she explained that freedom of association of civil servants was guaranteed by section 44 of Act No. 21 of 2000, but that there had been no proposal hitherto from civil servants to establish a union. Given the large number of civil servants in Indonesia and their significant role in the country, the Government would nevertheless remain open to discuss this initiative upon request from civil servants. Turning to the question of the right of workers' organizations to organize their activities, she noted the observations of the Committee of Experts concerning the shortcomings in relation to the exercise of the right to strike, but emphasized that the procedure to implement the right to strike had been established in a comprehensive manner taking into account various views of the social partners. With regard to the request by the Committee of Experts to amend section 186 of the Manpower Act providing for criminal conviction for violations of certain provisions in relation to the right to strike, she indicated that sanctions had to be imposed to ensure the maintenance of public order and that the Manpower Act served as a reasonable restriction upon the right to strike in the interests of the public. It was therefore premature to amend the Manpower Act on this matter. With regard to the dissolution and suspension of organizations by administrative authority, she indicated that her Government fully supported the establishment of trade unions as part of its commitment to implement Convention No. 87. Since there were more than 6,000 trade unions registered, the Trade Union Act was important to ensure that they effectively worked in a unified manner in the best interests of the workers. In conclusion, she said that her Government was very supportive of the efforts of workers to exercise their rights, was ready to provide the necessary additional information on the issues addressed in the report of the Committee of Experts and would work untiringly with the social partners and the ILO to ensure the implementation of the Convention.

The Worker members recalled the important progress that had been made in the post-Suharto transition period in protecting freedom of association in Indonesia. Unfortunately, that progress had come to an abrupt end with the advent of the Widodo administration. In a deeply troubling trend also witnessed in other countries in the region, anti-union violence was once again on the rise for the sake of attracting investment. In addition, labour law continued to contain limitations contrary to the Convention, and trade union rights were rarely enforced in practice. Anti-union discrimination had led to a decline in unionization in sectors such as electronics, while others, such as the palm oil sector, had been kept virtually union free. A return to the 1980s style repression was to be feared. Among the numerous attacks on trade unionists, on 31 October 2013 an attack by paramilitary organizations had been carried out in Bekasi against a peaceful national demonstration demanding an increase in the minimum wage, protesting against outsourcing by state-owned enterprises and calling for the adoption of the Domestic Workers' Bill. Instead of protecting the workers, police officers deployed to the site had not stopped the attacks, and had let 28 workers be injured by

thugs armed with knives, iron rods and machetes. In November 2014, workers on strike over the minimum wage had been severely beaten by police in Bekasi, resulting in three of them having to go to hospital. Workers in Bataam had been dispersed by tear gas and water cannons that had been prepared in advance by the police. In Bintan, police had attacked and injured several workers who were meeting in front of the Lobam Industrial in order to march to the local government office. It should be recalled that the Committee on Freedom of Association had held that the rights of workers' and employers' organizations could only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of those organizations, and that it was for governments to ensure that this principle was respected. The Committee on Freedom of Association expected that the Government would make every effort to ensure that this principle was fully respected in future. The Committee on Freedom of Association had called for an independent judicial inquiry into these allegations, but no action had been taken. Indeed the repression had only continued. On 30 October 2015, a lawful and peaceful protest by over 35,000 workers in front of the Presidential Palace had been dispersed by the police with water cannons and tear gas. Some 23 workers had been arrested and detained for 30 hours, and they continued to face criminal charges under sections 216(1) and 218 of the Penal Code and had to report weekly to the police. Peaceful demonstrations in other parts of the country had similarly been disrupted. Heavily armed thugs of the *Organisasi Kepemudaan* were hired by employers' organizations to intimidate workers in the Medan North Sumatra region. Seven labour activists from the North Sumatra Workers Alliance had been attacked by thugs as they marched in Medan to protest against Government Regulation No. 78/2015 on wages and had suffered serious injuries as a result. In Jawa Timur, a member of the Federation of Indonesian Metalworkers Union (FSPMI) had been beaten unconscious by the police. On 24 November, the first day of the national strike, the police had physically attacked picketing workers. In addition to these acts of violence, the Government had unlawfully interfered with trade union activities through other means. In the days before the nationwide strike planned for 24–27 November 2015, the police had occupied the branch office of Confederation of Indonesian Trade Unions (KSPI) in North Jakarta and put KSPI and FSPMI branch offices under surveillance. Local authorities and employers in the Bekasi, Karawang and Batam regions had attempted to intimidate workers, claiming that the strike was illegal and that participants would face dismissal, although it should only be for an independent judicial body to determine the legality of a strike. On 25 November, the police had arrested and detained for eight hours five union leaders in the Bekasi Industrial Estates, West Java, arguing that it was prohibited to demonstrate in the industrial parts of the "National Vital Object Area". In 2014, the Ministry of Industry had added 49 industrial firms and 14 industrial estates to the list of industry-sector national vital objects under Presidential Decree No. 63 of 2004 on the Security of National Vital Objects. Demonstrations were completely prohibited in sectors and zones covered by that Decree and met with fierce repression when they took place. In early 2016, rallies and demonstrations had been banned in several regions by local authorities.

The President had ordered the National Intelligence Agency to investigate alleged foreign involvement in labour rallies and had on numerous occasions claimed that foreign support for workers was responsible for rallies and demonstrations. It should be recalled that trade unions had the right to join international organizations, including international trade unions.

The Worker members joined the Committee of Experts in calling on the Government to ensure that state security was not invoked to suppress the right to freedom of association, and that those, whether they were public officials or private individuals, who had committed acts of violence against trade unionists, were charged, tried and punished. They also echoed the call by the Committee of Experts to repeal or amend sections 160 and 335 of the Penal Code on “instigation” and “unpleasant acts” against employers so as to ensure that these provisions could not be misused as a pretext for the arbitrary arrest and detention of trade unionists. In addition, the Committee on Freedom of Association had also found that the Mass Organizations Act, adopted in 2013, included numerous broad and generally worded provisions that could curtail the exercise of freedom of association. The Government had yet to amend the Act, which had been challenged by several trade unions before the Constitutional Court. The Committee of Experts had previously called on the Government to adopt legislation guaranteeing the exercise of the right to organize of civil servants, pursuant to section 44 of the Trade Union Act No. 21 of 2000. The Government had yet to heed that call. The Committee of Experts had also repeatedly called on the Government to amend provisions allowing trade unions to be suspended or dissolved by administrative authorities. Finally, the Committee of Experts had repeatedly pointed out, legal provisions imposing obstacles to the exercise of the right to strike, including: (i) the manner of determining failure of negotiations; (ii) the issuance of back-to-work orders prior to the determination of the legality of the strike by an independent body; (iii) the extensive time period accorded for mediation/conciliation procedures; and (iv) criminal convictions for violation of certain provisions in relation to the right to strike. In that respect, the Worker members reaffirmed their view that the right to strike was an essential element of the right to freedom of association and was protected as such by Convention No. 87. The Government had to respect that right in law and practice. The Worker members therefore urged the Government to amend the legislation in accordance with the observations of the Committee of Experts and to ensure the full exercise of that right. Recent moves by the Government to ban or interfere in strikes and demonstrations were serious violations of the Convention and had to stop.

The Employer members welcomed the Government’s stated willingness to work with the social partners to apply the Convention. They recalled that Convention No. 87 provided for the right of workers and employers, without distinction whatsoever, to establish and join organizations of their own choosing, without previous authorization and subject only to the rules of the organizations concerned. Indonesia had ratified the Convention in 1998, and to date the Committee of Experts had made observations on eight occasions regarding the country’s application of the Convention. This was the Government’s first appearance before the Conference Committee in relation to Convention

No. 87. They regretted that the Government had not replied to the serious concerns raised by the Committee of Experts regarding the allegations of the International Trade Union Confederation (ITUC) of violence against trade unionists, and they urged that full information in reply to these deeply troubling allegations be submitted to the Committee of Experts without delay.

Recalling that the Convention laid down guarantees against interference by the public authorities that would restrict the right to freedom of association, they noted the comments by the Committee of Experts referring to legislative restrictions on the right of civil servants to organize. In particular, they noted that the Committee of Experts had questioned why no organizations of civil servants had yet been established, despite the Government’s indication that section 44 of the Trade Union Act granted civil servants the right of association, and they called on the Government to provide full information on the circumstances relating to civil servants and their exercise of freedom of association. They observed that the Committee of Experts had raised concerns regarding sections 21 and 31 of the Act. Penalties for violations of these sections, as laid down in section 42 of the Act, included the suspension or revocation of trade union status and the loss of trade union rights. Recalling further that the Committee of Experts had requested the repeal of these provisions, and to ensure that the organizations affected by them enjoyed the right to appeal orders of suspension or dissolution to an independent judicial body, they requested the Government to provide full information on these matters. Finally, they encouraged the Government to seek technical assistance from the ILO to ensure that organizations affected by orders of suspension or dissolution by an administrative body enjoyed the right to appeal these orders to an independent judicial body.

The Worker member of Indonesia pointed to the sharp increase in inequality in Indonesia, despite its impressive economic record. The Gini coefficient – a measurement of inequality – had increased sharply in Indonesia over the past 15 years, climbing from 30 in 2000 to 41 in 2013, where it currently remained. While the ratification by Indonesia of Convention No. 87 represented a milestone and ended the system of trade union monopoly, in recent years Indonesia’s commitment to respecting workers’ rights had been moving in another direction. She therefore welcomed the fact that the Committee had chosen the present case for examination. She recalled the serious and continuous violations of the Convention, and particularly the attacks on peaceful strikes in the following cases: (a) the strike of 31 October 2013 in Bekasi District calling for a minimum wage raise, implementation of health insurance and the adoption of the domestic workers law. Police officers were said to have been deployed, but had done nothing to stop the violence committed apparently by paid gangs of youth resulting in the injury of 28 workers; (b) the strike in November 2014 for minimum wages, where striking workers had been severely beaten by police in the MM 2100 and Jababeka Industrial Areas, and five workers, members of the KSPI had also been detained: Budi Lahmudi, Jefri, Hadi Maryono, Nur Waluyo and Priyanto; (c) the strike of 24 June 2015 in front of a factory where workers had suddenly been attacked and blocked by people wearing the uniform of Pemuda Pancasila, while the police on the site

had been passive and provided no protection for the attacked workers; (d) the strike on 30 October 2015 in front of the President's palace, attended by over 35,000 workers to oppose Government Regulation No. 78/2015, which sought to link the statutory minimum wage to inflation and GDP growth rates only, and to demand a 22 per cent increase in the minimum wage for 2016. Despite the peaceful nature of the strike, the police were reported to have used bodily force, water cannons and tear gas to disperse the protesters with the resultant arrest of 23 workers, including the General Secretary of the KSPI, Muhamad Rusdi, who had subsequently been released on bail on 31 October 2015.

With regard to the right to organize of civil servants, she said that separate regulations to safeguard the protection of civil servants had as yet not been adopted consistent with section 44 of the Trade Union Act, as recalled by the Committee of Experts. She also referred to President Decree No. 63 of 2004 on the security of "national vital objects" and Ministry of Industry Decree No. 466/2014 on the national vital objects industrial sector, which were considered to represent an added layer of security for 49 national industrial firms and 14 industrial estates. Decree No. 466/2014 allowed: (a) companies or industrial areas to request assistance from the police and the military in the event of disruption and threat to national vital objects; and (b) the minister and head of agencies to determine "vital national objects" within their jurisdiction, and to issue a certificate to the companies and industrial areas concerned. In conclusion, she urged the Government to: (a) ensure that state security was not used to suppress the right to freedom of association, and to hold accountable public officials or private actors involved in acts of violence against trade unionists; (b) adopt an act protecting the rights of civil servants; and (c) revoke all decrees and regulations on "National Vital Object".

The Government member of Cambodia, speaking on behalf of the Association of Southeast Asian Nations (ASEAN), noted the 2016 report of the Committee of Experts, in which the Government was requested to provide responses regarding its implementation of the Convention. He expressed full confidence in the Government to implement and protect the right of workers in accordance with its international obligations, and in line with its laws and regulations. He called on the Government of Indonesia to continue addressing labour issues through social dialogue and he welcomed its political will to implement the ILO's fundamental Conventions, including Convention No. 87.

The Worker member of Japan emphasized that acts of violence against peacefully striking or demonstrating workers, whether by the police or by paramilitary organizations, were a grave violation of the principles of freedom of association. Although the comments of the Committee of Experts referred to acts of violence in 2013 and 2014, further such acts had also occurred in 2015, at times resulting in serious injury to the workers concerned. Unless concrete measures were taken by the Government to stop this violence, he feared that such acts would continue to occur. Although Indonesia had ratified the Convention, and indeed all eight of the ILO's fundamental Conventions, ratification alone meant very little if the principles enshrined in those the Conventions were not fully realized in national law and practice. Noting that the Government was due to

host the ILO's 16th Asia and the Pacific Regional Meeting in December 2016 in Bali, he emphasized that it would behoove the Government to fully apply all of the recommendations of the Committee of Experts so that concrete improvements could be duly noted and celebrated by the time of the meeting.

The Worker member of the Netherlands referred to Presidential Decree No. 63 of 2004 and Ministry of Industry Decree No. 466/2014, which provided the security forces, the police and the military with special powers to intervene directly in companies, at the request of employers. The decrees covered 49 enterprises, 14 industrial zones and 252 companies in the energy and mining sector. The objective of the Decrees was to make Indonesia more attractive for foreign companies and to protect them against threats, without specifying the nature of these threats. In the experience of trade unions, these perceived "threats" could include industrial action, peaceful demonstrations and even trade union meetings outside or inside the factories. Among the companies which could and did ask for protection under the National Vital Objects Decrees were multinational enterprises from Europe, Asia and the United States. In the 14 industrial areas where Indonesia's export production took place, thousands of companies, mostly linked to networks in global supply chains, enjoyed special protection under these Decrees, while workers, particularly in global supply chains, found their freedom of association to be undermined. She considered that, if the ILO was serious about promoting decent work in global supply chains, which was the subject of a general discussion at the present session of the Conference, work to safeguard all the fundamental rights of workers, including those under Convention No. 87, should have priority. In conclusion, she called on the Government of Indonesia to comply with Convention No. 87 and to withdraw Presidential Decree No. 63 of 2004 and Ministry of Industry Decree No 466/2014.

An observer representing IndustriALL Global Union said that the enormous challenges already confronting Indonesian workers were made even more difficult and dangerous by Ministry of Industry Decree No. 466, which undermined all industrial action and threatened union organization by authorizing military intervention against workers. The implementation of the Decree had resulted in serious acts of violence against peacefully demonstrating workers since 2014–15, and had furthermore kept trade unions from reaching out to workers in industrial zones. The 2014 Decree reclassified and added a number of enterprises and industrial zones to the category of "national vital objects". It also empowered the security forces, the police and the military to intervene directly in companies at the request of employers. The fact that the military now had special powers to intervene directly in industrial zones endangered the lives of workers. Moreover, the definition of "national vital objects" was intentionally kept flexible, so as to render it applicable even to companies in the paper sector, as had occurred in 2014. The new definition included any zone, location, building or business that carried the hopes of many, were of national importance, a source of State revenue or characterized as of strategic importance. Virtually all industrial zones could therefore fall within the scope of the Decree. She said that, according to Indonesia Corruption Watch (ICW), between 2001 and 2010 one of the country's largest gold mining companies had paid

US\$79.1 million to the police to ensure the security of its operations. She mentioned several cases in which, under Decree No. 466, industrial action had been violently repressed: (1) a 2011 military intervention in a labour dispute in the PT Thiess enterprise, located in East Kalimantan; (2) the suppression of demonstrations in 2013 held by workers at Pindo Deli Pulp and Paper by the police and the army; and (3) the imposition by police in 2014 of a ban on strikes at the enterprise PT Freeport in Papua. She urged the Government to stop permitting the use of violence by the armed forces, and to immediately revoke all decrees and regulations relating to “National Vital Objects” which gravely restricted the exercise of freedom of association.

The Worker member of the Republic of Korea welcomed the comments of the Committee of Experts regarding the violations of the Convention. The actions of the management of the Cakung EPZ to the strikes of 2012 and 2013 were of particular concern, as the EPZ was dominated by Korean companies represented by the Korean Garment Association (KOGA) in Indonesia, which accounted for over 80 per cent of the facilities in the zone. The employers there had reacted by retaliating against unions in almost every factory, except those with management-backed unions, as from the very first national strike of 2012, in which 90,000 workers had participated from 98 companies in the Cakung EPZ. Consequently, a strategy had been developed by the KOGA, and other associations, representing human resource managers in each factory and managers of the Cakung EPZ. The strategy was aimed at reducing the influence of trade unions and included the following measures: (a) confiscating the member cards of several factory-level labour union officials to prohibit them from entering workplaces; (b) non-recognition of trade unions established after the 2012 national strike; (c) forcing workers to sign a letter of resignation as union members; and (d) criminalizing and union-busting by circulating photos of union leaders or workers who took part in demonstrations. More seriously, the Memorandum of Understanding (MoU) of January 2014, signed by the management of the Cakung EPZ and the Indonesian National Armed Forces for cooperation in security management was justified on grounds of state security, although it breached Law No. 34 of 2004 of the Indonesian National Armed Forces. Apparently, the MoU had been announced on 21 August 2014 through the Decree of the Minister of Industry No. 466 of 2014 which itself contradicted the Decree of the Minister of Industry No. 620 of 2012 on National Vital Objects in the Industrial Sector. The strike of 24–27 November 2015 had involved 35,000 workers from Jakarta protesting against the Government regulation to exclude trade unions from participation in minimum wage setting. Sixty-two workers from a Korean electronics company, one of the major suppliers to a Korean conglomerate, located in Jakarta had joined the strike. The workers in the Korean company had gone on strike according to the instructions of the FSPMI there had been proxy (?) bilateral negotiations with the management regarding the manner of the strike. Nevertheless, these 62 workers had been terminated on 5 December 2015. The union regarded this as unfair dismissal and had sent a letter to the management which had remained unanswered, and the managers of the company had used the police and the army to drive away the workers. In conclusion, he expressed support for the comments of the

Committee of Experts and requests made by the Worker members.

An observer representing the Confederation of University Workers in the Americas (CONTUA), also speaking on behalf of Public Services International (PSI), referred to the comments made by the Committee of Experts concerning civil servants. For several years, the Committee of Experts had been asking the Government of Indonesia to adopt legislation guaranteeing the right to freedom of association for civil servants in compliance with the Convention. In 2003, Indonesia had stated that provisions on establishing a trade union for civil servants were included in section 30 of Act No. 43 of 1999 concerning basic staff provisions. In that regard, the Committee of Experts had taken the view that the Act did not govern the freedom of association of civil servants. In 2009, Indonesia had claimed that the right to freedom of association and of expression of civil servants was covered by the Civil Service Corps of Indonesia (KORPRI). On this point, the Committee of Experts had reminded the Government of the conclusion of the Committee on Freedom of Association in Case No. 1431 that “... KORPRI does not meet the requirements of the principle that all workers should have the right to form and join organisations of their own choosing to defend their occupational interests”. In 2011, the Government had reported that there had been no new developments with regard to the adoption of legislation and in 2012 it had stated that it was necessary for all parties to demonstrate political will. According to the latest observation made by the Committee of Experts, the Government had said that to date no proposal had been received from civil servants to establish a trade union. This showed that, over the years, the Government had tried to justify its failure to comply with the Convention in various ways: first, by trying to show that civil servants enjoyed the right to organize by virtue of current legislation; and later by attempting to transfer responsibility and plant the idea that the problem was the lack of initiative among the workers themselves. However, it was evident and obvious that the problem was the lack of political will to adopt legislation to guarantee that civil servants would benefit from the right to freedom of association and to create a favourable climate allowing that right to be exercised. Reference had been made to acts of violence, intimidation, arrests and repression against workers and union leaders, and the fact that the Act was used in a sectarian and abusive manner to persecute and silence workers. In that context, it was worrying that the Government had yet to act on the repeated requests of the Committee of Experts and failed to assume responsibility for addressing the systematic violation of trade union rights in Indonesia. The Government needed to take definite steps and stop simply making excuses to the Committee of Experts and the Conference Committee. On behalf of Indonesia’s civil service workers (affiliated to PSI), he called on the Government to avail itself of the technical assistance of the ILO to give effect to section 44 of the Trade Union Act, and in so doing, to adopt specific legislation granting freedom of association for public servants.

The Government representative thanked the members of the Committee for their comments. He affirmed that the Government would seriously address the realization of workers’ rights, and would do so while accommodating the

concerns of the social partners, in the spirit of social dialogue. At the same time, the Government was committed to reducing inequality by enacting measures to promote the realization of the United Nations' Sustainable Development Goals, particularly those relating to inequality. While appreciating the interventions calling for greater protection for protest action by workers, he stated that, even though freedom of association and assembly were upheld, it was important to conduct all protests in a peaceful and lawful manner. In this respect, the Government imposed reasonable restrictions on the holding of protest action, and when those restrictions were not respected, bold action was necessary to ensure the maintenance of public safety and security. When protesters damaged property, provoked violence and disrupted the flow of traffic, they would have to face the consequences of the law. He recalled that Case No. 3050 of the Committee on Freedom of Association, which had been referred to several times during the discussion, was now closed. The Government and the social partners had amicably resolved this matter. Moreover, the Government was committed to realizing all the issues raised concerning workers' rights, and decent work more generally, through social dialogue and the participation of the social partners. ILO assistance in supporting the constituents would also be crucial to ensuring the full application of the Convention.

The Employer members once again emphasized the need for the Government to provide full information to the Committee of Experts so as to allow the latter to fully assess the country's application of the Convention. With regard to the right to strike, they emphasized that the Government's obligations in this respect must be read in the light of the statement by Governments on the right to strike, issued in March 2015.

The Worker members emphasized that income inequality in Indonesia was among the highest in the world, and that the gap between the rich and the poor had increased dramatically in the last decade. Over 50 per cent of formal sector workers were not receiving the minimum wage, hence the consequent organization and mobilization by workers to assert their rights. The Government should be working with workers and unions to address these serious concerns, rather than resorting to the use of tear gas and the baton. They expressed the sincere hope that the Government would acknowledge the gaps in the application of fundamental rights and would change its course of action immediately. They urged the Government to give effect to the requests by the Committee of Experts to: (a) amend or repeal sections 160 and 335 of the Penal Code to prohibit the arbitrary arrest and detention of trade unionists; (b) amend the Trade Union Act to ensure that trade unions could not be suspended or dissolved by administrative authorities but only by an independent judicial body, and only after all appeals had been exhausted; (c) adopt implementing legislation to ensure the protection of civil servants under the Convention; and (d) ensure that imprisonment or fines were not imposed against a worker for having carried out a peaceful strike, including by the amendment of the Manpower Act; (e) ensure the immediate establishment of independent judicial inquiries to determine responsibilities and punish those responsible for violence against trade unionists, whether they were private actors or public officials; (f) investigate allegations of police inaction in the face of

violent acts and ensure that those who failed to carry out their official duty to protect workers from harm were penalized; (g) institute adequate measures to prevent the repetition of acts of violence, for example through *education and training for the police, as well as police accountability*; and (h) accept a direct contacts mission to develop a roadmap to implement these conclusions.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee expressed deep concern regarding numerous allegations of anti-union violence and limitations on the rights protected by the Convention by national legislation.

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

- ensure that workers are able to engage freely in peaceful actions in law and practice without sanctions;
- with regard to violence against trade unionists by private actors or public officials, ensure the immediate establishment of independent judicial inquiries to determine responsibility and to punish those responsible. The Government should also investigate allegations of police inaction in the face of these violent acts and ensure that those who failed to carry out their official duty to protect workers from harm are sanctioned. The Government should institute adequate measures to prevent the repetition of such acts by means of appropriate measures such as education and training of the police as well as police accountability;
- amend or repeal the relevant sections of the Penal Code to avoid the arbitrary arrest and detention of trade unionists;
- pass implementing legislation to extend the right to freedom of association to civil servants;
- ensure that if a trade union is suspended or dissolved this decision may be appealed to an independent judicial body, and the order suspended until appeals are exhausted; and
- accept a direct contacts mission to develop a roadmap to implement these conclusions.

The Government representative said that he had taken note of the discussions and, while he would be reverting to his capital, he emphasized that the future promised better implementation of the Convention. Indonesia stood ready to cooperate with the Committee of Experts.

At a later stage, **another Government representative** expressed reservations on the conclusions adopted in the case of Indonesia. She deeply regretted that the Committee's conclusions were based on one-sided allegations and had been drawn without taking into account the explanations of her Government and the actual discussion within the Committee. She called on the Committee to work in a more transparent and impartial manner.

KAZAKHSTAN (ratification: 2000)

A Government representative stated that tripartite commissions were functioning at the national, sectoral and regional levels. Parliament had adopted the Act on the National Chamber of Entrepreneurs and the Trade Union Act, which aimed at the further development of social partnership and took into consideration the comments of the Committee of Experts. Regarding the limitation on the right of judges to join or establish associations, he explained that judges, who were the bearers of judicial power and who

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

Kazakhstan (ratification: 2000)

exercised constitutional authority, should be independent and subject only to the Constitution. Any interference in their activities would be a violation of the law. Considering the special status of judges, the Constitution prohibited them from being members of political parties or trade unions, but did not restrict their right to be members of other associations. For example, the public association, the Union of Judges of Kazakhstan, which represented and protected the common interests of the judicial community, was operating successfully in the country. Law enforcement bodies, such as the police, fire brigade and other public order bodies, because of the specificity of their functions, were subject to certain restrictions. However, civilian personnel in such offices enjoyed the rights set forth in the Convention. For example, there were trade unions of soldiers, with 12,000 members, and of 4,000 employees of the Ministry of the Interior. He was of the opinion that the Convention permitted certain restriction in national legislation. Section 10 of the Act on Public Associations, which required a minimum of ten persons to establish a public association, was in the process of being reviewed in order to reduce the number of members that were required to establish an association. The Trade Union Act introduced a system of association of trade unions in order to develop an active trade union movement in the country. The main goal was to protect the rights of workers by providing them with access to discussion and the resolution of issues involving serious political matters through organizations considered to be at the right level. However, the trade unions were free to join trade union associations or to establish their own. The principle was based on plurality, either at the national or regional level, and there was no monopoly with regard to the trade unions concerned. Under the new law, three national associations of trade unions had been registered, including the Confederation of Free Trade Unions of Kazakhstan, which brought together 3 million workers. He requested the ILO to support the efforts of the Government to maintain an active trade union movement in the whole of the country. The Constitution prohibited external financial assistance for trade unions, and this prohibition protected the constitutional order, independence and territorial integrity. The right to join international organizations had resulted in the Federation of Trade Unions of Kazakhstan joining the International Trade Union Confederation (ITUC), which was a clear indication that the national legislation fully complied with the Convention.

The Act on the National Chamber of Entrepreneurs aimed to protect the interests and rights of businesses and ensure wide coverage and involvement of entrepreneurs in the formulation of legislative and other standards for the conduct of business. The consolidation of entrepreneurial activities led to strong businesses. Under section 32 of the Act, a five-year transitional period had been introduced for the participation of the State in the activities of the National Chamber of Entrepreneurs. At the end of the transitional period, the Government would no longer be a member of the National Chamber of Employers, and the rules providing for its participation in the Chamber would then fall into abeyance. According to section 176 of the new Labour Code concerning civil aviation, railways, health care and other essential services providing vital services to the population, strikes were allowed on condition that a minimum

level of service was provided for the population. Parliament had launched an independent report on the situation concerning strikes in essential services and had decided to further improve the sections of the Labour Code in this regard. He gave assurances that all the necessary measures would be taken to improve the legislation to meet the requirements of the Convention.

The Employer members recalled that Convention No. 87 was a fundamental Convention, which provided that “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation.” The Convention had been ratified by Kazakhstan in 2000 and the Committee of Experts had made observations on its application in 2006, 2007, 2008, 2010, 2011, 2014, 2015 and 2016. Moreover, the application of the Convention in Kazakhstan had been examined by the Conference Committee in 2015. This was therefore a long-standing case. In 2015, the Conference Committee had deplored the absence of a representative of the Government during the discussion, despite his accreditation to the Conference. They thanked the Government for its presence this year and for the information provided. The Employer members noted that the reference to the conclusions of the Conference Committee, made by the Committee of Experts in the introduction to its observation on this case showed the strong and positive relationship between the Conference Committee and the Committee of Experts. In 2015, the Conference Committee had observed the pending matters raised by the Committee of Experts with regard to restrictions on the freedom of association workers and interference with employers’ organizations. The conclusions of the case had been included in a special paragraph of the report of the Conference Committee, which constituted a serious measure. The Government had not provided a full report that was responsive to the requests of the Committee of Experts and the Conference Committee. This continuing failure was a matter of great concern.

In 2015, with regard to the restrictions on the freedom of association workers, the Conference Committee had requested the Government to amend the provisions of the Trade Union Act of 2014 consistent with the Convention. While noting the Government’s indication that work to address this issue was ongoing, the Employer members considered that more information was needed on this point. The Conference Committee had also requested the Government to amend the Constitution and the relevant legislation to permit judges, firefighters and prison staff to establish and join a trade union. While the Government had provided additional information on such exclusions and the impact of the Constitution, the Employer members considered that more information was required to fully assess this issue. Expressing concern at the significant barriers to freedom of association in law and practice, they once again urged the Government to take the necessary measures to amend its legislation to ensure that judges, firefighters and prison staff had the right to establish organizations, in compliance with the Convention. The Conference Committee had also requested the Government to amend the Constitution and the relevant legislation to lift the ban on financial assistance to national trade unions by an international organization. The Employer members observed that, although the

Government had indicated that it was possible to receive external financial assistance, this did not appear to be reflected in the legislation in force. With regard to issues related to interference with employers' organizations, the Conference Committee had requested the Government to amend the Act on the National Chamber of Entrepreneurs of 2013 to ensure the full autonomy and independence of employers' organizations. While noting the Government's information regarding the five-year transitional period during which the functions of the State would be transferred to the Chamber and the revision of section 176 of the Labour Code, the Employer members expressed concern that the Act resulted in interference in the freedom and independence of employers' organizations and noted with concern that the Government had not made any commitment to amend it. In light of the seriousness of the issues, they urged the Government to take measures without delay to amend the Act so as to eliminate all possible interference by the Government and to ensure the full autonomy and independence of employers' organizations in Kazakhstan. They encouraged the Government to avail itself of the technical assistance of the ILO in this respect. They also expressed concern that the Government had not implemented, to their knowledge, any measures to address barriers to the establishment of employers' organizations and urged it to take such measures without further delay.

The Worker members expressed their deep concern at the repeated neglect by the Government of Kazakhstan of its international obligations towards the Committee. This attitude should be firmly condemned. The amendments made in 2014 and 2015 to the Trade Union Act and to the Labour Code had done nothing to improve the exercise of freedom of association. The Kazakh legislation remained contrary to the Convention in various aspects. Firstly, Article 2 of the Convention established the right of workers and employers, without any distinction whatsoever, to establish and join trade unions. However, it appeared that the Kazakh legislation obstructed the free establishment of trade unions for judges, firefighters and prison staff. The only exceptions to freedom of association provided for by the Convention concerned members of the police and armed forces. Secondly, the Trade Union Act obliged unions to be affiliated to a national trade union association. This prevented the establishment of trade unions that were structured freely and in full autonomy, which was contrary to Article 2 of the Convention. Moreover, sectoral trade unions had to represent at least half of the total workers in the sector, half the trade unions in the sector or had to be present in over half the regions to be validly constituted. However, it was recalled in the General Survey published by the Committee of Experts in 2012 that, to be in conformity with the Convention, the threshold should be fixed at a reasonable level so that the establishment of organizations was not hindered. Thirdly, under the Trade Union Act, a two-step procedure had to be followed for the establishment of a trade union: it was necessary to register it with the Ministry of Justice and then to become affiliated to a national trade union association in the six months following registration, or registration was cancelled. This was in violation of the free exercise of the right to establish organizations without prior authorization and to decide in full freedom whether or not to establish or join a higher-level structure.

These various violations to the right to freedom of association, affecting both workers' and employers' organizations, were a threat to one of the fundamental values of the ILO, namely social dialogue. The full and complete independence of the social partners was necessary for the latter to be able to represent their members' interests freely and effectively.

Article 3 of the Convention guaranteed the right of organizations to organize their activities and to formulate their programmes. There was no escaping the fact that the legislation restricted such freedom of action for a number of organizations carrying out "hazardous industrial activities". The Committee had already highlighted the problem posed by the vagueness of this term and the uncertainty that prevailed regarding which organizations were specifically concerned by that provision. The Committee of Experts recalled that a minimum service should not form an obstacle to freedom of action. It was also essential for the social partners to be able to participate in its definition. Section 303 of the Labour Code appeared to conflict with these principles. The Kazakh legislation still banned trade union organizations from accepting financial assistance from international organizations and this, as recalled by the Committee of Experts, violated the principles relating to the right of affiliation to international workers' organizations. That assistance was often essential for trade union organizations whose freedom was obstructed by both legal and practical obstacles imposed by the Government. The latter must stop all interference in the affairs of representative workers' organizations and, to that end, amend its legislation without further delay in line with the recommendations made by the Committee. Information provided by Human Rights Watch, published in May 2016, also referred to the introduction in 2014 of new provisions relating to administrative violations and criminal offences. New administrative penalties were imposed on the leaders and members of public associations, who could more easily be held liable for any act that was not defined by their union rules. That had the effect of unduly increasing their liability. Participation in actions that had been declared illegal and acceptance of funding from international organizations were also considered to be criminal acts which could incur penalties of up to three years' imprisonment. The notion of leader of a public association was extremely vague, but such leaders could be held liable for a whole range of specific criminal offences, in particular breaches of the Act on Incitement to Social Discord, which in itself was a particularly vague concept. All of the above showed that the situation remained a source of concern with regard to trade union freedoms. The tragic events that occurred in Zanaozen in 2011 had not been forgotten. The recommendations made in the past to the Government should therefore be reiterated and strengthened so that it could formally give them effect in practice.

The Worker member of Kazakhstan said that much work had been done in the country over the last four years to strengthen the protective function and responsibility of trade unions, including the adoption in June 2014 of the new Trade Union Act, under which the antagonism between and within trade unions was ended. A multi-level system of social partnership existed in Kazakhstan, with the labour unit, primary trade union and an employer as the primary level. The second level was the territorial level. At

every level, there was a tripartite body which dealt with labour disputes. These bodies held monthly meetings, attended by trade unions, employers and the territorial authorities, to resolve labour disputes. For example, in 2015, with the participation of the Office of the Public Prosecutor, wage arrears of 4.1 billion tenge had been paid to 83,000 employees. In addressing this issue, fines had been imposed on employers in violation of labour laws in 1,075 cases, and 178 cases had been referred to the courts and five criminal prosecutions indicted. In the territorial bodies of the trade unions, during the first quarter of 2016, a total of 1,200 applications and queries had been received regarding labour law, which demonstrated the trust that existed in trade unions. The new law concerning public councils had been adopted. All of these initiatives helped workers. Taking into account the global crisis, the territorial bodies were able to conclude memorandums with employers and local authorities which helped to protect the jobs of over 2.5 million workers. The ministerial level, together with branch trade unions and employers' associations, was the important third level where a great deal of work was being done to address social questions in a particular sector or branch. The fourth level, consisting of the Government, workers and employers, met every quarter to examine the most topical issues of social partnership. A tripartite agreement was signed every three years. The signatories were all three national trade union associations, which had not previously been the case. He noted that, in a country with 2.5 million trade union members, there were 836 independent trade unions listed, some of which were only present in enterprises for limited activities, collecting trade union dues and conducting simple activities. Therefore, for a transitional period, the Act provided for measures to consolidate and strengthen trade unions, which was not contrary to the Convention in principle. He indicated that the Trade Union Act did not infringe the right of workers to establish a trade union and that several trade union organizations could work together within the same enterprise. Under section 13 of the Trade Union Act, branch or sectoral trade unions were fully authoritative and representative of the workers in social partnerships at the branch level. From the moment a branch trade union was founded, there was a six-month period to confirm its status and it had to cover over half of the districts of the concerned region. The Act was not contrary to democratic principles and was necessary during the transitional period. Under the new legislation, trade unions retained the right to determine their organizational structures, elect their representatives and establish branch and territorial unions and associations. The Act also provided for protection of trade union leaders against acts of interference. He was of the view that this approach was in accordance with the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). Trade union membership should not lead to any discrimination or restrictions on the right of citizens with regard to employment and to career progression. The right of workers to leave, join or establish a trade union should not be restricted and there were criminal sanctions for infringements of workers' rights in this regard. Section 16 of the new law concerned the social and labour interests of workers and provided details which had not been present in the previous law. The new Labour Code, which had come into effect on 1 January 2016, had been reviewed and

redrafted following the comments of the trade unions and gave new powers to trade unions and inspectors. The Federation of Trade Unions had made 219 amendments to various articles, with 117 of the proposed amendments being adopted during the examination of the different versions of the Labour Code.

The Government member of Turkmenistan supported the comprehensive measures adopted to apply the Convention and noted the efforts made to improve the legislation and introduce new provisions on active social partnership. He welcomed the constructive cooperation with the ILO and the Committee of Experts in this regard.

The Worker member of the United States referred to the tragic events of December 2011, during which the police had violently ended a seven-month strike by oil workers, killing at least 17 trade unionists and injuring dozens more. To date, nothing had been done by the competent authorities to carry out investigations and prosecute the perpetrators. The Government had given no indication that it was taking the tragedy seriously and, inexplicably, charges against oil workers were still pending. The new laws adopted in 2014 and 2015 did not provide appropriate solutions and workers' rights continued to be undermined and restricted. Kazakhstan's trade union legislation imposed serious restrictions on workers' right to freedom of association and their right to organize. Trade unions were required to fulfil a burdensome multi-step registration process: they needed to successfully register with the Ministry of Justice and then confirm their status by demonstrating, within six months, that they were affiliated to a higher-tier union. Trade unions at all levels had faced difficulties and delays trying to reregister in accordance with this law. Even if a union managed to prove its affiliation, there was still the possibility for the Government to deny registration on alleged technical grounds. As a result, all independent unions were only registered on a temporary six-month basis and risked dissolution if they did not pass the second step imposed by the Government. By requiring trade unions to confirm their membership of higher-level unions, the law mandated trade union affiliation and limited freedom of choice with regard to trade union membership, in violation of the Convention. Although the Conference Committee had called on the Government to amend the provisions of the Trade Union Act of 2014 consistent with the Convention, the Government had failed to take any steps in this regard. The existing trade union laws might be less restrictive, but their effect was the same and the situation was still critical as of 2015. Workers in a range of industries regularly faced interference in organizing, were intimidated for joining independent trade unions, sometimes under threat of dismissal, or were subject to surveillance by the authorities. Some workers were threatened with criminal sanctions in response to their labour activism and union activities. In light of the continued restrictions on freedom of association, the Government should make meaningful changes to its law and practice in order to ensure freedom of association for independent trade union activists, as required by the Convention.

An observer representing the International Union of Food, Agriculture, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF) said that the situation concerning the right of workers to freedom of association needed

to be examined not only from the point of view of the manner in which legislative standards changed but, above all, from the point of view of the events of 16 December 2011, when a seven-month strike by oil workers had been brought to an end. If the country had given effect to its obligations under the Convention, the strike would have ended peacefully through the negotiation of an agreement or protocol, instead of being ended by the use of armed force resulting in the death, wounding or arrest of numerous workers. Workers' leaders had been accused of inflaming social division and organizing disorder. This had sent a clear message to all workers that they should not stand up for their rights or the right to collective bargaining and association, and these events had become a turning point in the development of industrial relations systems in Eastern Europe and Central Asia. Most importantly, until the Government had carried out a full evaluation of these events, the future of freedom of association in the country would be uncertain. The Government should take into account the comments of the Committee of Experts and the results of the discussion of the Conference Committee. Freedom of association was one of the principal ways in which working conditions were guaranteed and peace was secured, and was therefore a necessary prerequisite for continued social progress. He recalled that people had attempted to protect and defend their rights in 2011 and he called for their sentences to be repealed and justice to be reinstated for those workers.

The Government member of Belarus welcomed the comprehensive measures taken to implement the Convention, such as the adoption of the Trade Union Act and the extension of the rights of workers and their participation at all levels of dialogue. With the creation of the National Chamber of Entrepreneurs and the strengthening of the legislation the rights of employers had also been reinforced. The National Chamber of Entrepreneurs, which would lead to an effective economy and create strong business, would serve as an example for other countries in Europe. He welcomed the Government's readiness to cooperate at all tripartite levels to comply with the Convention and considered it useful for the ILO to help the country implement its obligations in accordance with international standards.

The Worker member of the Russian Federation referred to the developments in Kazakhstan with regard to the issues under examination and the manner in which the new Trade Union Act was applied. The Act provided for a two-step procedure for the registration of trade unions, which was complicated, not transparent and made compliance difficult. In this regard, he referred to some of the problems that Kazakh trade unions had experienced with regard to registration, such as cases of refusal. There were also issues of discrimination between trade unions. He expressed concern with regard to a section in the Criminal Code on "sowing of social discord", which had been quoted in connection with the 2011 tragedy of the oil workers. He hoped that both criminal and labour legislation would be brought into line with the Convention.

An observer representing the World Federation of Trade Unions (WFTU) expressed concern at the number of cases pertaining to Convention No. 87 that were being examined by the Committee. He emphasized that the present case involved murders, acts of intimidation, imprisonment and the arbitrary transfer of trade unionists. The Government

needed to adopt legislation to bring an end to violations of fundamental rights. He hoped that the right of workers to freely choose their trade union would be respected. Trade unions must be independent of the Government and of employers, and must be established and chosen freely. Expressing solidarity with Kazakh workers and their right to freely choose their trade unions, he called on the Government to respect the rights of workers and international labour Conventions and requested the Committee to give the Government the opportunity to improve the situation.

The Government member of the Russian Federation appreciated the detailed information provided by the Government and noted its readiness to engage in practical and constructive cooperation with the ILO in order to, in association with its social partners, ensure the right to freedom of association and the other rights laid down in the Convention. He believed that the delay in providing information was due to organizational problems and that the misunderstanding which had arisen with the Committee of Experts would be quickly resolved. He called on the ILO to continue providing expert and technical assistance to the Government for the implementation of the Convention, taking into account its willingness to cooperate.

The Worker member of Turkmenistan noted that the Government had taken measures to improve the legislation and the working methods of trade unions. The new Trade Union Act had been adopted with the aim of protecting workers' interests and to create, develop and protect an effective and well-functioning trade union system in the country, at the sectoral and government levels. Trade unions were not obliged to be members of higher organizations. The Act did not interfere with the rights of the trade unions and there was no monopoly in the trade union system. The Trade Union Act provided for a flexible environment for the establishment of trade unions. The new Labour Code expanded the role of trade unions and the right to strike. These legislative reforms would have a considerable impact on the functioning of trade unions and it was important to support the Government in this regard.

The Government member of Uzbekistan appreciated the information provided by the Government on the implementation of the Convention and the manner in which it was developing constructive cooperation with the ILO in this regard. Measures were being taken in the country in order to provide freedom of association, protect workers' rights to join and establish trade unions and improve the national legislation. As a result of the improvement of the legislation, including the new Trade Union Act, more than three trade union confederations were registered covering a significant number of workers. Over 3.6 million workers were therefore covered by trade unions, which represented 58 per cent of wage earners in the country. He welcomed the efforts made by the Government to provide for strong social partnerships and to give effect to the Convention.

The Government member of China noted the improvements made by Kazakhstan, its political will to cooperate with the ILO to actively address the relevant issues and to formulate laws that were in line with international labour standards. It was the obligation of ratifying countries to implement international labour Conventions. In the meantime, the ILO needed to provide the necessary technical support to its member States for the application of standards. He concluded by supporting the Government's efforts

and hoped that the ILO would be able to provide technical assistance.

The Government representative assured the Committee that all the comments made would be taken into account. With reference to the registration of trade unions, he indicated that the new Trade Unions Act established a new procedure. Given that a branch trade union defended the interests of the workers in the relevant branch, the branch union needed to be sufficiently representative. The legislation set out three equally important membership requirements that the branch union had to meet for registration: (i) no fewer than half of the persons working in a branch; (ii) no fewer than half of the enterprises in a branch; and (iii) member organizations in no fewer than half of the territory covered by the sector. He believed that the law was reasonable, notably as trade unions could join any upper level organization of their choosing and the law did not limit the number of trade unions at the branch or company levels. Branch unions first registered with the authorized state body without providing supporting documents. Following registration, they had six months to provide copies of the documents confirming compliance with the conditions for the establishment of branch unions. The Government was prepared to improve the law with regard to the registration procedure. He also referred to the questions raised relating to the interference by the Government in the National Chamber of Entrepreneurs. In accordance with section 32(11) of the Act, at the end of the transitional period, the Government would cease participation in the activities of the National Chamber of Entrepreneurs. That would occur in July 2018. He concluded by indicating that in December 2015 Kazakhstan had become a member of the World Trade Organization (WTO) and that the next step would be to become a member of the Organisation for Economic Co-operation and Development (OECD). Institutional reforms in Kazakhstan, as announced by the President in 2015, were focused primarily on improving laws and practices and their harmonization with international social and labour standards. He reaffirmed the commitment of Kazakhstan to ILO principles and to cooperation with the Organization.

The Worker members emphasized that no significant progress had been made by Kazakhstan on the shortcomings that had been pointed out the previous year. Certain occupations, other than the police or the armed forces, were still deprived of the right to establish or join a trade union, which was contrary to the Convention. Trade unions were still denied the choice of the structure they could adopt. This structure was imposed by law and was a hindrance to freedom of association enshrined in Article 2 of the Convention. This freedom was further curbed by extremely restrictive registration procedures and by the fact that receiving financial assistance from international organizations was banned by law and subject to criminal sanctions. Interference had also been noted in the affairs of the social partners, which was in violation of Article 3 of the Convention. The legislation should therefore be amended to: (i) allow judges, firefighters and prison staff to establish and join a trade union; (ii) remove restrictive criteria and registration procedures which limited freedom of association; (iii) end the mandatory affiliation of sectorial, territorial and local trade unions to a national trade union association within six

months following their registration; (iv) reduce the membership threshold for the establishment of a trade union; (v) lift the prohibition on financial assistance from international workers' or employers' organizations; (vi) amend the administrative and criminal Codes to clarify vague notions such as "public association leader" and "social discord"; (vii) ensure that a minimum service was genuinely and exclusively a minimum service and that the workers' organizations could participate in the definition of that service; and (viii) specify the organizations that carried out "hazardous industrial activities", for which actions were illegal. The Worker members urged the Government to avail itself of ILO technical assistance to implement these recommendations.

The Employer members agreed with the Worker members that no concrete steps nor significant progress had been made in Kazakhstan in relation to the issues raised repeatedly by the Committee of Experts and the Conference Committee. They joined in the call for the Government to cease its interference with freedom of association in respect of both employers' and workers' organizations. They were surprised by the Government's reference to the Act on the National Chamber of Entrepreneurs, and particularly section 23(2) as an indication that there was no government interference with the Chamber. The law contained serious infringements of freedom of association, and particularly interference with employers' organizations, such as rules regarding: (i) compulsory membership in the National Chamber of Entrepreneurs; (ii) the maximum membership fee to be approved by the Government and the payment procedure to be established by the Government; (iii) exclusive competence of the Chamber to represent Kazakh employers and to further and defend their interests in the various state bodies; (iv) government participation in the work of the congress of the Chamber and the right to veto decisions; and (v) the inclusion in the presidium of the Chamber of, among others, government representatives and parliamentarians, and only a small number of representatives of employers at the sectoral and regional levels. They concluded that the Act institutionalized government influence on the decisions and activities of the National Chamber of Entrepreneurs. The Chamber could not be considered an independent employers' organization, as required by the Convention, but was rather an institution close to the public authorities. They urged the Government to amend the Act on the National Chamber of Entrepreneurs without delay so as to ensure that employers' organizations in Kazakhstan could operate with full autonomy and independence.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee expressed serious concern regarding the Government's lack of progress in relation to the implementation of the conclusions of the Committee in 2015.

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

- **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, without any further delay.**
- **Amend the provisions of the Trade Union Law of 2014 in line with the Convention, including issues concerning**

excessive limitations on the structure of trade unions found in Articles 10–15 which limit the right of workers to form and join trade unions of their own choosing; and Amend section 303(2) of the Labour Code so as to ensure that any minimum service is a genuinely and exclusively minimum one.

- Indicate which organizations fall into the category of organizations carrying out “dangerous industrial activities” and indicate all other categories of workers whose rights may be restricted, as stipulated in section 303(5) of the Labour Code.
- Amend the Constitution and appropriate legislation to permit judges, firefighters and prison staff to form and join a trade union.
- Amend the Constitution and appropriate legislation to lift the ban on financial assistance to national trade unions by an international organization.
- Accept ILO technical assistance to implement the above noted conclusions.

The Government should accept a direct contacts mission this year in order to follow up on these conclusions.

The Government representative thanked the Committee for its consideration of the measures taken by his Government to fully apply the Convention, and assured them that further measures would be taken in the near future and be reported to the ILO supervisory bodies.

MEXICO (ratification: 1950)

A Government representative, citing the progress that his country had made, emphasized the commitment of the Government to freedom of association. Regarding the question of transparency in the registration of trade unions, he said that the number of local boards of federal bodies that had published lists of the registration of trade unions on their website, as required by law, had increased from two last year to 20 in 2016, and eight others were well on the way to doing so. With regard to the legislative and practical measures that had been taken for free collective bargaining and to guarantee the representativity of trade unions, the President of the Republic had, on 28 April 2016, submitted a major proposed reform of important aspects of the Federal Labour Act. In relation to the registration of collective labour agreements, the proposed reform provided that, before they could be registered, the authorities must confirm that a labour centre genuinely existed, that the workers were protected under the agreement, that they had received copies of the agreement and been fully informed of its content, and the status of the trade union that had promoted it. On the subject of the legal status of labour agreements, the proposal set out clear rules for conducting a recount election so as to ensure that the votes regarding the status of labour agreements were free and democratic. From the practical standpoint, the National Conference of Secretaries of Labour had issued a joint statement in June 2015 on two important aspects: (i) a categorical rejection of protection contracts; and (ii) a commitment to take firmer action against acts of simulation, which constituted a violation of freedom of association. In September 2015, the Federal Conciliation and Arbitration Board had adopted a set of good practice criteria for the conduct of recount elections, in order to ensure that each worker’s ballot was personal, free, secret and direct. In February 2016, a new labour inspection protocol had been prepared on free collective bargaining, under which labour inspectors were

empowered to enter workplaces and interview workers directly, so as to ascertain that they knew which their trade unions were and which collective agreements applied to them. With regard to trade union pluralism in state departments, he welcomed the conclusions of the Conference Committee that legal restrictions did not apply, and that this did not pose a problem in practice. The Conference Committee had also recognized that the prohibition on foreign workers being on trade union executive boards did not apply either. Moreover, no specific case had come to light and no complaint on the subject had been lodged. On the contrary, some union by-laws expressly recognized the possibility of foreign workers to hold union office. With regard to the Committee’s concern relating to conciliation and arbitration boards and the need for them to be independent, autonomous and devoid of any conflicts of interest, the President of the Republic had submitted a constitutional amendment to the Constituent Assembly on 26 April 2016 which marked an important precedent and a turning point for the country. The proposed amendment provided that labour justice would in future be the responsibility of the judiciary, and would no longer be dependent on the executive and would not be of a tripartite structure. At the same time, conciliation machinery was to be strengthened. The proposed amendment would also provide for the establishment of an autonomous body responsible at the national level for the registration of collective labour agreements and trade unions. The head of that body would be proposed by the President and approved by the Senate to ensure transparency and autonomy. These reforms were the outcome of an extensive participation process at several levels and of broad social dialogue. The Government was therefore showing its determination to make the necessary changes to guarantee freedom of association and trade union autonomy, and it thanked the ILO for its collaboration in bringing about those changes.

The Employer members recalled that this subject was being discussed by the Conference Committee for the second year and that there were similarities with the previous year. Mexico had not ratified the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). However, there were elements in the observation and direct request of the Committee of Experts on this case that created confusion between these Conventions. The observation referred to various matters: the murder of rural workers’ leaders; protests by workers from various sectors; the registration of trade unions; the representativity of trade unions and protection contracts; trade union pluralism in state bodies and the possibility to re-elect trade union leaders; elections of foreign nationals as trade union leaders; and conciliation and arbitration boards (which was also examined in Case No. 2694 of the Committee on Freedom of Association). The direct request, which was not included in the report of the Committee of Experts, addressed the issues of trade union registration, accreditation of trade union representatives, the right of workers’ organizations to organize their activities and formulate their programmes, and the proposal to amend the legislation concerning strikes. With regard to the right to strike, the Employer members recalled their reservations concerning the content of this right in Convention No. 87. They indicated that 40 of the 50 observations relating to the Convention in the 2016 report of the Committee of Experts referred to the

right to strike. In 12 of the 16 cases in which the Committee of Experts made no reference to the right to strike in an observation, it did so in a direct request. In addition, of the 50 total direct requests relating to the Convention, 41 referred to the right to strike. The Employer members emphasized that the direct requests were not subject to tripartite oversight. Despite the fact that paragraph 36 of the report of the Committee of Experts explained the difference between observations and direct requests, and that the Chairperson of the Committee of Experts had stated that it followed these criteria carefully, it was necessary to clarify this difference and to review, with the support of the Office, the functions of the Committee of Experts in its various types of comments.

With respect to the progress made by the Government, the Employer members noted positively that the local boards of the 20 federal entities had published the trade union registers online, and a further eight were following suit. They also noted the various laws that had been adopted recently and requested the Government to clarify the scope of the General Act on transparency and access to public information of 4 May 2015. They warmly welcomed the rejection of protection contracts, according to a statement of the National Conference of Labour Ministers, as well as the reform of labour inspection which would help to combat practices such as the “note-taking” procedure mentioned in the direct request and to make progress in practice. With respect to trade union pluralism in state bodies and the election of foreign nationals to trade union executive bodies, despite the fact that the respective legislative restrictions had no effect, social dialogue should be stepped up. They also welcomed the draft constitutional reform, particularly because it clearly determined the competence of the judicial authorities to settle disputes in relation to collective bargaining between employers and workers. However, it was unclear, and the Government had not referred to the issue, whether and in what manner the employers were invited to participate in discussions on this reform process, and how they would be involved and consulted on this matter in the future. The Employer members urged the Government to intensify social dialogue over the coming months. With regard to the murder of rural workers’ leaders, an issue noted once again in the observation of the Committee of Experts, it was now clear that this question was not related to freedom of association, and therefore this point should not be dealt with subsequently. Turning to the protests by workers, further information was needed on the matter. Significant progress had been made in this case, and they therefore suggested that the conclusions should only include an invitation for more in-depth social dialogue.

The Worker members said that in 2015 the Conference Committee had reviewed the Government’s failure to comply with the Convention and concluded that it should, among other action, identify in consultation with the social partners additional legislative amendments to the 2012 reform of the Labour Act necessary to comply with the Convention, including the reforms needed to prevent the registration of protection unions. A protection contract was a collective agreement, signed between an employer and an undemocratic union, and which was only recognized by the employer. In most cases, workers had no knowledge of the existence of such an agreement until they tried to establish

a union of their own. Management would then inform the workers that they were already members of a union and were covered by an agreement they had never seen or ratified. The main purpose of the protection contract system was to reduce wages and to prevent workers from enjoying democratic union representation. This system, which gave employers broad discretion to fix wages, working hours and conditions of work, had been maintained by State Conciliation and Arbitration Boards. The conciliation and arbitration boards were widely known to be biased against the legal rights and interests of democratic unions, and their decisions were influenced by the representatives of employer-dominated unions. Realizing that the protection contract system led to greater industrial strife and refusing to be associated with such a system which violated the right to freedom of association in supply chains, eight international garment brands had sent a joint letter to the Government in 2015 urging it to do away with the system. In April 2016, the President of the Republic had sent the proposed reforms to the Constitution and the Federal Labour Act to the Senate, which would in effect: (i) eliminate the conciliation and arbitration boards and transfer their legal functions to the judicial branch, thereby bringing all labour disputes to one mandatory conciliation hearing; (ii) bring the administrative functions of the conciliation and arbitration boards under a new decentralized federal entity; (iii) require that, before a collective bargaining agreement could go into effect, the labour authorities would verify that the company was operational, that it had workers and that these workers had received copies of the agreement and supported it; and (iv) establish tight time frames for each step in the election process to determine which union controlled the collective bargaining agreement. These reforms were also supported by some employers’ organizations. Referring to the long procedure and considerable time that would be taken by the Senate to approve and adopt legislative and constitutional reforms, the Worker members urged the Government to take all the necessary measures to ensure that these reforms were approved at the earliest possible time.

Protection contracts continued to dominate the industrial relations system and recent efforts by democratic unions to hold *recount* elections to remove protection contract unions had faced opposition and procedural irregularities. They referred to the example of an independent organization which had faced down a major automobile manufacturer and the protection contract union and had lost the election for union representation during the *recount* election in 2015, following a series of procedural irregularities. Moreover, aggressive anti-union campaigns by employers remained common in the country. In late 2015, 120 workers who had sought to establish a union at a factory in Ciudad Juarez which produced laser printer cartridges for a United States based company, had been dismissed following a strike for an increase in wages. The 2012 amendment to the Federal Labour Act, although aimed at providing greater flexibility in employment by replacing pay per day by pay per hour, had led to reduced job creation and an increase in temporary jobs, while wages and working conditions had deteriorated. Although the law prohibited companies from outsourcing a worker who had been assigned to perform a core function in the company, a 2015 report on the electronics sector had found that approximately half

of the workers who performed core functions were outsourced and hired through temporary agreements. The use of outsourcing was a common tactic to avoid unions or to replace unionized workforces with contract workers. The courts had significantly narrowed the right to strike by allowing employers to nullify collective bargaining agreements under the theory of force majeure. The courts had challenged the constitutionality of sections 465 and 937 of the Federal Labour Act, which allowed workers to submit a request to strike to the Federal Labour Board for binding arbitration. This must be addressed through appropriate legislation. The Worker members recalled that the issues raised had been before the ILO supervisory system for many years and they hoped that the Government would take proactive steps: (i) to resolve issues related to protection contracts; (ii) to ensure that conciliation and arbitration boards did not collude with employers or protection contract unions to frustrate the ambitions of democratic unions to represent workers; (iii) to sanction those employers engaged in anti-union discrimination; and (iv) to amend other aspects of the law which the Committee of Experts had been commenting on for several years.

A **Worker member of Mexico** considered that the Government was engaged in a reform process with the aim of gradually being in compliance with the Convention and had provided the information requested of it, which was updated on the Internet. The Government had been making this change despite financial limitations, as the budget for state departments, including the Department of Labour, had been cut. In Mexico, exercising freedom of association was the prerogative of every worker and consequently every worker could choose which trade union organization to join. The fact that a collective labour agreement was limited to including what was established by law did not make it a protection contract. Of course, it was necessary to identify those who made undue use of protection contracts to avoid workers' rights. The Federal Labour Act established the procedure for the acceptance, registration and cancellation of collective labour agreements, as well as applications for recognition as a bargaining agent, and for workers to choose the union that they wished to join. It was wrong to claim that protection contracts enjoyed the support of workers' organizations, as it was the boards which accepted or rejected a collective agreement, observing whether or not it was in line with legal provisions. In conclusion, he referred to the legislative initiative introduced in the Senate. He observed that the opinions of workers and employers had not been taken into account. The conciliation and arbitration boards were tripartite in nature. The initiative attempted to judicialize these boards, with the courts becoming responsible for dispensing justice, thereby entirely removing the participation of worker and employer representatives and tripartism from the process.

The **Employer member of Mexico** began by referring to the working methods of the Conference Committee. He considered that, while there had been some positive changes, there remained areas in which more progress was needed to improve effectiveness. From a reading of the report of the Committee of Experts, it appeared that there were many issues that required prompt intervention by the Committee but, despite that, priority was given to cases where this was not so, or which had already been examined

at previous sessions, with replies, explanations and commitments that were followed up in reports. This carried the risk of the repetition of observations and arguments, rather than constructive dialogue. It would be preferable to follow-up on the commitments made through the provision of reports and to give the States a reasonable time to comply with their commitments, after which compliance could indeed be required where adequate measures had not been taken and the progress achieved could be recognized. He observed that Mexico had not ratified Convention No. 98 and that the Committee should therefore not refer to matters related to collective bargaining in its conclusions. Similarly, it should refrain from dealing with issues relating to strikes which, despite the insistence of the Committee of Experts, were not endorsed by the Conference Committee. He considered that there were few new elements requiring immediate analysis. With regard to the murders of rural leaders, while they were regrettable, it had already been established that they were not workers, as had been recognized by the Committee. He said that, as the alleged acts of violence against trade unionists had only been reported recently, although not yet proven, a report had just been requested from the Government. On the issue of trade union pluralism in state departments, the explanation had been provided that this had been dealt with by case law, and that various trade unions and collective contracts existed. In relation to the functioning of the conciliation boards, he recalled that this topic that had been under consideration in Mexico for a long time, and tripartite consultation forums had even been set up. However, the issue was new for the Conference Committee, and therefore a report had recently been requested from the Government, which had explained that a legal and constitutional initiative had been introduced that would allow the problems to be addressed which had been identified in an April 2015 study. Unfortunately, employers had not been invited to take part in this study, nor in the work carried out prior to the initiative being introduced. He trusted that the legislative process would include the participation of workers' and employers' organizations for the purpose of effective social dialogue and discuss new provisions required to regulate procedural aspects and issues resulting from the constitutional reform. It was important to have sufficient time for the content of the legislative reform initiative to be examined through tripartite dialogue. With regard to transparent trade union registration, as it had been informed, the draft reform contained provisions that would guarantee that this objective would be achieved, for which purpose new institutions would be required, which would require constructive and participatory social dialogue. He trusted that the Conference Committee would understand the implications of tackling a challenge of such magnitude and would allow sufficient time. In conclusion, he said that, in the report of the Committee of Experts, issues were raised which simply did not exist, which merely reflected the statements made by certain organizations with the sole purpose of creating trouble. The real problems raised were being addressed and progress had been made. The legislative reform initiative recently introduced by the Government presented great opportunities and challenges and would require study, planning and action within a framework that guaranteed social dialogue.

The Government member of Panama, speaking on behalf of the group of Latin American and Caribbean (GRULAC) countries, expressed appreciation for the information supplied by the Government concerning the follow-up given to the observations of the Committee of Experts and took note of the progress made with regard to the application of the Federal Labour Act in relation to the publication of registrations, trade union statutes and collective agreements with a view to strengthening the transparent and democratic functioning of the industrial relations system. She also expressed interest in the initiatives to reform the Constitution and the Act, which involved a fundamental change in the labour justice system, particularly the transfer of the administration of labour justice to the judiciary, the creation of local conciliation centres and the creation of a specialized body for the registration of collective labour agreements and trade unions and for conciliation at federal level. Wishing the Government success in those reforms, she welcomed its openness and willingness to continue promoting frank and open social dialogue. Reiterating GRULAC's commitment to respect for freedom of association, she trusted that the Government would continue taking steps to comply with the Convention.

The Government member of Spain, endorsing the statement made by GRULAC, acknowledged with interest the progress and efforts made in relation to the publication by Mexican state departments of the registration and by-laws of trade unions and collective agreements so as to comply with the goals set out in the Federal Labour Act, in the interests of strengthening governance and respect for trade union autonomy. He emphasized the historical significance of recent initiatives to amend the Constitution and the Federal Labour Act so as to transform the administration of labour justice with a view to strengthening the free exercise of individual labour rights. A paradigm shift was occurring, in which labour justice would be administered by federal or local judicial authorities, with conciliation procedures would become more flexible and effective through the creation of specialized and independent local conciliation centres and a decentralized body would register all trade unions and collective agreements, in addition to having conciliation at the federal level. He trusted that the effective implementation of this paradigm shift, in consultation with the social partners, would contribute to a significant change in the protection of labour rights and the goal of decent work.

The Worker member of Germany expressed great concern at the violations of the Convention in Mexico and particularly at the practice of protection contracts, which unfortunately also involved German employers. Protection contracts were contracts through which pseudo-unions torpedoed any action to achieve better wages and working conditions. These so-called protection unions were instructed by management to conclude agreements with the company. On paper, all employees were members of the protection union, without knowing it. Protection contracts agreed to without the participation of the workers, pressed wages to the lowest level, and unscrupulous individuals were paid by companies to keep away militant unions. Unfortunately, several German enterprises were among these companies. By binding workers to the protection union, they could not establish other independent unions and had to give up any hope of the negotiation of improved collective agreements.

Workers who organized themselves in order to achieve better pay and working conditions faced intimidation and repression. Once the protection contract entered into force on paper, the labour courts, employers and local governments regulated everything else to prevent an independent union being able to push through a genuine collective agreement. Workers trying to defend their rights were portrayed as troublemakers and ran the risk of being placed on a blacklist by the company. Those who tried to leave the protection union lost their jobs. Protection contracts granted huge freedoms to the company in terms of hiring and firing, outsourcing and temporary employment, and were sometimes concluded before the plant even commenced operation. The number of protection contracts was on the rise, with about 80 per cent of collective agreements in Mexico being concluded as protection contracts. International companies from Europe should lead by example rather than concluding contracts that undermined workers' rights, including the right to strike enshrined in the Convention. He called for the abolition of protection contracts in Mexico and regretted the absence of investigation of the death of the 43 students in 2015.

The Government member of the United States recalled that the case had been discussed in 2015 by the Committee, which had requested the Government to take specific steps to address persistent challenges related to, among other issues, the administration of labour justice and protection unions, including through legal reforms and in consultation with Mexico's social partners. Later that year, the Government had launched a consultative process to develop proposals that would improve the country's everyday justice system, including labour justice. On 28 April 2016, the President of Mexico had introduced to Congress a justice reform package that represented the culmination of that process, encompassing labour reforms through which the Government was affirmatively seeking to address concerns about freedom of association and collective bargaining that had been voiced for decades by Mexican workers and the ILO supervisory machinery, including by the Conference Committee. She applauded the introduction of such historic reforms, which included constitutional amendments that would fundamentally transform and modernize the Mexican labour justice system. The responsibility for resolving labour cases would be transferred from the Conciliation and Arbitration Boards to new specialized labour judges in the Mexican judicial system, and the registration of unions and collective bargaining agreements would be transferred to a newly created, independent entity. Such changes would help to guarantee a fair, transparent, objective and efficient labour justice system in Mexico that upheld workers' rights to organize and bargain collectively. In addition, the planned labour law amendments would: help address long-standing concerns about protection unions by requiring a demonstration of worker support before registering collective agreements; and impose tight time frames for union elections that determined exclusive bargaining representation, thereby helping to address concerns about the lengthy delays in the union election process. She looked forward to the expeditious adoption of these transformative labour reforms by the Mexican Congress and to the subsequent approval of the constitutional amendments by the Mexican states, and hoped that they would be

adopted, as introduced, and effectively implemented without delay.

An observer representing IndustriALL Global Union considered that the Government was pursuing an unequal and exploitative labour policy based on the system of employers' protection contracts. The wages of Mexican workers were currently the lowest in Latin America, and were 40 per cent lower than wages in China. Whenever Mexican workers discovered that they were victims of a system of protection contracts, they would first ask why the trade union did not represent them and then face opposition from the entire network of complicity, corruption and control which did not allow them to organize freely and democratically. To be able to replace the protection union with an independent union, they had to file an application with the labour authorities for recognition as the bargaining agent, which would involve a voting process in which they chose the trade union of their preference. However, in practice, this process was very far from the one established in the labour legislation, the Constitution and the Convention. The process could take years due to deceit and malpractice by the authorities, enterprises and trade unions. For example, applications for recognition submitted in the mining sector and other sectors of the economy had taken between three and five years. In the case of one automobile enterprise, it had taken almost five years for the ballot to take place, and when it had eventually been held, the workers had been threatened by staff from the enterprise and by armed police, and the enterprise had selected which workers could vote. In most cases, workers who had expressed their preference for an independent trade union had been dismissed, threatened or beaten. Workers in the mining sector had been victims of "industrial homicide" in the Pasta de Conchos coal mine, where 65 miners had lost their lives in February 2006, and the enterprise remained unpunished with the complicity of the Mexican authorities. Furthermore, miners had been killed or injured in attacks by "shock groups" that were in collusion with the public security forces. The number of trade unionists who had been arrested arbitrarily or were in prison continued to grow. Cases included Juan Linares, who had been held in custody for over two years; Gustavo Labastida, who had been imprisoned for almost a year; and Jose Luis Solorio, who had been detained in a security centre for three days. In the mining sector, there were no trade unions that defended or represented the rights of workers. In conclusion, he urged the Government to ensure respect and justice for the workers and uphold their dignity.

Another Worker member of Mexico considered that, despite the information provided by the Government, there were still many issues to be addressed with a view to achieving compliance with the Convention. He criticized the functioning of the conciliation and arbitration boards, at both federal and state level, and particularly the way their members were appointed and the way in which cases were handled, which demonstrated serious structural problems. Freedom of association was undermined partly because of the situation of complicity between the Government, the employers' and workers' organizations. He also questioned the use of austerity plans. He hoped that the Government would take this opportunity to establish an authentic industrial relations system in Mexico, based on social dialogue between the employers' representatives and

democratically elected workers' representatives. In the meantime, however, the Government should take measures to guarantee that workers could exercise their right to freedom of association in practice, under the existing law.

The Government member of Panama endorsed the statement by GRULAC and welcomed the information provided by the Government, in which it had expressed its utmost willingness and determination to comply fully with the Convention. The information presented contained the necessary clarifications and explained the measures that had been adopted with regard to freedom of association, such as the right to freely elect trade union representatives, the right of re-election, and the publication of the registers and statutes of trade unions by the conciliation and arbitration boards. She expressed her support for the reform initiatives of the Constitution and the Federal Labour Act, which the Government had introduced with a view to making a significant reform of the labour justice system, the conciliation services and the register for collective agreements and trade unions, as well as for the constant open dialogue with the social partners. In conclusion, she wished the Government every success in its efforts to give full effect to the Convention.

The Worker member of the United States, also speaking on behalf of the Worker members of Argentina, Brazil, Canada, Chile, Colombia, Ghana, Guatemala, Honduras, Mali, Nigeria, Swaziland, Uruguay and Zimbabwe, as well as the Confederation of University Workers of the Americas (CONTUA), recalled that in 2015 the Committee had heard how thousands of migrants in Baja California, working in conditions of modern slavery, had organized, formulated a programme of activities and gone on strike to defend their social and economic interests, bringing employers and the Government to negotiate and sign agreements in May and June. That exercise of freedom of association, including a strike, had taken place as a struggle against the failed national labour justice system and entrenched company-dominated unions that had long misrepresented most Mexican workers using protection contracts. These workers and those in two other states produced 85 per cent of Mexico's berries, with over 90 per cent of the crop going to the United States, and 80 per cent of that being sold by major brands. The supply chain had grown rapidly and with no enforcement of basic workers' rights, yet it was projected to be Mexican agriculture's highest value export, already producing 30 per cent of the berries in the world, that were currently valued at 1.5 billion dollars, with the expectation that they would reach 3 billion by 2020. A year after the agreements had been signed by employers and the Government, the Mexican berry workers leaders were stating that conditions and pay remained the same, violations of the law continued, workers and their families were still excluded from social security, healthcare, housing and education, employers and the Government continued to make hollow agreements with organizations that they, and not the workers, chose. Since the latest agreement merely summarized existing commitments to farmworkers in Mexico, without committing sufficient resources, the union representing those who had gone on strike and had negotiated in San Quintin had refused to sign. Despite being incomplete, as they failed to address problems in the public sector, the Government's proposed reforms to the labour justice system were a positive development, addressing demands that

independent unions had long made. However, the Government still needed to take full responsibility for these reforms and use its political will to ensure that they were rapidly approved and implemented, as it would otherwise lose credibility. Given the experience of the previous year, there was a justified distrust that the proposals would actually become law and be implemented. To gain support and trust nationally and internationally, the Government should adopt the principles of impartiality and transparency that the reforms could represent by resolving many long-standing and well-documented labour violations, such as those of the San Quintin farmworkers. Without real reform in law and practice, Mexico would be in violation of the Trans-Pacific Partnership Agreement (TPPA), which contained a strong commitment to the core Conventions, including Convention No. 87, from the moment of its entry into force.

The Government member of Honduras endorsed the statement by GRULAC and expressed his support for the measures adopted by Mexico with a view to achieving compliance with the Convention. He took note of the action taken by the Government, particularly in relation to the publication of the registration of trade unions, the plan to transfer the administration of labour justice to the judiciary, the establishment of conciliation centres to render conciliation processes more flexible and the procedures for the registration and deposit of collective labour agreements. He urged the Government to continue to develop new mechanisms for dialogue with the trade unions in the context of the current reform initiatives, in accordance with the Convention and for the benefit of workers' fundamental rights, with a view to guaranteeing observance of the exercise of freedom of association in the country.

An observer representing the International Transport Workers' Federation (ITF) called on the Government to intervene as a matter of urgency to end the situation faced by Benito Bahena y Lome, General Secretary of the Alliance of Tram Workers of Mexico (ATM) and executive board member of the ITF, who had been persecuted over the previous 12 months by the local state-owned transportation company for reporting violations of workers' rights and denouncing a lack of investment in public transport. In addition to being dismissed from his job, he had been physically and verbally intimidated and forcibly denied entry to his union office. In an attempt to further paralyse the union, the company was refusing to remit union dues through the check-off system. Not even a court ruling confirming Bahena y Lome as the legitimate leader of the ATM had stopped such violations of trade union rights. He associated himself with the concern and indignation expressed by IndustriALL regarding the continued and widespread practice of employer protection contracts in all industrial sectors in Mexico, which deprived workers of any right to demand safe working conditions, labour inspections, compensation or social security. Every announcement of new foreign investments in the country came with a perfectly tailored protection contract, also conveniently advertised on the Internet. In all the cases mentioned in Case No. 2694 of the Committee on Freedom of Association, the protection contract had been signed in the same week as the investment had been announced, long before the plant had been constructed or the workers employed. The protection

contract system had tragic consequences, notably an explosion in the Pajaritos petrochemical plant in Veracruz on 20 April 2016, where companies and government agencies had denied responsibility for the over 130 workers injured and 32 subcontracted workers killed, leaving the bereaved families without compensation. Also in Tlaxcala, a well-known transnational shoe and garment company had closed without following due process, dismissing 450 workers and refusing to pay proper compensation recognizing the, on average, 25 years of service of the workers. When the union had picketed the plant to stop the removal of the machinery, the State Governor had stepped in and supported the company to press false charges against the union leaders, pressure the workers to accept a substandard redundancy package and arbitrarily imprison the union's General Secretary for over nine months.

The Government member of El Salvador endorsed the statement made by GRULAC and thanked the Government for the detailed information provided. She acknowledged the progress Mexico had made towards applying the Convention, particularly with regard to the publication of trade union registrations and collective labour agreements, the proposed draft reform of the Constitution and the Federal Labour Act, the plan to transfer the administration of labour justice to the judiciary, and the creation of local conciliation centres to facilitate conciliation procedures. She noted Mexico's commitment to freedom of association and expressed her belief that the Government would continue to implement policies aimed at guaranteeing respect for the exercise of freedom of association in the country and compliance with the Convention.

The observer representing the Confederation of University Workers in the Americas (CONTUA) denounced the violence against trade unionists experienced in Mexico, including in the mining, telephony, footwear, electricity and education sectors. Far from coming to an end, the violence had increased in recent years. Trade union activities were ever more risky, against a background of complex social violence in which state corruption and drug crime were intertwined and social groups were victims for lack of protection, as in the case of the 43 Ayotzinapa students who had been murdered. So-called protection contracts made a real mockery of social representation and collective bargaining. No progress had been made in removing this illegitimate concept that the Committee of Experts had described as a simulation of collective bargaining. The Government had provided information on supposed plans to abolish this practice, but no progress had been made in this respect, and the ILO should intervene actively to reach a solution that would bring an end to such contracts. The labour situation in Mexico was becoming worse. Mexico's ratification of the TPPA and the continuing negotiations on the Trade in Services Agreement (TISA) would signify a clear step backwards in the area of labour rights, as they meant that ILO Conventions would become subordinate to trade rules. As a result of the TPPA negotiations, the Government was pressing on with an initiative to introduce labour reforms, demonstrating the executive's need to present a proposed legislative amendment that met external requirements. The Government was trying to push through an expeditious reform process but, faced with the pressure of complaints and action by national and global organizations, it had been obliged to begin a process of negotiations.

The official reform proposals did not provide a definitive solution to the problem of protection contracts, nor did they meet demands to eliminate state control over trade unions, which impeded the exercise of freedom of association, genuine collective bargaining and the right to strike, which was restricted for state employees by Article 123B of the Constitution. The executive's proposal maintained the contested National Minimum Wage Commission, which had impeded urgent measures to restore the purchasing power of wages. In conclusion, he observed that the Government did not have the true will to make the changes necessary to achieve freedom of association. On the contrary, there was evidence of an attempt to impose more flexible rules, which allowed market rules to gain ground without guarantees of respect for the rights of workers, social equity or the equitable redistribution of wealth.

The Government representative thanked all the participants in the discussion, and indicated that all the comments and observations would be taken into account in the labour legislation reform process that was being carried out. The Government was committed to giving priority to social dialogue in this process. With regard to the criticisms that the employers and workers had not been consulted during the preparation of the draft reforms, he indicated that they were only a proposal. The details were not known because it was a recent proposal, which reflected the comments made by the employers and workers in various areas. It was now necessary for all social partners to participate so that the reforms could be refined. Employer and worker representatives would be heard for that purpose. The Government had always supported the involvement, opinions and participation of all sectors in the major changes in the country, including those relating to labour. The Government had the political will to make amendments to the draft that were necessary to give effect to the reforms. He noted that it was necessary to amend some aspects of the current labour legislation. While priority was given to form in current labour legislation, the objective was to adequately address questions of substance. That was why reforms were needed. The Government did not concur with some of the observations made during the discussions. With regard to the existing legal obligation to publish the registration of trade union by the local boards of the 31 states in the country, it needed to be taken into consideration that the digitalization of a system with that amount of information took time. With respect to outsourcing, he considered that the problem arose when it was used with the intention of evading labour law. Finally, he expressed Mexico's commitment to continue making progress in the reform and adoption of measures to bring labour law and practice in Mexico fully into line with the provisions of the Convention.

The Worker members welcomed the information provided by the Government and the constituents. The Government had an important and historic opportunity to create an authentic industrial relations system in the country based on social dialogue between employer representatives and democratically elected worker representatives. That was indeed the foundational and guiding principle of the ILO system, enshrined in the ILO Constitution of 1919. Without authentic representativity and representatives, there would be no social justice and consequently no lasting peace as evidenced in practice in Mexico and elsewhere. They referred, by way of example, to the thousands

of teachers of the National Coordination of Education Workers (CNTE) who had marched against the education reforms depriving teachers and professors of their right to freedom of association. The Worker members once again welcomed the proposals put forward by the President of Mexico, which addressed many concerns, and urged their adoption as soon as possible, while emphasizing that, in the meantime, the Government should take measures to ensure that workers could exercise their right to freedom of association in practice under existing law. As indicated during the discussion, companies regularly continued to violate that right with impunity. In conclusion, the Worker members urged the Government to: (i) fulfil without delay its existing legal obligation to publish the registration of trade unions in the local boards in the 31 states of the country; (ii) enact the reforms to the Constitution and Federal Labour Act, as proposed by the President; (iii) ensure that the legislation prohibited the use of agency labour to perform the core functions of an enterprise, which had undermined the ability of workers to establish or join a union; and (iv) produce a detailed report on the progress made to comply with those recommendations by the next session of the Committee of Experts.

The Employer members thanked all the speakers for their comments and the Government for providing very detailed additional information in a constructive manner. Progress had been made on many of the issues raised by the Committee of Experts, as other speakers had acknowledged. Other topics would continue to be reviewed with a view to moving forward, such as the representativity of trade unions and protection contracts. In this regard, they emphasized the need to have the widest possible representativity as a necessary requirement for strengthening the trade union movement. Concerning the difficulties of registering trade unions, they welcomed the information from the Government that 20 institutions now had an electronic register, and also praised the inspection protocol on freedom of association. They expressed their enthusiasm at the changes to the conciliation and arbitration boards, namely the introduction of measures to guarantee that in future labour justice would be dispensed by the judicial authorities, which would guarantee impartiality. They regretted the fact that the employers' organizations had not been involved in the discussions that had preceded this constitutional initiative. They trusted that the Government would take immediate steps to guarantee the participation of the most representative employers' organizations in this important constitutional initiative. Finally, they encouraged the Government to identify, in consultation with the most representative social partners, additional legislative reforms to the 2012 amendment of the Federal Labour Act which would be necessary to comply with the Convention, emphasizing that these should include reforms to prevent the registration of trade unions that could not demonstrate the support of the majority of the workers that they claimed to represent by means of a democratic election process.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the proposed reforms to the Constitution and labour law.

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

Philippines (ratification: 1953)

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

- continue to fulfil its existing legal obligation to publish the registration of trade unions in the local boards in the 31 states in the country;
- engage in social dialogue with a view to enacting the President's proposed reforms to the Constitution and federal labour law as soon as possible and reinforce social dialogue with all workers' and employers' organizations including through any additional complementary legislation;
- ensure that trade unions are able to exercise their right to freedom of association in practice;
- submit a report to the Committee of Experts on the application of Convention No. 87 both in law and practice.

PHILIPPINES (ratification: 1953)

The Government provided the following written information.

In six years of sustained constructive engagement with the ILO, the Government has diligently reported concrete results, framed in our four areas of commitment. The National Tripartite Industrial Peace Council (NTIPC) constituted and institutionalized as the high-level monitoring body with regional tripartite monitoring structures, the Regional Tripartite Monitoring Body (RTMB), has built a comprehensive inventory of 65 cases of extrajudicial killings, 11 cases of abduction and 12 cases of harassment. Of the 65 cases, 50 occurred from 2001 to June 2010 under the Arroyo Administration, while 15 – the cases of Rodel Estrellado, Kenneth Reyes, Rudy and Roderick Dejos, Bonifacio Labasan, Santos Manrique, Josephine Estacio, Carlo Rodriguez, Celito Bacay, Poncing Infante, Emilio Rivera, Romy Almacin, Antonio Petalcorin, Kagi Alimudin Lucman, Rolando Pango and Florencio Romano – are under the Aquino Administration. The NTIPC–MB, with 20 representatives each for employers' organizations affiliated with the International Organisation of Employers (IOE) and labour organizations affiliated with the International Trade Union Confederation (ITUC), is monitoring the movement of these cases, including the four resolved by the trial courts; these are: (1) Teotimo Dante, which resulted in the conviction of all four accused on 28 May 2012; (2) Ricardo Ramos, which resulted in the acquittal of the accused for failure to prove his guilt beyond reasonable doubt on 7 February 2012; (3) Antonio Pantonial, which resulted in the conviction of the accused for murder qualified by treachery; and (4) Fr William Tadena, which resulted in the acquittal of one accused on reasonable doubt, while the other accused is at large. The NTIPC–MB has brought before the Department of Justice (DOJ) chaired AO35-Inter-Agency Committee (AO35-IAC) all of the 65 cases of extrajudicial killings, 11 cases of abduction and 12 cases of harassment. The AO35-IAC report however has focused on the 65 cases of extrajudicial killings, and 11 of which (Diosdado Fortuna, Florante Collantes, Fr William Tadena, Abelardo Ladera, Samuel Bandilla, Tirso Cruz, Gil Gojol, Benjamin Bayles, Rodel Estrellado and Rolando Pango) have been identified as extrajudicial killings based on their criteria/definition.

The 54 cases not covered by AO35-IAC are investigated as regular criminal cases. According to the DOJ, the reasons for the exclusion from AO35-IAC include: (1) insufficiency of evidence which triggers referral of the case to

agencies like the police, the National Bureau of Investigation and the Commission on Human Rights for further investigation subject to a second review by the technical working group; and (2) absence of all the elements of extrajudicial killings as provided in the AO35-IAC Operational Guidelines. The non-AO35 cases include cases before the Committee on Freedom of Association (CFA). Case No. 3185 was first brought to the attention of the Department of Labor and Employment (DOLE) through a press statement by the National Confederation of Transport Workers' Union (NCTU) and the Alliance of Progressive Labor (APL) in June 2013. The case was previously with the Commission on Human Rights (CHR), the police and the DOJ, which spearheads the AO35-IAC. Considering its exclusion from the AO35-IAC, RTMB Region XI in Davao City was tasked with gathering additional information on this case for a possible second review by the AO35.

With regard to CFA Cases Nos 3119 and 3159, reports from the different RTMBs were deliberated at the Tripartite Executive Committee of the NTIPC–MB (TEC–MB) on 6 May 2016. In Case No. 3119, out of the six cases, only the case of Cañabano is considered to be related to freedom of association, but the TEC–MB tasked RTMB XI to further verify and interview Mr Cañabano and the radio anchor involved in the case of RMN Davao Employees Union. The TEC–MB elevates for consideration of the NTIPC–MB the case of Cañabano and the recommendation to refer the other five non-freedom of association cases to the Commission on Human Rights and the Advocate General's Office of the Armed Forces of the Philippines (AFP). Of the 65 cases of killings, only 12 were filed in court, with nine of the cases with resolution and three – two cases of ongoing investigation and one archived – pending resolution. A detailed breakdown of the status of the cases will be provided in a separate report. Progress on the 11 AO35-IAC cases is hindered by lack of material witnesses and/or non-cooperation of victims' families and relatives. The limited capacity for forensic evidence and reliance on witnesses/testimonial evidence render the prospects not too positive. The Government continues to encounter the obstacles of desistance or disinterest of the victims or their families to pursue the cases. Much needs to be done in the criminal justice system that brought this situation.

The Government is addressing the source of the problem through wide-ranging reforms in labour market governance and the sectoral goal of ensuring decent work under the ILO Technical Cooperation Programme (TCP). The TCP with the ILO started only after the 2009 High-level Mission, or 56 years after the ratification of Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), on 29 December 1953. The ILO TCP on training and capacity-building can generally be classified into: (a) capacity-building and advocacy for international labour standards, freedom of association and collective bargaining; and (b) observance of prescribed conduct by the police and military. Over 70 capacity-building activities on labour rights have been carried out under the TCP. Around 4,384 stakeholders have been oriented and capacitated on international labour standards, and on the observance of tripartite instruments governing the en-

agement of the social partners, including the police, military and key government agencies, during labour disputes. TCP activities have resulted in:

- (a) Key instruments governing the engagement of the social partners have been developed: (1) Joint DOLE–PNP–PEZA Guidelines (PNP Guidelines), signed on 23 May 2011; (2) DOLE Administrative Order No. 104, Operational Guidelines on Inter-Agency Coordination and Monitoring of Labor Disputes (DOLE implementors “dos” and “don’ts”), signed on 27 February 2012; (3) Guidelines on the Conduct of the DOLE, DILG, DND, DOJ, AFP and PNP Relative to the Exercise of Workers’ Rights and Activities (AFP Guidelines), signed on 7 May 2012; and (4) Operational Guidelines on the Regional Tripartite Monitoring Bodies. The PNP and AFP Guidelines have been effective in coordinating all stakeholders and preventing violence during strikes. In recent cases in Region 4A, violence was prevented when the newly engaged security agency was instructed to observe the PNP Guidelines and in the PhilSteel labour dispute, where the PNP has summoned the security agencies reported to have crossed the picket to explain why their license should not be revoked. In the Davao labour disputes at Lapanday Box (banana plantation) and RMN (radio station), the PNP Guidelines mobilized multi-stakeholder participation in ensuring the peaceful exercise of workers’ rights during collective bargaining negotiations. In the labour dispute at Albay Electric Cooperative, Inc. (ALECO), where the management directly requested the PNP Legaspi Station police to enter the company premises, the PNP Guidelines have helped to prevent the supposed plan to dismantle the picket line. Information on the PNP and AFP Guidelines is now part of the DOLE standard operating procedure in labour disputes likely to develop into a strike/lockout.
- (b) To prevent the conversion of labour disputes into criminal cases, the DOJ issued Memorandum Circular No. 16 on 22 April 2014 to reinforce Circulars Nos 15, series of 1982, and 9, series of 1986, requiring fiscals/prosecutors to secure clearance from the DOLE and/or the Office of the President “before taking cognizance of complaints for preliminary investigation and the filing in court of the corresponding information of cases arising out of, or related to, a labour dispute”, including with “allegations of violence, coercion, physical injuries, assault upon a person in authority and other similar acts of intimidation obstructing the free ingress to and egress from a factory or place of operation of the machines of such factory, or the employer’s premises”. The DOLE and DOJ further issued Joint Clarificatory Memorandum Circular No. 1-15 on the requirement of clearance from the DOLE and/or from the Office of the President for cases arising out of the exercise of freedom of association, collective bargaining, concerted actions and other trade union activities.

The TCP includes a component on the improvement of labour market governance. Together with the social partners, labour rights violations and labour-related incidence of violence were addressed by identifying the root causes of labour disputes, resulting in the mechanisms for labour

law compliance, dispute prevention, settlement and case disposition. Robust tripartite consultation with the social partners on policy and programme implementation were strengthened. These resulted in:

Substantially improved implementation of labour laws: the two-year-old Labor Laws Compliance System (LLCS), supported by the ILO and the tripartite partners, with a management information system (an online web-based application system that utilizes an electronic checklist for real-time transmission and processing of data collected from the field) and combines the regulatory and developmental enforcement approaches, achieved remarkable accomplishments: (a) projected company visitations become more frequent, from once every 16 years to once every two years; (b) the establishments covered increased, from an annual average of 23,000 in 2004–13 to an annual average of 63,627 in 2014–15; (c) the number of workers covered increased, from an annual average of 628,000 in 2004–13 to an annual average of 2.9 million in 2014–15; (d) compliance with general labour standards increased, from 70.73 per cent in 2004–13 to 77.59 per cent in 2014–15; (e) the correction rate increased, from 21 per cent in 2004–13 to 27 per cent in 2014–15; (f) the enforcement of a total of 94 labour laws, including regulations on contracting or ambiguous or disguised employment, compared to only 23 under the old enforcement system; and (g) with 574 labour law compliance officers compared with the previous 202 labour inspectors. The tripartite partners endorsed House Bill No. 4659 in the 16th Congress to institutionalize the LLCS, and it will be refiled in the 17th Congress as part of the DOLE 2016–2022 Priority Legislative Agenda.

Effective case management system: the 30-day mandatory conciliation-mediation services, or the Single Entry Approach (SEnA) for individual disputes, was institutionalized through Republic Act No. 10396, along with exhaustive conciliation-mediation for collective disputes and the overall objective of empowering the parties to process and resolve issues at the plant level through convergence with DOLE programmes and services. SEnA, as a prior mechanism, has afforded workers and employers fair, prompt, accessible and inexpensive settlement of labour issues. It has shortened the processing of labour disputes to an average of 15 days compared with the duration of one year to ten years in compulsory arbitration; 99 per cent reduction of small money claims before the DOLE Regional Offices and reduction in the dockets of the National Labor Relations Commission (NLRC); and free and accessible services, as it is present in all DOLE offices. SEnA has resulted in high settlement and disposition rates of 81 per cent and 94 per cent (102,382 cases settled and 128,257 cases disposed), respectively, from 2011 to 2015. It has benefited around 154,439 workers with PHP 4.951-B monetary awards.

Unprecedented single-digit strike incidence: empowering the parties through exhaustive conciliation-mediation of collective labour disputes and rationalized use of assumption of jurisdiction power of the Secretary of Labor and Employment resulted in single-digit

annual strike incidence from 69 in 2005–10 to only 17 in 2011–15; while on assumed cases, from 104 in 2005–10 to just 14 in 2011–15, punctuated with a decline in 2013–15 to only three, resolved through a conciliation order.

Institutionalized expansive tripartism and social dialogue: tripartism and social dialogue is institutionalized through Republic Act No. 10395 as the primary instrument to promote transparency, participative governance and sectoral accountability, addressing social disparities, while improving social cohesion among all stakeholders. Several tripartite structures at the national level and across regions and industries have been created to serve as venues for stakeholder participation in policy- and decision-making processes on matters concerning labour and employment. As of January 2016, there are 134 regional Tripartite Industry Peace Councils (TIPCs); nine national Industry Tripartite Councils (ITCs); and 284 regional ITCs. These structures are forums for tripartite information and prior consultation in developing regional or industry framework agreements. Thus, in these tripartite structures, a total of 178 industry voluntary codes of good practices on productivity and decent work were formulated from 2011 to 2015 to serve as voluntary industry standards. Through social dialogue, the labour sector in the NTIPC was able to get commitment on linking investment incentives with compliance with international labour standards. To date, the creation of workers' rights board for specific industries or tariff lines that will be accessed under the Generalized System of Preferences or free trade agreements is being worked out with the Department of Trade and Industry. At the workplace level, the single-digit strike incidence indicates the growing acceptance of social dialogue, either by them or through conciliation-mediation, as an empowering tool for the parties to resolve their disputes. This has been recognized even by the militant section of the labour movement with big cases that historically would have resulted in strikes or lockouts being settled through social dialogue. Tripartism and social dialogue have never been as robust and productive as under the current administration. The progress achieved through reforms implemented with support from the social partners is a good indicator of the constructive engagement ushered in by tripartism and social dialogue.

With respect to the recommendation by the High-level Mission to align the Labor Code, as amended, with international labour standards, particularly on freedom of association and collective bargaining, by amending the following: (a) Article 263(g) of the Labor Code, on overbroad assumption of jurisdiction power of the Secretary of Labor and Employment; (b) Article 234(c) of the Labor Code, requiring 20 per cent support signatures for registration of independent unions; (c) Article 264 and 272 of the Labor Code, imposing penal sanctions for peaceful strikes;

(d) Article 270 of the Labor Code, requiring prior approval for foreign assistance; and (e) Article 237(1) of the Labor Code, on the ten locals requirement for registration of federations, the proposed bills failed to pass during the remaining sessions of the 16th Congress. Thus, all shall, subject to the discretion of the incoming administration, be part of the DOLE Legislative Priority Measures for the 17th Congress, including the following legislative proposals: (a) Security of Tenure Bill, Employment Relations, and Termination of Employment; (b) Rationalizing Government Intervention in Labor Dispute or the proposed modified Assumption of Jurisdiction Bill; (c) Magna Carta of Filipino Seafarers Bill; (d) LLCS Bill; and (e) Occupational Safety and Health Standards Bill. However, pending the adoption of these amendments, administrative issuances have been implemented and enforced through the ILO and tripartite partners supported LLCS, which contributed to the country's industrial peace.

While progress has been achieved, the TCP with the ILO arising from the 2009 High-level Mission is not over. Reforms in labour market governance are foundational and sustainability would benefit from technical assistance on: (a) conciliation-mediation techniques and strategies; (b) application of international labour standards on adjudication; (c) obtaining high level of compliance with labour laws and management/development of the LLCS-MIS; (d) development/implementation of just transition and green jobs; (e) understanding non-standard forms of employment and policy approaches; and (f) business and human rights. The track followed to address the source of the problem affecting compliance with this Convention has shown positive results. The Government is committed to aligning the provisions of the Labor Code with Conventions Nos 87 and 98, and to fully realizing the potential of the NTIPC-MB and RTMBs in case build-up, the NTIPC has proposed a fully-funded, independent and capacitated case-based NTIPC-MB Tripartite Validating Team. The Validating Team will be constituted under NTIPC-MB auspices, on cases needing independent validation or for the review of the cases under CFA Cases Nos 3119, 3139 and 3185. In closing, the Government affirms its commitment to obtaining substantial progress on cases with allegations of trade union rights violations. The AO35 IAC and the National Monitoring Mechanism (NMM)¹ are already in place and work with the NTIPC-MB in ensuring progress in observance of Conventions Nos 87 and 98. What remains to be done is the reform of the criminal justice system, which is forthcoming with the new Congress and under the administration of President Rodrigo R. Duterte.

In addition, before the Committee, a **Government representative** expressed her Government's commitment to complying with the Convention in law and practice, building on the six years of sustained constructive engagement with the ILO supervisory bodies and the Office, including the 2009 ILO High-level Mission. It was the first time since the High-level Mission that the Philippines had reported to

¹ The NMM is a tripartite body that brings together government agencies, NGOs, civil society organizations and the independent national human rights institution (NHRI) in a credible and inclusive forum for monitoring the country's progress on the resolution of human rights violations cases, prioritizing extrajudicial killings, enforced disappearances and torture. The NMM has been

regularly conducting its meetings. At present, the CHR together with the other concerned agencies, including the DOLE, is conducting an audit or investigation into the human rights situation at Semirara Island, Caluya and Antique following the accident at the open pit coal mine of the Semirara Mining Corporation.

the Conference Committee on concrete measures and results achieved. She expressed great appreciation for the ILO's support and technical assistance, the first provided to the Philippines since the ratification of the Convention. The Government, with support from the social partners, represented by local affiliates of the ITUC and the IOE, had implemented four major reforms towards giving full effect to the Convention. The first was the built-in institutionalized high-level tripartite monitoring body, the NTIPC–MB, with a regional tripartite structure, that helped to ensure observance of international labour standards, and particularly the Convention. The NTIPC–MB worked with an inter-agency committee created by the President under Administrative Order No. 35 (AO35), to provide appropriate redress using composite teams of investigators for unresolved cases of extrajudicial killings. The second reform was a proactive system of tracking cases involving allegations of labour rights violations, in coordination with the Commission on Human Rights, the Philippine National Police, the armed forces of the Philippines, the Department of Justice and the courts. The third reform consisted of tripartite-supported legislative reforms for effective compliance with the principles of freedom of association and collective bargaining. And the fourth consisted of foundational and wide-ranging reforms in labour market governance towards securing decent work for all, resulting in significant progress in the effective implementation of labour laws, fair and speedy settlement of disputes, including those involving industrial action, and strengthened tripartism and social dialogue. The impact of the reforms would not be felt overnight, as the root causes of the problems needed to be addressed in order to find lasting and sustainable industrial peace based on social justice. Thus, the collaboration and constructive engagement under the ILO technical cooperation programme on freedom of association encompassed a much broader agenda, with the concrete results presented in detail in the written submission to the Committee.

The NTIPC–MB had built a comprehensive inventory of 65 cases of extrajudicial killings, including those covered by Cases Nos 3185 and 3119 of the Committee on Freedom of Association. The information concerning the two cases was raw and validation by the Regional Tripartite Monitoring Body (RTMB) was still ongoing. Regarding Case No. 3159, the initial finding of unfair labour practice with fines was under appeal before the National Labour Relations Committee (NLRC). Although the case was pending in the legal and judicial systems, the Government was committed to providing the Committee with an update on its progress. In the absence of judicial reforms, in addition to the information provided in the written submission, the Government had diligently pursued, under the technical cooperation programme, awareness raising and capacity building on fundamental labour rights. The Philippine National Police (PNP) and the Armed Forces of the Philippines (AFP) guidelines had been effective in coordinating the action of all stakeholders to allow the free exercise of trade union rights and to prevent violence, injuries and death in strike and picket areas. It formed part of the Department of Labor and Employment (DOLE) standard operating procedure in labour disputes likely to ripen into a strike/lockout. The Department of Justice (DOJ) Memorandum Circular No. 16-14 had reinforced the requirement

for prosecutors to secure clearance from the Department of Labor and Employment or the Office of the President for all complaints arising out of, or related to, a labour dispute with a view to preventing indiscriminate conversion of labour disputes into criminal cases. Certification had been issued in at least five criminal cases, which had resulted in their dismissal. With the effective use of these instruments, there had been no reported cases of violence in strike and picket areas.

Implementation of labour law compliance had substantially improved through the new Labor Laws Compliance System (LLCS). Trade union organizations had been engaged in the conduct of the Special Assessment or Visit of Establishments (SAVE), with nationwide operation, and their participation had been institutionalized in the revised Labor Laws Compliance System rules. Under separate issuances, terms and conditions of work of seafarers engaged in domestic shipping and international voyages, fishers on board commercial fishing vessels, collection agency, bus drivers and domestic workers were covered for the first time by the LLCS. A more effective case management system was in place, namely through the SENa for individual disputes, and an improved labour arbitration system had shown its capacity to decide cases within a shorter period of six months with a higher degree of fairness, equity and consistency, compared to the previous record of one to two years.

Supplementing the information provided in the written submission, she also emphasized the unprecedented single-digit incidence of strikes, as well as the rare use of the assumption of jurisdiction, only upon the consent of the parties, with no record of defiance and ending in conciliated decisions. Stronger and more expansive social dialogue was in place and there was commitment for trade and economic agencies to link investment incentives to compliance with international labour standards. The creation of a workers' rights board for specific industries or which that would be accessed under the Generalized System of Preferences or free trade agreements, was being worked out by the social partners in the Clothing and Textile Industry Tripartite Council. With respect to the call by the High-level Mission to align the Labour Code with international labour standards, the NTIPC had adopted tripartite resolutions endorsing draft bills. Although deliberations on the proposed bills had been completed in the Lower House of Congress, they had failed to be passed by the Senate for various reasons, including the change in leadership in the Committee on Labor. The Chairperson of the Committee on Labor and Employment in the Lower House had committed to refile all the bills as principal sponsor in the 17th Congress starting on 25 July 2016.

On behalf of the NTIPC, as part of the priority legislative agenda 2016–22, the Government was committed to: (i) aligning the provisions of the Labour Code with the Convention; (ii) strengthening the NTIPC–MB and fully realizing its potential in case build-up, by operationalizing the recently approved NTIPC Resolution for a fully-funded, independent and capacitated case-based tripartite validating team for cases needing independent review, such as Cases Nos 3119, 3159 and 3185; (iii) ensuring funding for the operation of the validating teams that would be constituted from the existing 2016 DOLE budget for the NTIPC; and (iv) including its funding as a separate budget

item in the proposed 2017 General Appropriation Act. She concluded by affirming the Government's commitment, along with the social partners, to obtaining sustained progress in compliance with the Convention in law and practice, and to working with relevant government agencies for reforms in the criminal justice system towards ending cases of impunity arising from trade union rights violations. Recognizing that the work was far from complete, but also the concrete results already achieved, she reiterated the Government's gratitude to the ILO, its supervisory bodies and donor countries.

The Employer members recalled their disagreement with the views of the Committee of Experts concerning the right to strike, and particularly that, since 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 endorsed by the Government group at the tripartite meeting in February 2015 and by the Governing Body in March 2015. They emphasized that, at face value, this was a case of systemic discrimination by the State against workers' organizations and their members. Closer examination of the issues suggested, however, that this long-standing case had three facets. The first concerned the specific allegations made by workers' organizations over the years. The Employer members emphasized that they did not wish to denigrate in any way the seriousness of the issues brought to the attention of the Committee. This year's observation concerned serious allegations of human rights violations, including: two killings and an assassination attempt on trade union officials; the violent suppression of strikes and other collective actions by the police and the armed forces; harassment of unionists and prevention of people from joining trade unions in export processing zones; breaches of the Memorandum of Agreement between DOLE and the Philippine Economic Zone Authority (PEZA); and bankruptcy falsification to deny workers trade union rights. Such cases could not go unchallenged.

The second facet was the Government's response to those allegations, and the context of that response. The Government had not been idle. The main elements of its activity included: (i) the National Monitoring Mechanism (NMM), with the mandate to monitor the nation's progress on the resolution of human rights violations, prioritizing in the short term cases of extrajudicial killings, enforced disappearances and torture, and to provide legal and other services, which had resulted in several convictions for unlawful killings; (ii) the Inter-Agency Committee on Extra-Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (IAC), entrusted with the investigation of cases of extrajudicial killings, enforced disappearances, torture and other grave human rights violations perpetrated by state and non-state forces, the prioritization of unsolved cases and the creation of special investigation teams. The social partners had been invited to participate actively in the investigations, while members of the NTIPC-MB had been given observer status in the IAC; and (iii) awareness-raising campaigns on observance of freedom of assembly, capacity building for monitoring focal persons and measures to strengthen the existing monitoring structures. The Employer members welcomed these developments and requested the Government to provide further information on the functioning of the NMM, the Department of

Justice Special Task Force and the IAC in practice, including on the participation of the social partners in IAC investigations, as well as the number and types of cases addressed by these mechanisms. Progress in many cases was still inconclusive. For example, the main update provided on three cases of the union officials killed was, respectively, that the victim's mother had decided not to pursue the case, that the case was still on trial and that assistance from the victim's wife could not be obtained. However, the Employer members believed that the context in which the Government must investigate these serious allegations, a long-standing background of political and civil instability, including armed insurrection, had not been given sufficient weight in the consideration of this case, both at present and in the past. Not every human rights violation was a breach of labour rights, especially if the person against whom the violation had been committed had been engaged in an unlawful or criminal act at the time. It was therefore vital to the consideration of the cases that it be made clear what law was being transgressed and whether that law conformed with international standards. This was not always clear and any lack of clarity could only inhibit fair consideration of the case. The unions had expressed concerns that the Human Security Act could be misused to suppress legitimate trade union activities. For its part, the Government had stated that the Act could not be used against the exercise of trade union rights, especially legitimate trade union activities, and that guidelines existed to ensure that the armed forces and the police could only intervene in trade union activities if expressly requested to do so by the DOLE, if a criminal act had been, was or was about to be committed, or in the case of actual violence arising out of a labour dispute.

With respect to the Labour Code, the Employer members noted that a Tripartite Labour Code Review Team was a partner in the drafting process. Concerning Article 2 of the Convention, Bill No. 5886 currently before Congress only assigned the right to establish and join organizations to aliens with a valid working permit and did not deal with concerns over the denial of the right to organize to certain public servants. The Employer members recalled that, while it was possible under Right to Organise and Collective Bargaining Convention, 1949 (No. 98), to exclude certain public servants from collective bargaining, this was not a matter contemplated by Convention No.87, which dealt with the right to organize. They hoped that legislative measures would ensure that all workers benefited from the right to establish and join organizations and requested the Government to provide information on any developments in this respect. With regard to Article 3, the Employer members noted that the proposed changes harmonized the list of industries indispensable to the national interest, in which governmental intervention was possible, with the essential services criteria of the Convention. They welcomed the Government's initiative to limit governmental intervention to industries which could be defined as essential services in the strict sense of the term. In relation to the comments of the Committee of Experts concerning the principle that no penal sanctions should be imposed against a worker for having carried out a peaceful strike, they expressed concern as there was no consensus over the existence of a right to strike in the Convention. They also noted other positive

steps, such as bills, removing the requirement for government permission for foreign assistance to trade unions and reducing the registration requirement from ten to five affiliates for federations.

The third facet of the present case was the manner in which the Committee of Experts considered and reflected upon the information received. It was this aspect upon which the Employer members harboured concerns relating to the scope of the Committee of Experts and the Conference Committee to reach conclusions on matters that were not labour issues covered by the Convention. It was not the report of the Committee of Experts to the Conference Committee, but rather the conclusions of the Conference Committee on the case that formed the basis for government action. It was therefore important for the Committee of Experts to reflect the information received factually and to consider all the facts in a balanced manner. The Employer members criticized the fact that the Committee of Experts noted “with deep concern” alleged serious violations of trade union rights, while it simply reported the details of the Government’s response. An uninformed reader could interpret the presentation of the report as having a particular emphasis, when that ultimately might not reflect the outcome of the Conference Committee’s deliberations.

In the view of the Employer members, there were three lessons to be learned: (i) cases often had more to them than was apparent from the initial allegations; (ii) government responses were not of themselves proof of solution, conclusive results being the preferred outcome; and (iii) the Committee of Experts needed to ensure balanced consideration of cases by not emphasizing or characterizing any particular aspect of allegations or government responses, this being a matter for the Conference Committee. The Employer members therefore made the following recommendations: (i) that the Committee hope that all alleged cases of the violation of trade unions rights would be the subject of appropriate investigations, which would be vigorously pursued and finalized in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators; (ii) that the Committee acknowledge the establishment of several monitoring entities and requested the Government to provide further information on these mechanisms and progress on the cases assigned to them; (iii) that the Committee urge the Government to continue bringing national legislation into conformity with certain Articles of the Convention; and (iv) that the Committee of Experts be encouraged to confine its observations to a factual reporting of the concerns of the social partners and government responses, and leave it to the Conference Committee to place emphasis on any aspect it deemed appropriate.

The Worker members considered that the designation by the Committee of Experts of violation of freedom of association in the Philippines as a double-footnoted case was an appropriate reaction to the ongoing violence against trade unionists and the lack of prosecutions for extrajudicial killings. They were deeply concerned that the exercise of the right to freedom of association would further suffer under the newly elected President, who had openly admitted his association with death squads responsible for over 1,000 executions while Mayor of Davao and had threatened to rule the country by executive fiat if the legislature or courts stood in his way. The avoidance of unions

through false forms of employment and the defects in existing laws and their enforcement had led to a climate in which freedom of association was nearly impossible to exercise. The Worker members recalled that the Committee of Experts had expressed deep concern over the allegations of anti-union violence and had urged the Government to undertake appropriate investigations. They further emphasized that the Government had an obligation to take measures to guarantee that trade union rights could be exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats of any kind, but that it had so far failed in this regard, as shown by some recent cases of anti-union violence. On 2 July 2013, Antonio Petalcorin, President of the Davao-based Network of Transport Organizations (NETO) had been killed as a result of his campaign to expose corruption at the Transportation Board Office in Davao. The Government claimed that, pursuant to its guidelines, this murder was not an extrajudicial killing. Shortly afterwards, one of his colleagues had been murdered and another had been subjected to threats and violence forcing him into hiding. On 29 November 2014, Rolando Pango, who was organizing sugar plantation workers on land leased and operated by the President of the United Sugar Producers Federation of the Philippines, had been killed in Binalbagan town in Negros Occidental. The case had been determined by the Government to be an extrajudicial killing. Latest reports indicated that two men had been charged with murder, but the status of the case was unknown. On 8 March 2015, Florencio Romano, an organizer of the National Coalition for the Protection of Workers’ Rights, affiliated to Kilusang Mayo Uno (KMU), who was actively organizing workers in a food-processing plant, had been found murdered in Batangas City, south of Manila. No one had been charged with the murder. In April 2016, gunmen had opened fire on a KMU camp set up by agricultural workers in preparation for a strike in Pantukan town, Compostela Valley, concerning the dismissal of 52 workers, and there had been an attempt to burn down the workers’ camp. No one had been arrested for the crime. Such cases were evidence that trade unionists were at great risk. The Human Security Act constituted a powerful tool to further undermine freedom of association, as it vaguely defined terrorism, allowing the Government to arrest and detain persons suspected of terrorism without warrants. Under the Act, citizens, including labour leaders, could be subjected to surveillance, wiretapping, detention, interrogation and the freezing of bank accounts on mere suspicion of terrorism. Mandatory prison sentences were set at 40 years without the possibility of parole, and heavy penalties were also established for lesser crimes. The United Nations Human Rights Council and numerous human rights organizations had raised serious concerns about the impact of the Act on the exercise of freedom of association, which needed to be remedied in law to prevent the Government from the misapplication of these provisions when it so wished.

The use of dubious forms of employment to obscure the existence of an employment relationship was a serious problem intended to divest workers of their rights under the law, which was particularly acute in the Philippines. Over 73 per cent of the workforce was estimated to be employed on short-term contracts in 2013, which undermined the ability of trade unions to recruit members, as contract

workers were not allowed to establish and join unions by law. Misclassification of workers as “confidential” was very common, since under the Labour Code such workers were prohibited from joining a union. In other cases, workers were simply given a different denominator, to exclude them from an employment relationship. Employees in broadcasting companies were referred to as “talents”; companies engaged in tuna fishing and processing referred to their fishers as “industrial partners”; in one case, the denial of the employment status of fishing workers had been used to refuse critical assistance to 43 crew members captured and held in captivity for months in Indonesia. In addition, several classes of workers, such as firefighters and prison wardens, were excluded from the Code. The Committee of Experts had noted obstacles to the registration of trade unions, including high minimum membership requirements. In 2009, in the context of the High-level Mission, the ILO had noted that, under Executive Order No. 180, that the percentage requirement was calculated as a proportion of all government employees throughout the country, which was likely to preclude the establishment of a union of public sector employees. The Committee of Experts had also taken note of allegations of the violation of freedom of association in export processing zones (EPZs) and the violation of the Memorandum of Understanding between DOLE and PEZA. The measures in place to combat violations in EPZs were ineffective to sanction those who violated the law, even when courts ordered reinstatement. The Worker members referred to the case of a company in the EPZ in Batino, Laguna, supplier to a major Korean electronics multinational company, which had retrenched more than 30 workers who were known to be union activists a few weeks before the certification elections, had refused to allow these workers to cast their votes inside the company premises, contrary to the law, and had refused to recognize the union that had nonetheless been chosen as the bargaining representative.

The Worker members concluded by recalling the numerous legislative issues raised by the Committee of Experts, including the amendment of the law to remove the possibility of compulsory arbitration in sectors that were not essential in the strict sense of the term, the amendment of sections 264 and 272 to remove the possibility of penal sanctions for participating in a peaceful strike, and section 270, which prohibited unions from receiving foreign assistance without prior approval. Despite the High-level Mission that had visited the Philippines in 2009 with regard to freedom of association, and a number of activities undertaken under the auspices of the ILO, many of the concerns raised remained unresolved and it could be time for another such mission to return to the country.

The Employer member of the Philippines qualified his reaction to the double-footnoting of the case of the Philippines by the Committee of Experts as suspended belief. He raised questions concerning: (i) the extent of the mandate of the Committee of Experts to make conclusions and recommendations on the subject of criminal cases and their prosecution under the national law of a member State; (ii) when there would be a procedure for the closure of recurring and continuing general allegations of harassment and threats to the right of workers to organize; and (iii) the mandate of the Committee of Experts regarding matters of the national security of a member State. His country should

not be taken to task for substantially criminal cases remotely connected to labour standards, which should be left to the national justice system. He believed that the Philippines was a very, if not the most, compliant country with the Convention in that part of the world. The Committee of Experts should have given more thought to the background of a continuing armed insurgency that hopefully might be resolved soon. Investigations into violations of the Convention were different in situations of relative peace or of armed conflict. Rebels in the guise of trade unionists, or vice versa, might be hard to distinguish in a very fluid situation, where objectives were identical. The better part of discretion was to be discreet in telling a member State, in the context of armed conflict, to stop military operations conducted in the interests of national security simply because trade unionists might be involved.

Double footnoting was justified by the seriousness of a case, which seemed to be equated with failure to provide quick results or automatic responses. That could not always be achieved by a legal system that recognized independent branches of government put in place to achieve checks and balances in the exercise of governmental powers. In a constitutional democracy such as the Philippines, structural challenges to the well-meaning and inspired work of the Committee of Experts must be recognized. For instance, the executive could not order the judiciary to speed up the wheels of justice, although several procedural reforms were in place to achieve this; or the Congress to enact laws recommended by the Committee. In general, the conclusions and recommendations of the Committee of Experts read like directives to the executive department of a sovereign state to: drop alleged trumped up criminal cases involving trade unionists; provide security to trade unionists allegedly under threat; or stop legitimate military operations in response to an armed insurgency. He raised the question of whether the Committee of Experts should make such requests and whether a member State was obliged to do more than expected under its own legal system and pursuant to its own determination of self-preservation and the national interest.

The Worker member of the Philippines said that there would be opportunities for reform, since a new Government would take office on 30 June and the President-elect had promised to end unlawful contractual employment schemes and to uphold the rights of workers to security of tenure. Prospects were bright for peace negotiations with the aim of ending decades of war in the Philippines. Recalling that the right to organize had been recognized in the Constitution of the Philippines since 1899, he said that, in practice much still remained to be done to fully comply with the Convention, which could only be achieved by the Government with the cooperation and active participation of the social partners. Following the 2009 High-level Mission, which had been welcomed by the tripartite constituents, a comprehensive technical cooperation programme to improve understanding and respect for the fundamental principles and rights of freedom of association and collective bargaining had been adopted. Nevertheless, reported killings of trade unionists had continued, namely of Antonio Petalcorin and Rolando Pango, reported by the Center of United and Progressive Workers (SENTRO) in 2015. Mr Pango’s killing had been considered to be trade union-related, while that of Mr Petalcorin was being treated as an

ordinary crime. This was a serious matter that should not be taken lightly by the social partners. Much had already been done, as reported by the Government, but more was needed to further reduce the number of cases of violations and the existing gaps between law and practice. The ITUC, Education International (EI), the Trade Union Congress of the Philippines (TUCP) and SENTRO had referred to particular cases, and the Federation of Free Workers (FFW) had a number of cases which it was trying to resolve domestically. As examples of violations of Article 3(2) of the Convention, he said that, while the FFW was organizing tugboat workers in 2012, government agencies had been used to harass union leaders to discourage union organizing. The Special Board of Marine Inquiry in Manila had been used to harass the union president, Jose Emmy Tiongco, of the Malayan Tugboat Officers Association, through an administrative case for allegedly violating marine safety in 2013. Qualified theft charges had also been brought against Tugboat Captain Ruel Guda, as well as Bendell Esquerra, Mark Anthony Orbito and John Mark Trio to destroy their resolve to maintain their union membership, and the case had been dismissed for lack of probable cause in 2014. A case had also been brought against union President Tiongco and 15 others for illegal strikes, not with the DOLE or NLRC, which had jurisdiction over labour disputes, but before the Maritime Industry Authority, at the latter's initiative, despite objections by the union and the fact that there was no verified complaint. The case had later been dropped. Despite the requirement in the AFP Guidelines for clearance from DOLE or the Office of the President before filing criminal information in court on cases arising out of or related to labour disputes, Captain Tajanlangit and Ramil Estoloso, Federation of Free Workers members, had also been indicted for attempted homicide. These cases had subsequently been dismissed after trial for lack of evidence. Similarly, women trade union leaders Jocelyn Nono and Bing Jumamil had been indicted and were facing libel charges for allegedly holding a streamer with a derogatory statement against their employer at a picket line of striking workers. A positive example of the application of the Guidelines had resulted in criminal charges being dismissed against 15 trade unionists in a delivery company and nine trade union members in a bus company, due to lack of clearance from DOLE. Although both workers and employers were involved in the national monitoring body, the latter needed to be funded and given full-time personnel to fulfil its functions effectively of monitoring violations of trade union rights. He also lauded the tripartite legislative proposals to amend the Labour Code in line with the Convention and other ILO standards, while emphasizing that continued lobbying for the adoption of such amendments in law was needed. He concluded by urging the Government to: end killings of trade unionists and stop other trade union rights violations; review the case of Antonio Petalcorin, the killing of whom was in the view of the trade unions related to his initiative of organizing a union; prosecute and punish perpetrators of trade union rights violations; provide adequate funding and capable staff for the national monitoring body; effectively implement the requirement for clearance before filing criminal charges against workers in cases related to or arising out of the exercise of the right to freedom of associa-

tion; remove the harsh punishment of termination of employment for workers involved in illegal strikes or for defiance of the assumption order of the Secretary of Labor and Employment; certify as urgent all tripartite endorsed bills in Congress related to freedom of association to be compliant with ILO standards; and ratify the Labour Relations (Public Service) Convention, 1978 (No. 151).

The Government member of Cambodia, speaking on behalf of the Member States of the Association of Southeast Asian Nations (ASEAN) and the Republic of Korea, acknowledged the efforts made by the Government to address issues pertaining to the application of the Convention and Convention No. 98 and encouraged its continuing technical cooperation with the ILO. The tripartite-endorsed reforms instituted by the Government in response to the 2009 High-level Mission included the establishment of the monitoring and investigation mechanisms, including the National Tripartite Industrial Peace Council – Monitoring Body (NTIPC–MB), the National Monitoring Mechanism (NMM) and the Inter Agency Committee on Extra Legal Killings, Enforced Disappearances, Torture and Other Grave Violations of the Right to Life, Liberty and Security of Persons (IAC); capacity building for national and regional monitoring focal persons, such as the police and the military, the judiciary and prosecution, on the observance of freedom of association and collective bargaining since 2010; as well as reforms of labour justice administration, trade incentives linkage with the observance of labour rights and a creative track of securing high-level compliance with labour standards by transforming the enforcement mechanism into the LLCS. He highlighted the reduction in the number of cases of trade union rights violations as a tangible demonstration of bringing an end to cases of civil liberties and trade union rights violations, and called on the Committee to consider the foregoing efforts and progress, and most especially the commitments made by the Government to align its legal and institutional mechanisms with the requirements of Conventions Nos 87 and 98.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Norway and the Republic of Moldova, emphasized their involvement in the promotion of universal ratification and implementation of the core labour standards in the framework of the Action Plan on Human Rights, adopted in July 2015, and recalled the commitments made by the Philippines within the framework of the GSP+ Agreement and the Framework Agreement on Partnership and Cooperation between the European Union and its Member States, of the One Part, and the Republic of the Philippines, of the Other Part. She noted with deep concern the allegations of violations of freedom of association in the Philippines and, in particular, the killing of trade union leaders, the abduction and arbitrary detention of trade union members and the dramatic rise in false criminal charges against them. Welcoming the establishment by the Government of monitoring entities entrusted with investigating extrajudicial killings, enforced disappearances and torture, she concurred with the Committee of Experts and expressed the firm hope that the established bodies, with the active participation of the social partners, would appropriately investigate all cases, determine responsibilities and punish the perpetrators. Referring to the EU–Philippines Justice Support Programme,

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

Philippines (ratification: 1953)

now in its second phase of implementation, she urged the Government to provide information on the number of cases investigated and the punishments imposed. Furthermore, as indicated in the observation of the Committee of Experts, the Government should take measures to: amend the Labour Code so as to bring it into conformity with the Convention; ensure that House Bill No. 5886 safeguards the right to establish and join organizations of all workers in the Philippines, irrespective of their residence or work permit; and adopt legislation which would guarantee to public sector, temporary or outsourced workers, as well as workers in managerial positions, the right to establish and join organizations to defend their occupational interests. A reasonable minimum membership requirement for establishment of an independent trade union should be determined in consultation with the social partners and a requirement for government permission to receive foreign assistance should be repealed. Relevant legislation should be adopted to give effect to the Government's intention to restrict compulsory arbitration to essential services and to remove penal sanctions for the exercise of the right to strike.

The Worker member of Japan, also speaking on behalf of the International Transport Workers' Federation (ITF), said that trade unions should have the right to organize their activities without interference by the Government. He shared the deep concern expressed by the Committee of Experts with regard to numerous serious violations of trade union rights, including harassment, disappearances and killings of trade unionists. He considered that the current situation in the country could discourage foreign investment and urged the Government to investigate the murders.

The Employer member of the United Kingdom, referring to the observation of the Committee of Experts in relation to the right to strike, recalled that there was no consensus of the social partners as to whether Convention No. 87 included the right to strike. He pointed out that the Government group considered that the right to strike was to be regulated at the national level and expressed concern about the fact that the Committee of Experts continued to make observations regarding the right to strike in the context of Convention No. 87. He considered that such observations, which were intended to facilitate the work of the Conference Committee, the apex of the ILO supervisory machinery, risked being misinterpreted. He therefore hoped that the Committee of Experts would reflect upon the tension that such observations created and the importance of the harmony of the social partners and the Government group across the ILO supervisory system.

An observer representing Public Services International (PSI) recalled the previous discussion of this case in 2009 and said that the "soft" approach in terms of government initiatives and the availability of ILO assistance had not delivered the expected results, as the case was being discussed again. The core issues of labour law reform and non-compliance with the Convention remained at stake. Referring to the statement made by the Worker member of the Philippines, she hoped that the promises made by the incoming President would be fulfilled in relation to ending unlawful short contracts of employment and upholding the right of workers to security of tenure. At the same time, she recalled that the change of Government would lead to the reinitiation of complex negotiations and referred to ambiguous statements by the President-elect during the electoral

campaign on the role of labour unions that sounded more like threats than an invitation to cooperation. Public Services International affiliates had cooperated in good faith with the former Government and encouraging results had been achieved in the campaign to ratify Convention No. 151. This had primarily been done through the work of the social partners in the public sector, and she suggested that the results achieved in the public sector could serve as good practice for correct industrial relations in the private sector as well. Recalling the strong final statement made by the Employer members seven years ago regarding the need to take urgent action for the implementation of the Convention in law and practice, she expressed the hope that ILO constituents would work together to produce tangible change in the Philippines.

The Worker member of the Republic of Korea drew the Committee's attention to the infringement of freedom of association in export processing zones (EPZs). Despite the fact that the Department of Labor and Employment had promised to amend the Labour Code and to investigate extrajudicial killings of trade unionists in the wake of the ILO High-level Mission in 2009, violations of freedom of association, union busting and employer interference still prevailed, especially in EPZs. The Korean Confederation of Trade Unions (KCTU) had been closely monitoring the situation of workers' rights in EPZs, especially in Cavite, the biggest EPZ in the country employing around 60,000 workers, and Laguna. According to interviews with workers carried out in 2014 and information reported to the KCTU and other Korean NGOs, workers often faced oppression when they tried to establish a union. For example, according to a worker from a Korean company in Cavite, on 24 June 2014, workers had submitted a petition for certification of election to the DOLE to set up an independent trade union. Although 95 out of 258 workers had initially signed the petition, 35 had withdrawn their signatures after the company had threatened to move out if the union was established. The company had also coerced people to sign statements attesting that they would not join the union promising in return financial aid for typhoon damage. According to another worker from a different company, managers interfered whenever workers tried to set up a union, sometimes by promoting workers or paying them more. Freedom of association was thus in danger and the connivance of state agencies, especially the DOLE and the Philippines Export Zone Authority (PEZA), in union busting and management interference in union establishment should be seriously addressed. The reform of the Labour Code, as recommended by the Committee of Experts, should be completed as a matter of urgency to ensure that all workers could exercise freedom of association rights without any fear of interference.

The Government member of India noted that the Government was committed to addressing all issues pertaining to the application of Conventions Nos 87 and 98 and recalled that, following the 2009 ILO High-level Mission, a number of substantial reforms had been undertaken to align national policies and measures with international obligations. They included capacity building and awareness raising among law enforcement agencies and other stakeholders, as well as an increase in the number of compliance officers. These measures had had a positive effect in upholding the enforcement of labour rights and protection, including

through the promotion of social dialogue. The Committee should take into account the progress achieved in its conclusions and the Government should continue its long-standing cooperation with the ILO and avail itself of its technical assistance, as appropriate.

The Worker member of Indonesia drew the Committee's attention to the massive practice of labour contractualization in the Philippines, both in the public and private sectors, which deprived workers of security of tenure, benefits and the right to organize, and therefore, excluded them from collective bargaining. It was alarming that regular employment in government offices was increasingly being replaced with contractual work. The Philippines had currently had almost 20 million contractual workers out of 42 million workers. Under the scheme of contractualization, a worker was hired for five months, fired, and then rehired for another five months by a subcontractor, who avoided paying social and health contributions for which regular employees were entitled. The five-month contract was known as contractualization, 5-5-5 or "endo" (end of contract). This practice violated the labour law that required employers to regularize workers after six months of continuous service and give them full benefits, such as health insurance, social security coverage and housing. The links between precarious employment and the increasing numbers of the poor in the Philippines were clear. Contractualization and agency labour had also weakened the trade union movement through the reduction of permanent workers, who were the traditional basis of trade unions. The latter were facing difficulties in organizing contractual workers, who feared losing their jobs. Labour's bargaining power was undermined by the preference of employers to use short-term workers. Currently, less than 7 per cent of the Philippine's total labour force was unionized, and even fewer workers were covered by collective agreements (about 228,000 workers in 2013). Attempts by the Federation of Free Workers (FFW) and other unions in the Philippines to organize contractual workers in shopping malls had failed because of strong union busting mechanisms by management. Despite such mechanisms, the Federation of Free Workers continued to organize workers to fight precarious work and the massive practice of contractualization in the country. She urged the Government to bring its law and practice into line with Convention No. 87 and to ratify Convention, No. 151.

The Worker member of Burkina Faso voiced concern at the large number of individual cases that concerned Convention No. 87 and recalled that the issues before the Conference were all based on respect for the social thermometer represented by the trade union movement and for the freedom of association and right to strike, which were its underlying features. Without them, speaking of trade unionism would be little more than an illusion. The situation in the Philippines was alarming and the Committee of Experts was to be congratulated on its work, as well as governments and employers that complied with their international commitments. In an ultraliberal world, in which the system was continually endeavouring to overturn the balance, no social gain was stable or secure. Unless they were counterbalanced by standards, power and wealth offered fertile ground for social injustice and war. He concluded with the observation that, if commitments and promises were to have any meaning, education was a fundamental

factor in creating a world in which social relations were genuinely humane.

The Government representative, noting the statements and expressing appreciation of the dialogue, emphasized that, while the reforms were not complete, the bills were ready, had the support of all the social partners in the NTIPC and would be pursued by the new Congress. As to the criminal cases related to the exercise of labour rights, there was a shared will to end impunity and continue capacity-building efforts, strengthening the powers and resources of the NTIPC-MB to conduct independent reviews to assist the police and prosecutors. As to the issue of contractualization, the Government did not tolerate illegitimate contracting and subcontracting to circumvent labour laws. Pending the adoption of the three bills already prepared on the subject, the Government was strictly applying Department Order 18-A, which clarified allowable and prohibited practices, was supported by employers and workers and had led to the regularization of workers in cases of violations. The discussion encouraged the Government to keep focusing on addressing the recommendations of the 2009 High-level Mission, which had already borne results. As to the right to strike, the concerns had become practically moot as the assumption of jurisdiction had been almost discontinued, as the Government proactively facilitated conciliation between the parties to foster settlement. She noted that the incoming administration would be fully briefed on the measures taken since 2009 and the comments made to address any remaining gaps concerning the implementation of the Convention in law and practice.

The Worker members emphasized that a climate of violence, including the murder of trade union leaders, constituted a serious obstacle to the exercise of trade union rights. While monitoring mechanisms had been established to address anti-union violence, it was clear that they had been ineffective in preventing the number of trade unionists or ending impunity. The Government must redouble its efforts and, together with trade union representatives, find effective measures to protect trade unionists at risk and to ensure that investigations were undertaken to identify, prosecute and punish the perpetrators. They were deeply troubled by the various means by which workers were prevented from exercising their rights, either through exclusion in the labour laws, the use of short-term contracts or the misclassification of the employment relationship. All workers should be able to enjoy the right to organize. The Government must ensure this right in law and in practice, as well as the right to bargain collectively with the employer with whom they had an employment relationship. Violations of freedom of association in EPZs had been a serious problem for many years and, despite the regular attention brought to this matter, the situation had not improved. The Government should act without further delay to guarantee the exercise of freedom of association in EPZs. With regard to the legislative issues raised by the Committee of Experts in relation to the right to strike, including the imposition of compulsory arbitration in sectors that were not essential in the strict sense of the term and the possibility of imposing penal sanctions for participating in a peaceful strike, the Worker members recalled that no one should be imprisoned for participation in peaceful industrial action. With reference to the observations of the Committee of Experts, they urged the Government to take the

necessary measures to bring to an end the impunity in relation to acts of violence against trade unionists and to institute independent investigations so as to ensure that the intellectual and material perpetrators of the crimes were arrested, tried and, if found guilty, appropriately sanctioned. Sufficient funds should be allocated and staff hired for this purpose. They further urged the Government to: take adequate measures to prevent other trade unionists from being murdered, including through protection schemes for trade unionists who were considered to be at risk by an impartial body; ensure that all workers, without distinction whatsoever, including migrant workers, those in managerial positions or with access to confidential information, firefighters, prison guards and other public sector workers, temporary and outsourced workers, as well as workers without an employment contract, could exercise their right to freedom of association; take effective measures to prohibit the intentional misclassification of employees, which deprived them of the free exercise of the right to organize; ensure that the Human Security Act was not used to suppress legitimate trade union activities; reduce the minimum membership requirement for the registration of a union, federation or confederation; allow trade unions to receive foreign financial assistance, including from an international union, without prior permission; and amend sections 263(g), 264 and 272 of the Labour Code. A direct contacts mission should visit the Philippines this year in order to follow up on these recommendations.

With regard to the right to strike, the Worker members emphasized that the Employer members had once again mis-characterized the following statement made by the Government group in February 2015: “The Government group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers’ interests, cannot be fully realized”. While not an absolute right, it was not acceptable that the scope of the right was only regulated at the national level, as that would render meaningless the remainder of the statement by the Government group. As the Employer members recognized that the Committee of Experts and the Conference Committee were the twin pillars of the ILO supervisory system, the Worker members did not understand the position of the Employer members that governments had no obligation to respond to the Committee of Experts, but only to the political direction given to its report by the Conference Committee. That would render the work of the Committee of Experts meaningless. It would also lead to the wrong interpretation that the Conference Committee was superior and somehow supervised the work of the Committee of Experts. Finally, the Worker members did not understand how the observations of an independent body such as the Committee of Experts, which was entrusted with evaluating the application of the Convention by member States, could be questioned as unbalanced, when they expressed concern with the Committee of Experts when the Convention was not applied.

The Employer members took note of the comprehensive discussion of the case and indicated that there was no doubt that the issues and allegations were real. They supported the call by the Worker members for action and most of the

recommendations made. They also acknowledged the Government’s statement that those issues needed to be considered, taking into account the background of each case, as no case was identical to another. Also, without denigrating the role of the Committee of Experts, they observed that the Conference Committee was the final body which based itself on the facts reported by the Committee of Experts. While the Conference Committee could not perform its work without the report of the Committee of Experts, the latter should not formulate conclusions or directions in each case, which were a matter for the Conference Committee. They concluded by stating that, in the absence of a unanimous view, the issues regarding Convention No. 87 were being taken forward in the agreed way and congratulated the Government for the measures that had been taken, inviting it to consider any technical assistance that could be offered.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with concern the numerous allegations of anti-union violence and the lack of progress in the investigation of many such cases. The Committee noted that the Government has introduced legislative reforms to address some of the Committee of Experts’ concerns but regretted that they were not adopted and urged the Government to bring the law into compliance with the Convention.

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

- **undertake appropriate investigations on the alleged cases of violation of trade union rights in the near future with a view to establishing the facts, determining responsibilities and punishing the perpetrators;**
- **ensure that sufficient funds and staff are available to effectively carry out this work expeditiously so as to avoid a situation of impunity;**
- **establish monitoring bodies and provide regular information on these mechanisms and progress on the cases assigned to them;**
- **institute adequate measures to prevent the repetition of crimes against trade unionists, including the institution of protection schemes for trade unionists that are determined to be at risk by an impartial body;**
- **bring national legislation into conformity with the Convention with regards to the requirement of government permission for foreign assistance to trade unions and to reduce the registration requirement from ten to five duly recognized bargaining agents or local chapters;**
- **amend the legislation to allow currently excluded classes of public servants to associate freely;**
- **take effective measures to prohibit the intentional misclassification of employees so as to deprive them of the right to freedom of association under the Convention.**

The Government should accept a direct contacts mission this year in order to follow up on these conclusions.

The Government representative thanked the Committee for its comments, which were constructive and useful for assisting the Government to address the gap in the application of the Convention. She made a reservation as regards the request for a direct contacts mission, however, as she was unable to bind the incoming administration, which would assume office at the end of the month, to such a commitment.

SWAZILAND (ratification: 1978)

A Government representative, the Minister of Labour and Social Security, emphasized the close collaboration her Government had had with the ILO and the social partners since its appearance before the Committee in 2015. She expressed appreciation for the support and technical assistance received from the ILO, in particular in relation to the preparation of regular reports to the ILO and the implementation of the recommendations made by the Conference Committee and the Committee of Experts. She stated that her Government had prioritized implementation of the recommendations, and that the progress report in this regard had been a standing agenda item at the monthly meetings of the National Steering Committee on Social Dialogue. These monthly meetings, together with at least 15 extraordinary meetings held by the National Steering Committee, had resulted in progress on the implementation of the recommendations. Firstly, with regards to the Conference Committee's request to release unconditionally Mr Thulani Maseko and all other workers imprisoned for having exercised their rights to free speech and expression, she was pleased to report the release of Mr Thulani Maseko in June 2015 after his appeal, heard by the Supreme Court. Further, she categorically stated that there were no workers imprisoned for the abovementioned allegations. Seven cases communicated by the Worker members at the 2015 session of the Conference were investigated and the individuals concerned were found implicated in, charged with, or convicted of, serious criminal activities, including petrol bombing, attempted murder, murder and promoting acts of terrorism with no lawful connection to worker issues. The results of the investigations were contained in the regular Government report of last year and were discussed by a delegation to the ILO in Geneva, in September 2015, and once again with the ILO Pretoria Office, the Southern Africa Trade Union Co-ordination Council (SATUCC) and the International Trade Union Confederation (ITUC) delegation in Swaziland, in February 2016. Secondly, she confirmed that all workers' and employers' organizations in the country were fully assured of their freedom of association rights in relation to registration issues, in particular in respect of the registration process of the Amalgamated Trade Union of Swaziland (ATUSWA), without delay. She stated that ATUSWA, the Federation of Swaziland Trade Unions (FESWATU) and other trade unions had been registered. Issues of compliance with the law faced by ATUSWA had been resolved. Furthermore, she provided information regarding the activities of several tripartite structures that involved the full participation of the tripartite partners: the National Steering Committee on Social Dialogue had been held to discuss and review, *inter alia*, the Public Order Bill, the Suppression of Terrorism (Amendment) Bill, the Public Service Bill, the Correctional Services Bill, as well as the Code of Good Practice on Protest and Industrial Action; the Wages Councils had had several meetings to review terms and conditions of employment for employees in the various sectors of the economy; the Labour Advisory Board had held at least ten meetings and was working with a consultant from the ILO to finalize a new employment bill. The Board considered notices for protest action issued by the Trade Union Congress of Swaziland (TUCOSWA) in terms of section 40 of

the Industrial Relations Act (IRA), which resulted in a peaceful demonstration in February 2016. Among the 27 tripartite structures, the following were mentioned: the Training and Localisation Committee; 18 wages councils; the Governing Body of the Conciliation, Mediation and Arbitration Commission (CMAC); the Board of the Swaziland National Provident Fund; the Workmen's Compensation Medical Board; the Industrial and Vocational Training Board; Pneumoconiosis Medical Board; and the Essential Services Committee. In respect of the Conference Committee's recommendation to amend section 32 of the Industrial Relations Act to eliminate the discretion of the Commissioner of Labour to register trade unions, she indicated that this matter was discussed in the National Steering Committee on Social Dialogue in February 2016, after a formal submission made by TUCOSWA in November 2015, as well as in May 2016, after which this submission had been referred to the Labour Advisory Board for its consideration. With regard to the recommendation to investigate arbitrary interference by the police in lawful, peaceful and legitimate activities of trade unions, the Government representative indicated that the Ministry of Labour and Social Security had held consultations with the police in this regard and established strong lines of communication to deal with issues as they were reported, aiming to avoid potential conflict. She further mentioned that, while organizations were given autonomy and independence when they participated in lawful, peaceful trade union activities, the police had a duty to maintain law and order, and protect human life and property. In this connection she underlined that the implementation of the Code of Good Practice and Industrial Action had improved the handling of these issues by the police and social partners. For example, a peaceful protest march held by TUCOSWA on 25 February 2016 and May Day Celebrations held by TUCOSWA and FESWATU all took place without incident. The cooperation between the police and social partners had significantly improved, and the Government had further requested technical assistance of the ILO to conduct workshops on the operational aspects of the Code, with an initial workshop to be conducted on 29–30 June 2016. Reiterating the importance of relationship building, on the one hand, and the duty of the police to maintain order and protect public safety, on the other, she pointed out that there had been a high incidence of acts of violence by unions against other workers, employers and police in 2014. This situation had improved in 2015 and 2016, with the exception of a case involving a threat made to the Commissioners of the Conciliation, Mediation and Arbitration Commission by a TUCOSWA affiliate during a strike ballot on 12 May 2016. With regard to the 1963 Public Order Act and the Suppression of Terrorism Act, she stated that the Public Order Bill had been drafted with ILO assistance and in consultation with social partners and other stakeholders. It was tabled before Parliament and was awaiting the conclusion of the legislative process. The Suppression of Terrorism Amendment Bill had been completed in consultation with social partners, addressing three main issues: amending the definition of a "terrorist act"; subjecting the Minister's decision to determine a specified entity or terrorist organization to judicial review; and ensuring compliance with United Nations resolutions to combat global terrorism. The Bill was a product of consensus by the National Steering Committee

on Social Dialogue and was submitted to Parliament. She informed the Committee that the Code of Good Practice was adopted and published as Legal Notice No. 164 of 2015. Furthermore, two bills had been tabled before Parliament: the Public Service Bill, reviewed by the National Steering Committee on Social Dialogue, referred to the Labour Advisory Board and approved by the Cabinet; and the Correctional Services Bill, reviewed by the Labour Advisory Board and approved by the Cabinet.

Finally, she indicated that her Government had accepted ILO technical assistance regarding the legislative reforms and implementation of the recommendations. At the initiative of the Government, a joint mission of the ILO, ITUC and SATUCC had visited the country in February 2016, which had allowed them to obtain information at first-hand on the ground. The Office had prepared a compliance report for four pending bills; the assessment was received on 24 of May 2016. She underlined that rushing the bills without the feedback from the ILO and other stakeholders would have been considered counter-productive, defeating the purpose of amending the legislation in the first place. The Government representative concluded her speech by expressing her appreciation to the ILO and the social partners who worked with the Government in an effective tripartite alliance to achieve the progress made. She also thanked the Africa group, the Southern African Development Community (SADC) – Employment and Labour Sector and Private Sector Forum – and SATUCC.

The Employer members recalled that this case had been discussed last year, and that the Conference Committee had then formulated several recommendations to the Government. They noted with satisfaction that the Government had acted upon the first recommendation by releasing Mr Thulani Maseko, TUCOSWA's lawyer. They further noted the positive developments with regard to the registration of unions, and urged the Government to provide information on the steps taken to register ATUSWA, as requested by the Conference Committee in June 2015. They welcomed the concrete measures implemented by the Government in respect of the legislative issues previously raised, including the publication of the Public Service Bill in the Gazette, and the production, through social dialogue and with the assistance of the Office, of a draft bill of the Public Order Act. They noted the Government's information on the steps taken to prevent arbitrary interference by the police, and to implement the Code of Good Practice for protests and industrial action, which had resulted in the improved handling of protests. The peaceful observance of May Day by trade unions this year, for instance, demonstrated an improved relationship between the police and workers' groups. In concluding, they affirmed that the Government had made genuine efforts to improve the application of the Convention. Noting nevertheless that work remained to fully implement all of the recommendations, they encouraged the Government to continue in its efforts, and to continue engaging the social partners and seeking the assistance of the Office in doing so.

The Worker members stressed that this was the seventh consecutive time that this case was discussed in the Conference Committee. In total, the country had been examined 14 times with respect to the Convention, and had been placed in a special paragraph four times in recent years (2009, 2010, 2011 and 2015). The ILO had also conducted

two high-level missions to the country in the previous six years, the last of which, in 2014, recorded that no progress had been achieved within the past decade. In spite of the technical assistance the ILO had provided for the reform of the repressive legal framework, within the framework of the Universal Periodic Review by the United Nations Human Rights Council concerning Swaziland in 2016, it had been submitted that no significant progress had been achieved in the area of freedom of association since 2011. They recalled that a technical report requested by the 2010 ILO high-level mission had criticized the fact that the police had applied the Suppression of Terrorism Act, in a manner that restricted peaceful and legitimate trade union activities. The definition of "terrorist act" was very broad and could include conduct that was non-violent or considered to be driven by an intent to incite fear. Article 2(1) of the Act defined a terrorist act as "an act or omission which constitutes an offence under this Act or within the scope of a counter terrorism convention." Article 5(3)(b) of the Suppression of Terrorism Act provided that "*any person who intentionally or without lawful excuse sends or communicates to another person or institution a false alarm or by any deed causes a false alarm or unwarranted panic*" was guilty of an offence and upon conviction liable to serve a term in prison not exceeding three years or a fine imposed by a court. The Government had agreed to amend this Act in the discussion of this case in 2013, yet to date no amendments had been undertaken. Equally the Government had taken no action, for some 20 years, to amend the King's Proclamation of 1973. The same applied to the Public Order Act, in respect of which the Committee of Experts had been requesting amendments since 1998. The Public Order Act entitled public authorities "*to control public gatherings*", and to "*give such orders as they may consider necessary or expedient*", which was found to have been used to repress lawful and peaceful trade union activities. They recalled that workers in Swaziland who engaged in peaceful, lawful and legitimate trade union activities were constantly subjected to police intimidation and violence, leading to severe injuries in some instances. The police justified their interference on grounds laid down in the Urban Act, under which unions were required to request a non-objection certificate from the police, two weeks prior to protests planned in urban areas where workplaces with union representation were located. Mr Mcolisi Ngcamphalala, member of the Swaziland National Association of Teachers (SNAT) and Mr Mbongwa Dlamini, Manzini Regional Chairperson of SNAT, were arrested in February 2016 and charged with obstruction for having participated in a protest action called by the public sector unions to demand the publication of a report on the public sector pay review. Their homes were also raided on 4 February 2016 by Swaziland's serious crimes unit, also known as the Swazi anti-terrorism squad. They were then held in custody before being granted bail of SZL1,000 (US\$60) each, pending trial. They deplored that, to date, no police officer had been subjected to disciplinary procedures for having intimidated workers or having used disproportionate violence. Mr Muzi Mhlanga (second deputy of the General Secretary of TUCOSWA and SNAT General Secretary) had filed a demand for compensation as a result of a police beating in February 2015, when he refused to hand over his phone to the police who had intervened in an internal trade union

meeting. They stated that the wide discretion afforded to the Commissioner of Labour to register trade unions under section 32 of the Industrial Relations Act continued to constitute a hindrance for workers in applying the right to establish trade unions. In this regard they added that the Government had no reason to congratulate itself for the recent registration of TUCOSWA and ATUSWA, as these cases in fact demonstrated the arbitrary and inconsistent procedures of the registration of trade unions. When TUCOSWA was de-registered in April 2012, and denied registration for another three years, the Government had justified this decision before the Conference Committee on the ground of a “lacuna” existing in the Industrial Relations Act. However, Swazi members of Parliament who spoke before the European Parliament in September 2015 had stated that TUCOSWA had been de-registered for demanding multi-party elections, and for having links with the political party People’s United Democratic Movement (PUDEMO). In the case of ATUSWA’s application for registration, in September 2013, the Commissioner of Labour had placed numerous requirements which went beyond the statutory requirements and what was requested from other unions for their registration. For example, ATUSWA was required to delete the term “amalgamated” in the union’s name and to provide letters from the employers of the founding members of the trade union to prove their employment. While welcoming the registration of ATUSWA and TUCOSWA, they expressed concern at the lengthy registration procedures, which constituted a serious obstacle to the establishment of trade union organizations. Moreover, the contradictory statements by high-level officials made it clear that the Government abused the wide discretion afforded by the Industrial Relations Act by using arbitrary and unclear criteria for trade union registration. They observed that, in July 2015, both Mr Thulani Maseko, TUCOSWA’s lawyer, and Mr Bheki Makhubu were released, but only after having completed their entire sentences. Mr Mario Masuku, President of PUDEMO, and Mr Maxwell Dlamini, Secretary-General of the Swaziland Youth Congress, had been arrested and charged under the Suppression of Terrorism Act, after delivering a speech during the 2014 May Day celebrations organized by TUCOSWA. While they had been released on bail, they continued to face criminal charges and were maybe facing up to 15 years of hard labour. Both activists attended the TUCOSWA congress in 2016, yet were not permitted to address the workers due to their bail conditions. It was troubling therefore that these limitations remained on the exercise of free speech, which was a sine qua non for the right to freedom of association, and that heavy criminal charges continued to be employed to suppress debates during workers’ assemblies. They called for concrete legal changes to be urgently adopted so as to prevent future serious violations of freedom of association. It did not suffice to merely provide reassurances, as the Government had done, that bills had been tabled before Parliament.

The Employer member of Swaziland stressed that it was important to commend the social partners for the dedication they had demonstrated in working to improve the country’s compliance with the Convention. A new era, characterized by robust social dialogue and a shared commitment to producing tangible results, had emerged in the last 12 months. This was demonstrated by the fact that the

Minister of Labour and Social Welfare had undertaken two missions, to the ILO in Geneva and to the ILO Regional Office for Africa, respectively, in order to gain a deeper understanding of the challenges. The Minister subsequently reported back to the social partners, thus enabling them to gain a better understanding of the actions the country needed to give priority to. The acceptance of the ILO tripartite high-level mission to the country in February 2016 represented further proof of the partners’ shared dedication to making progress on the application of the Convention. With regard to the Code of Good Practice on protests and industrial action, he noted that the Code was being successfully implemented, as several trade union events had been held in 2016 without interference from the authorities. Despite this progress, extensive awareness-raising activities remained necessary, for both security forces and workers’ groups to ensure a thorough shift in mindset and behaviour with respect to the holding of protests. In respect of the four pending bills, he emphasized the involvement of the social partners in the legislative process. In particular, public inputs to the revision of the Suppression of Terrorism Act were being made through the Parliamentary Portfolio Committee. He underlined in this regard the importance of the ILO input received by the social partners on 20 May 2016. Parliament would continue giving the Bill the priority and urgency it deserved, ultimately enabling compliance with the Convention. He recognized that sound and comprehensive amendments to the Suppression of Terrorism Act and the Public Order Act would enable potential consideration of Swaziland for re-admission to the African Growth and Opportunity Act (AGOA) benefits, driving job creation in the country. In this regard, he committed to continuing to actively participate in the tripartite forums and lobby Parliamentary Portfolio Committees towards finalizing and passing the bills concerned. Regarding the amendment of section 32 of the Industrial Relations Act to eliminate the discretion of the Commissioner of Labour to register trade unions, he indicated that this matter was pending before the National Steering Committee on Social Dialogue and the Labour Advisory Board for due deliberation. Furthermore, the employers had raised a point of principle on the issue of registering ATUSWA during the ILO high-level mission in February 2016. The registration of worker and employer entities should be based on a certain set of requirements in line with defined practice and principle. If requirements were met, entities should have been registered. He was convinced that the Government’s attitude had genuinely changed, as demonstrated by the abovementioned activities and the results achieved. The social partners were therefore encouraged to fully utilize all national social dialogue forums available to them to ensure that ILO procedures were availed of only as a last resort. Underscoring the employers’ desire for an environment conducive to job creation and economic growth, he emphasized that such an environment could only be realized by a high degree of collaboration among the social partners. In this respect he urged that the positive gains achieved so far with respect to social dialogue continue to be built upon, so that dialogue could be used as a means for not only addressing issues of compliance with international obligations but also serve as a platform for addressing such issues as working conditions, poverty eradication and job creation.

The Worker member of Swaziland recalled that this case had been discussed by the Committee on no less than 15 occasions, including the present one, which clearly attested to the seriousness and the persistence of the issues respecting freedom of association. On the issue of police harassment and brutality, he pointed out that although two events had indeed been organized by workers without police interference, this did not mean there had been no reported cases of interference by the police in workers' activities in 2015. Several instances of police interference had, in fact, occurred, including the following: (1) in February 2016, a TUCOSWA march to deliver a petition to Parliament was blocked, pushed to a distance of 2 kilometres away from Parliament and eventually dispersed; (2) in February 2016, TUCOSWA was also prevented from staging a protest march, on grounds that the King was hunting wild game in this period; (3) in April 2016, the police twice invaded the offices of the Swaziland Union of Financial Institutions and Allied Workers (SUFIAWU) in an attempt to dissuade the latter from continuing with a planned strike, and also prevented SUFIAWU's General Secretary from supporting a protected strike by the Swaziland Development Finance Corporation (FINCORP) employees; (4) in April 2016, the Commissioner of Police issued a statement that the police should treat trade unionists as a "shishi" (a type of animal considered as vermin) and kill them upon sight; and (5) in June 2016, a trade unionist, Gladys Dlamini, was badly injured by the police and almost lost an eye. In addition to these violations, two trade unionists – Mr Mario Masuku and Mr Maxwell Dlamini – were prevented from speaking at the 2016 May Day rally after having been arrested at the 2015 event. The Government continued to report, year in and year out, on various measures that fell short of actually implementing the changes requested by the Committee, such as tabling bills before Parliament. He urged the Government to ensure that the bills referred to by the Government, particularly those concerning the Public Order Act and the Suppression of Terrorism Act, be passed by July 2016, and that the entirety of the other recommendations issued by the Committee be implemented without further delay.

The Government member of Botswana, speaking on behalf of the member States of the Southern African Development Community (SADC), stated that the Government briefed the member States and social partners of the SADC at their tripartite meetings on 12 May and 1 June 2016 on progress made with regard to the implementation of the Convention. He noted with satisfaction the significant progress made by the Government in addressing the issues to comply with the Convention, and noted in particular, the tabling in Parliament of amendments that had been brought to the legislation. Numerous achievements were made in order to create a conducive environment for effective social dialogue, which was evidenced by the fact that tripartite social dialogue structures were operational. He also noted that the problems related to the registration of federations of trade unions had been resolved and ATUSWA, as well as FESWATU, had been registered. Recalling that there were outstanding issues that needed to be addressed, in particular the need for Parliament to pass various bills in an expeditious way, he expressed confidence in the Government's commitment to address those rapidly. He stated that

the SADC encouraged the sharing of lessons and experiences by member States, and regularly reviewed and monitored the implementation of regional instruments such as the SADC Protocol on Employment and Labour, 2014, and the SADC Decent Work Programme 2013–19, which prioritized compliance with international labour standards. He therefore encouraged and supported the efforts of the Government and social partners to address the outstanding issues to ensure full compliance with the Convention, and urged all stakeholders in Swaziland to work together in this regard. Finally, he commended the ILO for its technical support to the Government and social partners to address these issues.

The Government member of the Netherlands, speaking on behalf of member States of the European Union, indicated that Albania, Iceland, Norway, the member States of the European Economic Area, as well as the Republic of Moldova and Georgia aligned themselves to this statement. He emphasized that the promotion of the universal ratification and implementation of core labour standards, including this Convention, was part of the European Union Action Plan on Human Rights adopted in 2015, including the protection of human rights defenders including social partners. He recalled the commitment that had been made by the Government under the Cotonou Agreement – the framework for Swaziland's cooperation with the European Union – 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, he emphasized that they had engaged in a constructive dialogue with the Government and non-state actors and were monitoring the progress achieved. Noting that this case had been discussed a number of times at the Committee, he was pleased to acknowledge a number of positive steps taken by the Government since June 2015. He welcomed the unconditional release, soon after the Committee's discussion, of Mr Thulani Maseko, and welcomed the registration of the FESWATU in June 2015 and, recently, of the ATUSWA. He also acknowledged progress on legislative and administrative matters with ILO assistance, and strongly encouraged the Government to complete its legislative reform, including the amendment of the Suppression of Terrorism Act in consultation with social partners, in order to bring its legislation into compliance with international standards. He expressed the hope that all outstanding issues would be addressed promptly, so as to ensure full compliance with the Convention. He reiterated his readiness to cooperate with the Government and the people of Swaziland to promote development, including the full enjoyment of all human rights in the country.

The Worker member of Zimbabwe, speaking on behalf of the Southern African Trade Union Co-ordination Council (SATUCC), recalled that in 2015 the Committee had requested that its recommendations be implemented in full consultation and collaboration with the social partners. In spite of this, the Government had in fact continued to undermine TUCOSWA in its attempts to exercise its trade union rights. Social dialogue, moreover, continued to be conducted in an environment that in all respects remained

hostile to trade unions. Such hostility was evident by statements made by the police, to the effect that trade unions were monsters that needed to be crushed, and the fact that the trade unionists, Mr Mario Masuku and Mr Maxwell Dlamini, had been arrested and subjected to grossly unfair conditions of bail. He stated that the delayed and difficult process TUCOSWA had experienced in getting itself registered attested to the Government's lack of true commitment to social dialogue. Indeed, social dialogue at the national level was not consciously and genuinely cultivated. This lack of commitment was further demonstrated by the Government's usual pre-Conference mounting of largely formal measures that were intended to convey the illusion of enacting real changes. He concluded by stressing the importance of ensuring social dialogue not only at the national level, but at all levels, including within enterprises. The national situation, in which employers and the Government created and promoted sweetheart unions, was detrimental to the growth of genuine, representative unions, and thus detrimental to the realization of genuine social dialogue.

The Employer member of Zimbabwe supported the statement made by the Employer spokesperson regarding the exhaustive examples of advancements demonstrated by Swaziland. He congratulated the Government on the progress made and acknowledged the need for additional efforts. The report submitted by the Government confirmed that the ILO missions were not being wane in terms of willingness of the counterparts to comply with the ratified ILO standards. The Government should be encouraged further to pass the pending Bills without further delay. The registration of trade unions should be based on the standardized procedures, in line with the Convention. In case the requirements were not to be met, the registration should not be possible. The Government should fully utilize social dialogue, and address to the ILO forum as the last resort.

The Worker member of the United States deplored the lack of progress in the present case. In keeping with its strategy of years past, the Government had once again taken only measures of a superficial nature, by proposing amendments to the laws with no intention of passing the said amendments, much less implementing them. These proposed amendments, furthermore, were still not in conformity with the Convention. Also of particular concern was the failure of the proposed amendments to comply with the requirements of the AGOA – specifically the eligibility benchmarks contained therein which required full guarantees of the exercise of freedom of association. This failure to enact the necessary legislation resulted in the continued denial, to Swaziland, of preferential access to the US market under the AGOA, to the detriment of the nation and particularly the nation's workers. With regards to section 2 of the Suppression of Terrorism Act, she stated that while the Government's proposal to include the words "by violent means" was a welcome one, further amendments were necessary to clarify the definition of terrorism; definitions of "lawful activities" and "lawful organizations" were also needed. She also noted with concern that the overly broad definition of a terrorist group could serve as a means of suppressing trade union activity. She underscored that dangerous ambiguities also existed in the Government's proposed amendments to the Public Order Act. The

ground on which meetings and gatherings could be prohibited were vague and overly broad, which was tantamount to giving the authorities virtually complete discretion to quash any union gathering. The penalties for violations of the Act, including even minor offences were overly harsh. For instance, failure to provide seven days' notice for a public meeting was punishable by a fine and a one-year term of imprisonment. She concluded by urging the Government to immediately enact the amendments necessary for bringing the legislation into conformity with the Convention.

The Government member of South Africa fully endorsed the statement made on behalf of the SADC by the Government member of Botswana and highlighted the positive spirit of the social partners in the region, the SADC Private Sector Forum, and the enthusiasm and role played by the SATUCC and ITUC, which remained critical in the positive developments and notable progress in Swaziland. Acknowledging the challenges the country had faced with regard to compliance with the Convention, the speaker observed that in 2015, the authorities had faced their situation with renewed vigour and commitment, as evidenced by the amendment of the Industrial Relations Act to facilitate the registration of employers' and workers' federations. These registrations had led to the reconstitution of all tripartite social dialogue structures and had given a voice to the social partners. The speaker thanked the ILO for the technical assistance it had provided to Swaziland with regard to the legislative reform process, and in particular its support in the amendment of the Public Order Act. The assessment of the compliance of the amendments with the international labour standards was a crucial step in ensuring that the said amendments effectively addressed the shortfalls and gaps in the legislation. Following a recommendation of the ILO, ITUC and SATUCC during a February 2016 mission, the authorities had also submitted the Suppression of Terrorism Act to the social dialogue structures for review and discussion. In the framework of the SADC, the speaker supported and encouraged Swaziland to continue its collaborative efforts. This tripartite position was a testimony of the new spirit of cooperation in Swaziland in pursuit of decent work and respect for fundamental principles and rights at work. The Committee was urged to provide assistance to the country by letting it complete the legislative reform work it had begun without the onerous burden of being included in the special paragraph.

The Worker member of Senegal, speaking on behalf of the members of the Organization of Trade Unions of West Africa (OTUWA), expressed regret about the lack of progress made in this case. Since 2012, the Government had failed to report on the progress made concerning the final adoption of the Public Service Bill and its alignment with the provisions of the Convention relating to public service trade unionists. TUCOSWA was still waiting for Parliament to hold consultations with the general public and stakeholders, as was the usual procedure. Swaziland's trade partners had expressed their concern regarding certain provisions of the Bill. He condemned the violation of the rights of public servants, as established in the labour legislation and the Constitution, in relation to freedom of association, a violation which contravened the ILO Conventions. TUCOSWA and its public service affiliates had

written to several institutions, including Parliament, to request a hearing, but had been unsuccessful. Despite the fact that the Government was attempting to present regressive measures as signs of progress, particularly with respect to the procedure to adopt the Public Service Bill, the Committee should reaffirm its position regarding what genuinely constituted compliance with the provisions of the Convention.

An observer representing the International Transport Workers' Federation (ITF), while welcoming the early release of Mr Thulani Maseko, indicated that this could not be seen as a real sign of progress: although Mr Maseko had been released unconditionally, he still faced sedition charges for a May Day speech he gave in 2009. Mr Mario Masuku, President of the pro-democracy PUDEMO and Mr Maxwell Dlamini of the Swaziland Youth Congress (SWAYOCO), were arrested during a May Day event in 2014. They were charged, under the Suppression of Terrorism Act, with singing a seditious song and pronouncing seditious statements. The State argued in Court that their statements were serious and threatened the leadership of Swaziland. They were denied bail on two occasions before the Supreme Court finally released them on bail on 14 July 2015. Not only did they suffer from very unfair treatment with regard to the bail conditions, but they were also completely barred from speaking in public. In 2013, leaders of the Swaziland Transport and Allied Workers' Union were served with notice of prosecution under the Road Traffic Act of 2007 for holding a union gathering in a private car park. Three years later, the charges against them were still pending. In 2014, Mr Sfiso Mabuza, the Chairperson of a local branch of TUCOSWA, was arrested and detained for possession of PUDEMO documents. Despite being released after five days' detention, he was subjected to unfair bail conditions. In general, trade union meetings were stopped when they included an item in the agenda concerning democracy. Respect of the civil liberties of trade unionists still remained a major problem in Swaziland. The Convention protected the civil liberties of trade unionists. The common understanding that freedom of association was wholly ineffective without the protection of trade unionists' fundamental civil liberties was enshrined in a resolution of the International Labour Conference in 1970. In this regard, the Committee of Experts had commented that freedom of association was a principle with implications that went well beyond the mere framework of labour law. In the absence of a democratic system in which fundamental rights and civil liberties were respected, freedom of association could not be fully developed. The speaker indicated that the fundamental rights necessary for the exercise of freedom of association included the right to freedom and security of a person, to freedom from arbitrary arrest and detention, to freedom of opinion and expression and, in particular, to freedom to hold opinions without interference, as well as the right to a fair trial by an independent and impartial tribunal. The use of sedition, terrorism, and even road traffic laws to silence free speech struck at the heart of freedom of association. Swaziland would not be in compliance with the Convention until it could guarantee that trade union rights were exercised in normal conditions with respect for basic human rights and in a climate free of violence, pressure, fear and threats. In addition to the leg-

islative amendments requested by the Committee of Experts, it was necessary to repeal the Sedition and Subversive Activities Act and replace it with legislation that was respectful of democratic rights. The Government was also encouraged to take on board the comprehensive comments of the International Commission of Jurists regarding judicial independence and impartiality.

The Government member of Namibia indicated that his Government aligned itself with the statement made by the Government member of Botswana on behalf of the SADC and welcomed the legislative reform and other ongoing initiatives and efforts made by the Government in this regard. He also considered that the release of Mr Thulani Maseko had demonstrated the independence of the country's judicial system. The speaker applauded the Government for ensuring that May Day celebrations could take place without police interference and called upon the ILO to continue to provide technical assistance to ensure that once adopted, the bills debated in Parliament could be fully implemented by the Government.

The Worker member of the United Kingdom drew attention to the violent repression of trade union and human rights, including mistreatment and deaths in custody. Mr Thulani Maseko, who was released shortly after the 2015 discussion in the Committee, had suffered three weeks of solitary confinement during his imprisonment. The speaker referred to an attack by the police which had just taken place in Malkerns, against a group of workers who were waiting for a confirmation to proceed with a lawful strike. This resulted in workers being seriously injured. The Government's aversion towards trade unions had been discussed several times in the past. The recent adverse statement against trade unions and collective bargaining in public services by the National Police Commissioner clearly indicated the hostile disposition of the Government towards trade unions and of late, its clandestine manoeuvres to cloud the industrial relations sphere with "sweetheart" trade unions in an effort to sideline genuine workers' organizations. The Government had continued to act with disregard of rights under the Convention and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The speaker hoped that, with the continued scrutiny of the Committee of Experts and of the Conference Committee, reforms could be brought about for the people and workers of the country who had the right to live, free from repression, attacks and violence from those who should in fact be protecting them.

The Worker member of South Africa referred to active and consistent engagement with TUCOSWA. Swaziland had appeared before the Committee since 1996 in relation to this Convention and Convention No. 98, which were fundamental to the architecture of international labour standards and to the dignity of workers in general. As indicated by the SATUCC at its 28 March 2016 labour symposium in Botswana, it was a struggle for workers and their civil rights to freely organize, associate and bargain without fear and interference. There could be no separation between the rights of workers at the workplace and in their communities, including freely expressing themselves as part of civil society and as human beings. The speaker also noted the report of the Minister regarding the 2015 conclusions of the Committee in this case and aligned himself with TUCOSWA concerning the progress in this regard.

However, progress within the legislative framework, aimed at changing the problematic conditions, still needed to be confirmed in practice. The environment of hostility against civil society and other social forces, which related directly or indirectly to workers' rights, persisted and was characterized by the militarized political climate in the country. The relationship between labour and civil rights could not be subject to a false dichotomy, as they were interdependent and one directly shaped or affected the other. Within the SATUCC and the rest of the international progressive trade union movement, it was clear that the Convention concerned the rights of workers both as workers and as human beings. The speaker considered that the governments and employers of the SADC needed to honestly and consistently join the workers in their endeavour to free the region from workers' rights' violations. He assured that the workers and their sister unions would remain committed to defending workers' rights and democracy.

The Government member of the United Republic of Tanzania noted that the Government had implemented most of the recommendations of the Committee on this case and welcomed its efforts to protect and promote labour rights. Noting with appreciation the Government's cooperation with the ILO, including through a joint mission in 2016, she encouraged it to continue such cooperation in order to address all outstanding issues. The amendments to the Public Order Act and the Suppression of Terrorism Act had been drafted in consultation with the social partners and with the assistance of the ILO. The Government's commitment to continue promoting the relationship between the police force and workers, in addressing matters of common concern, was commendable. The Government was encouraged to implement the pending recommendations, as well as to keep up the momentum generated on the protection of labour rights, with the support of the ILO.

The Government member of Zimbabwe indicated that his Government aligned itself with the statement made by the Government member of Botswana on behalf of the SADC member States. Tremendous progress had been made by the Government in addressing the concerns raised by the Committee of Experts. In this regard, the Government had worked with the social partners and was committed to continue this collaboration, in its efforts to address the challenges within the labour market. He commended the Government for the bold steps taken to revise the Public Order Act, the Suppression of Terrorism Act and the Public Service Act in order to bring them into conformity with the Convention, while ensuring tripartism. He urged the ILO to continue to provide technical assistance to address the concerns expressed by the Committee of Experts.

The Government member of Kenya welcomed the information provided by the Government and noted that all of the pending issues had been addressed in some way. There had been significant progress and commitment by the Government with regard to addressing and finalizing the outstanding issues, including the urgent submission to Parliament of the bills to amend the Public Order Act and the Suppression of Terrorism Act. A Code of Good Practice on protests, which was fully operational, had been completed through tripartite participation. The Public Service Bill and the Correctional Services Bill, which had been developed through technical cooperation, were before Parliament, and comments from the ILO had been received on 24 May

2016. The speaker called upon the ILO to continue supporting the country with regard to the consolidation of the progress made and to the continuous improvement of industrial relations in the country.

The Government representative reiterated that the progress made so far was based upon the recommendations made by the Committee in June 2015. This progress had not been achieved singlehandedly by the Government, but had been made with the employer and worker federations and other social partners. Above all, the amendments made to the legislation were a result of tripartite consultations and the agreement of other stakeholders. In addition to its assistance in the drafting of the legislation, the ILO had made comments on the bills, which would be taken into consideration. Once the bills had been adopted, they would represent the spirit and nature of a free and harmonious industrial relations environment. With regard to the issues raised by the social partners, she indicated that the country was moving forward with what it had been urged to do. Regarding the anti-union statements made by the National Commissioner of Police, she clarified that they were made in a private meeting and that the Commissioner had apologized to the nation. Concerning the violence by police against workers in Malkerns, she stated that the information was misguided and that the workers who were exercising their right to strike had been pushing those who wished to work to go on strike. In fact, previously the police had come to rescue the officials of the Conciliation, Mediation and Arbitration Commission who had been held hostage by workers. The official report on the incident was still pending. She thanked the ILO for its patience in addressing the issues raised before the Committee and assured that the remaining legislative issues which were pending before Parliament would be finalized in the near future. The Government was committed to fulfilling all of its obligations under the Convention. She thanked the Committee and the social partners, particularly the governments, who had noted the progress made in the country and assured them that it would continue to make progress, as had been demonstrated in the last six months.

The Worker members recalled that the persistent lack of progress had led the Committee to place Swaziland under a special paragraph in 2015. They regretted that the Government had not addressed the issues adequately and therefore had to once again bring up the same issues. The 2015 conclusions had called for the amendment of section 32 of the Industrial Relations Act in order to ensure that trade unions could be registered without previous authorization. However, this section remained unaltered, despite several letters petitioning the Ministry of Labour to discuss the compliance of the Industrial Relations Act with the Convention. Mr Thulani Maseko and Mr Bheki Makhubu, who were released only two weeks before completing their entire prison sentences, were not awarded any compensation for their arbitrary detention. Contrary to the conclusions of 2015, which called for the unconditional release of all workers imprisoned for the exercise of their trade union rights, Mr Mario Masuku and Mr Maxwell Dlamini were not released unconditionally and continued to be deprived of their right to free speech. In addition, the Government had arrested and charged two more workers. Depriving workers of their liberty for exercising their rights was not only a serious violation under the Convention but also had

an intimidating impact on all workers. They reiterated their call for the Government to cease imposing criminal sanctions for legitimate and peaceful trade union activities. It was extremely disappointing that not a single police officer had been held accountable for their arbitrary interference in lawful, peaceful and legitimate trade union activities. Hence, the police interference in trade union activities continued unabated. Although the ILO had provided technical assistance six months ago to bring the Suppression of Terrorism Act and the Public Order Act in line with the Convention, the Government had not yet finalized this legislation. The Correctional Services Bill had not yet been passed and would not, in any case, allow prison staff to establish and join independent trade unions. They would instead be allowed to join staff associations consisting of managers and workers. Workers would be able to benefit from the rights enshrined in the Convention only if it was effectively applied in practice. In order to fulfil the promises made before the Committee and to bring about genuine changes, the Government should stop treating trade unionists as criminals and engage in dialogue with them to bring the country on a path to real reform. The speaker called on the Government to accept technical assistance from the ILO and a direct contacts mission in order to meet all its promises, before the next session of the Conference.

The Employer members recalled that the conclusions of the Committee on this case in 2015 included nine points and were included in a special paragraph of the report. Since then, concrete steps had been taken by the Government to comply with these recommendations. In this regard, the employer members welcomed: (1) the release of Mr Maseko; (2) the progress achieved with respect to freedom of association of employers' and workers' organizations, especially with regard to the registration of FESWATU and ATUSWA; (3) the progress made regarding the participation of social partners in a number of tripartite committees; and (4) the steps taken towards building more positive relationships between the police and the social partners, specifically in respect to peaceful protests. With regard to the legislative measures, while noting the steps taken by the Government, they encouraged it to continue its progress, in consultation with the social partners and with the technical assistance of the ILO. The discussion on whether such a legislative process could lead to concrete results was a good opportunity to remind the Government to continue to build upon the progress made in order to ensure real and meaningful results in relation to the legislative review, thus ensuring compliance with national legislation and the Convention. While noting the constructive spirit of the Government, this case had been a long-standing concern of both this Committee and the Committee of Experts. Therefore the Government was encouraged to step up its efforts, which would be carefully monitored.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the recent registration of workers' and employers' organizations and the Government's statement that these organizations are now represented in all tripartite structures. The Committee nevertheless expressed concern that legislative matters which have

been the subject of previous discussion before this Committee have still not yet been addressed.

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

- **continue to hold meaningful consultations with social partners in order to bring the Suppression of Terrorism Act and the Public Order Act in line with Convention No. 87;**
- **continue to conduct investigations into interference and intimidation of trade unionists during legitimate and peaceful trade union activities and hold those responsible for violations accountable;**
- **amend the Correctional Services (Prison) Bill to ensure that prison staff have the right to establish and join independent trade unions, in consultation with the social partners;**
- **ensure that freedom of association can be exercised in a climate free of intimidation and without violence against workers, trade unions or employers and act accordingly.**
- **amend section 32 of the Industrial Relations Act to eliminate the discretion of the Commissioner of Labour to register trade unions.**

The Committee urged the Government to complete the legislative processes without further delay. The Government is encouraged to avail itself of ILO technical assistance in this regard, as well as to accept a direct contacts mission to the country in order to assess the progress made before the next International Labour Conference.

The Government representative thanked the Committee for the conclusions and assured the Committee that the Government would continue work with the social partners and would attend to the remaining commitments.

UNITED KINGDOM (ratification: 1946)

A Government representative welcomed the opportunity to inform the Committee on the revisions made to the Trade Union Bill since it was considered by the Committee of Experts and before it was passed into law on 4 May 2016. The Government was confident that the Trade Union Act, which aimed to promote a more effective and collaborative approach to resolving industrial disputes, complied with its international obligations on trade union rights. The ILO Governing Body, the Governmental Committee of the European Social Charter and the European Court of Human Rights had previously accepted its legislative approach to strike the right balance between trade union rights and legitimate interests of others affected by their actions. The Government had maintained this balanced approach in its proposals to implement its commitments to trade union reform that had received democratic support at the last general election. For example, the introduction of ballot thresholds addressed the fact that industrial action affected large numbers of the public who did not have a say in a strike ballot. In view of the widespread adverse consequences of industrial action in public services, the Act required that strikes in "important public services" received the support of 40 per cent of those who voted, in addition to a 50 per cent turnout, to ensure the necessary democratic legitimacy and clear majority support. The 40 per cent threshold was meant to apply to services extremely significant to the public and the initial use of the term "essential" was not connected with any existing definition. To avoid confusion, the term "important public services" was now used. Other reforms in the Act included the extension of the notice for strike action from seven to 14 days, so as to allow more time to prepare, though a seven-day notice

could still be agreed with the employer. The Act also established a duration of strike ballot mandates of six months, extendable by agreement to nine months, to avoid strikes on outdated mandates. It required more clarity on ballot papers on the matters in dispute, as well as on the type of proposed industrial action. In relation to picketing, after consultation and concerns in Parliament, the Government had not taken forward the idea of requiring protest plans to be published weeks in advance. Instead of introducing a new criminal offence related to picketing, it had focused on modernizing the Code of Practice on Picketing. Concerning electronic balloting, the Government needed to be satisfied that it allowed all those entitled to vote to do so, that votes were secret and secure, and that risks of intimidation or malpractice were minimized. To that end, the Act required an independent review of electronic balloting within six months. The Trade Union Act modernized the union regulator, by giving to the certification officer updated powers in line with similar authorities. It introduced a partial levy to share with taxpayers the cost for regulating trade unions and employers' associations. It also required public sector employers to publish information on facility time for union officials and that payroll deductions of union dues be administered only where the cost was not funded by the public purse. Measures in the Act had been subject to extensive democratic scrutiny during the passage of the Bill and three large public consultations with trade unions, employers and members of the public. The Government was still considering its response on the proposal to repeal the ban on hiring agency workers during strike action and would announce its position in due course. During the consultations and extensive scrutiny by both Houses of Parliament, it had made revisions in light of evidence put forward. For example, it had revised proposals on the duration of strike ballot mandates, from four to six months, and allowed their extension by agreement to nine months. It had modified its initial proposal to ban check-off arrangements in the public sector to allow them to continue where they were at no cost to the public purse. Specific aspects relating to union political funds had been scrutinized by a Select Committee in the House of Lords; as a result, the Act established that the requirement to opt-in applied only to new union members, which was welcomed by all political parties. In conclusion, the Government was confident that the provisions in the Trade Union Act were reasonable, proportionate and based on a balanced approach, and that they were in line with its international obligations; they did not intend to prevent industrial actions, but to ensure they enjoyed a reasonable level of participation and support, to the benefit of everyone.

The Worker members pointed out that the Trade Union Bill had been introduced by the Government in July 2015 to severely restrict the right of workers to undertake industrial action, including pickets and strikes. The situation had been worsened by a proposed amendment to the 2003 Regulations on employment agencies to allow the use of agency workers as strike breakers. In addition, the Government had been allowed to interfere in voluntarily concluded collective agreements on trade union facilities – including time facilities related to health and safety, members' representation, consultation on redundancies and negotiations on pay and working conditions. The Act also granted to the certification officer significantly expanded

powers to engage in highly intrusive investigations into trade union activities at the behest of employers and other groups. The Government had failed to put forward any compelling arguments for the reforms introduced. The current laws already heavily regulated industrial action and did not need further tightening. The reforms, which ignored international obligations under the Convention and other instruments, would undermine rather than improve industrial relations. The Committee of Experts had examined the proposed legislation and made a number of observations with regard to the additional ballot requirements for industrial action in certain sectors, the limitation on the methods of strike balloting, and the use of agency workers to replace strikers. Other matters had been referred to the Government for further information by means of a direct request. Concerning ballot thresholds, the Bill proposed higher minimum levels of participation for lawful industrial action. In all sectors, such action would be lawful only if 50 per cent of those entitled to vote did so, and that if a majority of those voting supported the action. For six sectors deemed "important public services" – namely: health services; education; fire service; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; and border security – an overall 40 per cent vote in favour was required. Thus, in the case of a participation of 50 per cent, 80 per cent of those voting would be required to support the proposed action. The Committee of Experts had expressly urged the Government to ensure that education and transport would not be covered by the new higher threshold, as they were not essential public services in the strict sense of the term. As to the ballot methods, unions had to comply with complex notice requirements and to hold a postal ballot to ascertain support for the proposed action; they were prohibited from using other means such as allowing for strike votes at the workplace or electronically. The Government had opted for means to suppress strikes rather than to increase turnout for strike votes, if indeed its concern was that strikes were not sufficiently supported by membership. After the House of Lords had voted by a large majority, amendments requiring the Government to commission an independent review into the use of electronic voting and to publish a strategy to roll-out electronic voting, the Government had introduced amendments to ensure that it would be under no obligation to act following the review. The extent to which social partners would be a part of the review process remained unclear.

The use of agency workers to replace workers on strike had been banned since 1973 and there was no defensible reason to repeal that ban now or at any time. Allowing it could have no other purpose than to weaken strikes and ultimately to prevent workers from exercising their right to take strike action. As with other proposals, this would only worsen industrial relations, by making it far more difficult for parties in a dispute to resolve differences. It would create resentment among workers, which would last long after the dispute had ended. It would also put agency workers in a difficult if not impossible position. It had to be recalled that many employment agencies, including those affiliated to the International Confederation of Private Employment Agencies (CIETT), had agreed with unions not to use agency workers to break strikes, creating the space for less professional and accountable agencies to supply strike-

breakers. Even the enterprises affected by a strike would stand to lose, as the agency staff would be inadequately trained, resentful and far less productive. In some occupations, the lack of adequate training would likely involve health risks. The ILO was unequivocal in condemning the use of replacement workers and had condemned countries such as the United States, Chile and Zimbabwe for allowing the hiring of replacement workers. In particular, the Committee on Freedom of Association had explained that “the hiring of workers to break a strike in a sector which could not be regarded as an essential sector in the strict sense of the term constituted a serious violation of freedom of association”. The Government had not yet announced whether it would go ahead with its plans to introduce regulations lifting the ban on the use of agency workers to replace striking workers. The Trade Union Bill had also introduced several limitations on picketing, a power to cap union facilities, even where arrangements would have resulted from voluntary negotiations between employers and unions, and enhanced the powers of the certification officer. These matters were not addressed in the observation of the Committee of Experts but were instead referred to the Government in a direct request for further information. In these areas, some important concessions had been made in the legislative process. Taken together, the various proposals amounted to an unprecedented assault on the right to take industrial action. They were in clear breach of the Government’s obligations under international labour law, including the jurisprudence of the ILO supervisory system over several decades. Indeed, in February 2015, the Government group, including the Government of the United Kingdom, had issued a unanimous statement in which it recognized “that the right to strike was linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognized that without protecting a right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers’ interests, could not be fully realized”. Of course, the right was not absolute, and no one had ever claimed that. However, the Trade Union Bill struck at the heart of that right, rendering it difficult if not impossible to exercise it lawfully.

The Employer members thanked the Government representative for the information provided and noted with interest the process of consultation in relation to the drafting of the Trade Union Bill. The application in the United Kingdom of this fundamental Convention had been the subject of observations from the Committee of Experts on 12 occasions since 1995. Its observation of 2013 dealt with the right of unions to draw up their rules and formulate their programmes without interference from the authorities, in particular with regard to the expulsion of individuals on account of their membership in an extremist political party with principles and policies repugnant to the trade union. It also raised the need for fuller protection of the right of workers to exercise legitimate industrial action, including the issue of immunities from civil liabilities. That observation was not discussed by the present Committee. The latest observation took note of the Trade Union Bill tabled in July 2015 and of the concerns expressed by the Trade Union Congress (TUC) in relation to the Government’s legislative proposals. This raised two primary concerns for the Employer members. First, it was clear that

when the Committee of Experts made its observation, it was commenting on a draft Trade Union Bill, which was still subject to social dialogue, a democratic process of discussion, debate and review; its comments were therefore premature. Revisions had been made since, hence the said comments did not reflect the current situation. The basis and status of the observation were unclear and needed clarification. Second, the observation contained a number of comments on issues such as picketing, strike ballot and quorum requirements, use of replacement workers in the event of strike, that is, issues which were all related to the regulation of strikes. The position of the Employer members that the Convention did not include the right to strike was well known and did not need to be repeated. It sufficed to say that there was no consensus in the present Committee on the issue. Since the Worker members had referred to the statement made by the Government group in February 2015, but only to quote its paragraph 4, it was useful to recall that the following paragraph of the same statement also noted “that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, was not an absolute right”, that “the scope and conditions of this right were regulated at the national level” and that “the document presented by the Office described the multifaceted regulations that States had adopted to frame the right to strike”. The Employer members had heard the Government explain the complex issues and the act of balancing competing rights when considering these issues and looked forward to continuing the discussion.

The Worker member of the United Kingdom underlined the far-reaching restrictions of the Trade Union Act on trade union activities. The Trade Union Act provided the certification officer with wide-ranging powers to investigate union affairs and access confidential records, including the names and addresses of union members. In addition, the Trade Union Act curtailed the freedom of the unions to decide on the use of their funds and empowered the Government to restrict the ability of public sector unions to represent their members. Unions were required to appoint picket supervisors whose contact details had to be given to the police. These changes exposed the unions to an increased risk of legal challenges and to punitive financial penalties. Politicians from all major parties had spoken publicly against the Trade Union Act. Non-profit organizations had warned that the Bill would render the right to strike illusory. The devolved Scottish and Welsh Governments had both publicly opposed the Bill. Regarding the high voting thresholds, the Trade Union Act introduced a new requirement for a 50 per cent turnout. The Government assessed that 45 per cent of ballots in the last five years would not have been valid under this new rule. The Chartered Institute of Personnel and Development (CIPD), the leading human resources body in the United Kingdom, had called the thresholds “outdated” and had pointed out that in the last 20 years, the number of workdays of strike actions had fallen by more than 90 per cent. In parts of the public sector qualified as “important public services”, the Government would additionally require unions to meet a 40 per cent favourable votes of all those entitled to vote. When analysed together, the two voting requirements entailed that a 50 per cent turnout on a ballot would require an approval rate of 80 per cent. This Act would permit much wider restrictions to freedom of association than the

ones allowed by ILO standards. This Act would also have a disproportionate gender impact, considering that an estimated 73 per cent of the workers in these “important public services” were women. The Secretary of State had justified the inclusion of education and transport in the list of “important public services” by the inconveniences caused by stoppages in those areas, and not for reasons of public safety and security. The Minister had also said that the thresholds ensured that strike actions could only be carried out with a “reasonable” level of support. There were no other areas in which a requirement for up to 80 per cent support was considered reasonable, least of all when related to exceptions to fundamental democratic rights. The process for industrial action was already long and highly regulated. The Trade Union Act not only added further complex procedural requirements, including a doubling of notice periods for action, and extensive additional information to be included in the voting paper, it also provided that a ballot for action would expire after six months and thus had to be repeated if the dispute had not yet been resolved. The postal ballot process had to be simplified and modernized to allow for electronic voting. The Government also intended to undermine any future action by allowing striking workers to be replaced by agency staff. This replacement of strikers was not desired by the employment agencies, as it was against the spirit of the European Union (EU) Temporary Agency Worker Directive (2008/104/EC), and contrary to the European sector’s professional code of conduct. It also constituted a serious violation of freedom of association and aggravated potential disputes between employers and employees. The Worker member concluded by highlighting that the Trade Union Act constituted a serious interference with the rights of United Kingdom workers under the Convention and called on the Committee to request the repeal of the Trade Union Act and to discuss with the social partners on how to develop a legal framework adequate to the challenges of the twenty-first century.

The Employer member of the United Kingdom recalled that trade unions had been declared lawful by the Trade Union Act of 1871, long before the creation of the ILO and that the United Kingdom had not had a problem ratifying the Convention in 1949. Before its enactment the Trade Union Bill had received a high level of tripartite engagement and parliamentary scrutiny. Following the Conservative Party’s election, the new Government had announced package reform measures, as promised during the electoral campaign, that included the Trade Union Bill and three consultation papers on the use of agency workers, ballots thresholds and intimidation picketing. Following the consultations, the Confederation of British Industry (CBI), the United Kingdom’s leading business organization, and the TUC, an organization comprising 52 unions, had given oral evidence. The Bill had later been read by the House of Lords where all the main political parties were represented and where sat, among others, 16 former union leaders and 70 former union members. Subsequently, the Government had taken into consideration the outcome of the consultations and had amended the Bill to: remove the extension of the 40 per cent threshold to auxiliary workers; apply the 40 per cent threshold to private sector union members carrying out a specific important public service; and require bal-

lots to be run under the 40 per cent threshold where a majority of workers involved were carrying out an important public service. The Government also concluded that the ILO definition of essential services was not definitive and confirmed the six identified important public sectors. The legislative process had followed its course and, later on, the CBI had given further written evidence, the House of Lords report had been published and several amendments had been proposed and adopted. On 4 May 2016, the Bill had received Royal Assent and had become the Trade Union Act 2016. The Government still had to draft secondary legislation for some parts, including on the use of agency workers, and had to consult on other parts. This meant that more parliamentary and public scrutiny would come and that it was unlikely to be a speedy implementation process. The speaker supported the consensus between the social partners, as expressed in their joint statement of February 2015, that: “[t]he right to take industrial action by workers and employers in support of their legitimate industrial interest is recognized by the constituents of the ILO”. There was no consensus that the Convention included the right to strike and its modalities. The consensus position of the Government group, as expressed in February 2015, confirmed: “that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level”. The situation was problematic on many levels with regards to the Convention and the issue of the right to strike remained unresolved both legally and politically. The recent difficulties were appreciated and lessons had been drawn from the dramatic events in 2012 and 2014. The Director-General, in opening this Conference, had highlighted: “So facing up to the responsibilities which the ILO’s mandate for social justice imposes upon each one of us means adjusting our actions, our behaviour, our decisions to ensure that the undoubted opportunities of transformative change at work are realized. So that all – not just the few – can look to the future not with fear but with confidence, not with an eye only to individual advancement but also with a real sense of common purpose”. The Director-General had also recalled the crucial role of the Conference Committee in finding a way forward despite the underlying divergences of opinions and had emphasized the importance of a strong, authoritative and relevant standards system for an effective and influential ILO. The speaker wanted to constructively engage to help the ILO find lasting and harmonious resolutions of these divergences. A more private forum would help build the understanding necessary to find those resolutions. To conclude, the speaker expressed the hope that the conclusions on the case would be in accordance with the guidance of the Director-General and would respect the tripartite consensus.

The Government member of the Russian Federation expressed concerns over the adoption by the Government of a series of measures to reform the labour laws which might adversely affect the realization of the workers’ rights of association guaranteed by the Convention. Actions that would affect the basic labour rights had to be the object of discussions with the social partners and, where appropriate, the ILO should be consulted to assess whether such measures would be in conformity with the international labour standards.

The Employer member of the United States emphasized that the present case was not ripe and as such should not be heard by the Committee. Under the ILO Constitution, the Committee was a committee in charge of examining whether a member State was applying its domestic law in a manner that was consistent with the Conventions it had ratified. The legislation that had been under scrutiny was a draft that had never been implemented. At the time of the adoption of the comment of the Committee of Experts, the legislation was a draft Bill that had not even passed one House of Parliament. Instead of reviewing a Bill, the Conference Committee should dedicate its precious time to hearing more important cases that had been left off the list. It was unlikely that governments would allow the Committee of Experts to interfere with their internal legislative processes. To conclude, the speaker questioned the decision of the Committee of Experts to formulate an observation on a draft Bill, especially when its subject matter, the right to industrial action, was extremely controversial.

The Worker member of New Zealand, also speaking on behalf of the Worker members of Australia, Canada, Fiji, Kingdom of Tonga and the United States, addressed the voting mode for industrial action in the United Kingdom. A mandate for strike action had to be sought by secret postal ballot, the costs of which appeared to be almost £200,000 per ballot and had to be borne by the union. The Trade Union Act significantly increased the requisite frequency of balloting. Moreover, there were new threshold requirements for strikes and the possibility for employers to either seek injunctive relief to halt a strike action, or to use agency workers to replace striking workers. The laws on industrial action were widely regarded as some of the strictest in Europe with the United Kingdom being an outlier even among the so-called “Anglo” countries (that is, Australia, Canada, New Zealand and the United States). The Committee of Experts and the Committee on Freedom of Association had been clear that procedural rules which substantially attenuated the right to strike might violate the Convention. In paragraph 170 of the 1994 General Survey on freedom of association and collective bargaining, the Committee of Experts indicated that, in relation to member authorization for industrial action, “the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice”. Similarly, the Committee on Freedom of Association, in paragraph 547 of the 2006 *Digest of decisions and principles of the Freedom of Association Committee* indicated that: “[t]he conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations”. Recalling that the Members of the House of Lords had requested an independent review into the use of electronic voting in industrial action ballots to which the Government had not yet given any follow-up, he called on the Government to work with the social partners to permit electronic voting and workplace voting as soon as possible.

The Employer member of Argentina reiterated the Employers’ position on the right to strike and the Convention. Every State was legitimately entitled to adopt laws regarding the right to strike in order to allow the exercise of this right. However, in the case of the United Kingdom the

Committee of Experts was raising questions about a Bill that had been adopted since then, that regulated specific aspects of the right to strike, such as the voting procedure, restrictions on picketing and the replacement of striking workers. In doing so the Committee of Experts was raising issues that were not within its mandate. All States regulated the right to strike, which was not an absolute right, and although they had to consider the possible exercise of that right they also had to ensure that it was compatible with other rights, such as those relating to the employer’s property, freedom of movement and, above all, the right of workers who wanted to work. Despite the fact that the number of such workers might exceed that of workers in favour of taking forceful action, they might not be able to work because of the picketing. One could not possibly argue that employers should be the ones financing trade unions and pickets.

An observer representing the International Transport Workers’ Federation (ITF) commented on sections 2 and 3 of the Trade Union Act, namely the new requirement of a 50 per cent participation quorum in strike ballots and the requirement of 40 per cent support of all workers in “important public services”. The critical economic role of the transport sector was being used as a pretext to defend the free movement of passengers and goods over the rights of workers involved in transportation. Crackdowns of strikes in the transport sector had been occurring across the world in recent years. While the Trade Union Act did not ban strikes in the sector outright, the additional requirement of 40 per cent support would in fact deprive transport workers and all other workers in charge of “important public services”, from their right to strike, as they would not be protected through compensation guarantees. This negative result would be further aggravated by the existing legal mechanisms available to employers to obtain injunctions to cease actions. The additional 40 per cent requirement for important public services implied that 50 per cent of the members plus one member had to vote in a ballot and that 80 per cent of votes had to be in favour of an industrial action for such action to be lawful. The request of the TUC for electronic balloting had to be considered in the international context. In Germany, where some unions voluntarily laid down ballot thresholds in their rulebooks, ballots were held in workplaces rather than by post, producing higher turnouts. In Australia, a highly prescriptive system of strike ballots, it was possible to permit workplace and electronic voting. The Committee of Experts indicated clearly in its comments that the new ballot threshold would contravene with Article 3 of the Convention. The ILO supervisory bodies had held that the right to strike could only be restricted in the public service for those exercising authority in the name of the State or in essential services in the strict sense of the term. Transport occupations listed by the Government, namely local bus services, passenger railway services, airport security services and port security services, could not be considered essential services. The right to strike was a human right protected by the Convention and constituted international customary law. To conclude, the observer urged the Government to comply with the request formulated by the Committee of Experts to abandon the heightened requirement of support of 40 per cent of all workers in education and transport services.

The Employer member of France said that the case warranted the Committee's attention. Based on observations by the TUC, the Committee of Experts requested the Government to review the Bill with the social partners with a view to its amendment. However, since it had been examined, the Bill had been extensively amended, which meant that the Conference Committee faced the difficult task of considering a text that was going through the stages of a national standard-setting procedure. The Convention provided a framework for the exercise of freedom of association and the protection of trade union rights. In doing so it placed two restrictions on the public authorities. By virtue of these restrictions, set out in Article 3(2) and Article 8(2) the public authorities must refrain from any interference which would restrict the right of workers' and employers' organizations to establish and join trade unions freely and the law of the land must not be such as to impair, nor be so applied as to impair, the right of employers and workers to establish workers' and employers' organizations. The Bill did not in fact run counter to either of those restrictions. None of the provisions referred to by the Committee of Experts came within the purview of the Committee since, it should be remembered, governments alone were competent to determine the rules governing the suspension of work contracts in the eventuality of a dispute. Finally, the Committee of Experts did not establish that there was any violation of the Convention, which was solely concerned with guaranteeing the freedom to establish employers' and workers' organizations.

The Worker member of Italy stressed that, in addition to the measures contained in the Trade Union Act, the Government proposed to authorize the recruitment of agency workers to replace strikers. This proposal infringed workers' freedom of expression, and rights to organize and protest. The proposal would also have severe detrimental effects on recruitment agencies, which have expressed their opposition to the replacement of strikers with agency workers. Furthermore, the proposal would increase tensions between employers and workers, and would lead to employees seeking new employment opportunities, thus reducing productivity and causing an increase in recruitment and training costs. The Committee on Freedom of Association had found that the hiring of workers to break a strike in a sector which could not be regarded as an essential sector constituted a serious violation of freedom of association. In 2015, the Government of Italy and the trade unions issued a joint statement in which they called for the reaffirmation of the right to strike in all national and international forums in which the fundamental rights of people and workers were protected. The joint statement read as follows: "[t]he Treaty of Lisbon recognizes this right as one of the EU fundamental rights and defines a sort of joint European notion of this right, in addition to the national ones, by considering it a universal right. The ILO Committee of Experts, entrusted with the task of analysing national reports and detecting the infringements of Convention No. 87 signed by all EU Member States, has operated along these same lines. Said Convention, together with the other seven fundamental Conventions, contributes to define the minimum level of protection to be ensured to the rights recognized by the EU Charter of Fundamental Rights". In reaction to the criminalization of strikes by the Italian fascist regime, the right to strike had been recognized as a fundamental right

protected under the Italian Constitution. The right to strike, by giving to trade unions an economic leverage, also guaranteed freedom of association. To conclude, the speaker called on the Government to reconsider its proposal to authorize the recruitment of agency workers to replace strikers and engage in a dialogue with the social partners.

The Employer member of Denmark stated that the modalities of industrial action had to consider diverse elements of the national labour market. The obligations in respect of industrial action had been clearly reflected in the Government group statement of February 2015, which should be the basis for the work of the Committee of Experts and the Conference Committee. According to this statement, the scope and conditions of industrial actions should be regulated at the national level. He therefore noted with concern that the comments of the Committee of Experts dealt almost entirely with the aspects of industrial action in draft legislation. Emphasizing that the Committee of Experts had exceeded its mandate, the employer member refrained from commenting further on these comments.

The Worker member of Germany said that he was very worried about the freedom of association of British workers. The attack on these rights was reminiscent of a very dire period of British social policy, that is, the Thatcher era, during which all rights of workers had been severely curtailed. As a result of that policy, industrial relations had not recovered until today. While the provision concerning the explicit permission of the use of agency staff to replace striking workers had been removed from the Bill upon extreme pressure, the strike-breaking by agency workers remained of major importance for the Government. However, permitting the use of strike-breakers had wide-reaching consequences: not only did it compromise or render impossible the right to strike of trade unions, but – coupled with the minimum notification of two weeks prior to the strike – enterprises could take all their time to employ agency workers and any strike would be pointless. In addition, agency workers were generally poorly paid and suffered deplorable working conditions. The balance of powers would be shifted in favour of the employer and the bargaining power of workers would be lost completely. Therefore, such a situation would not only be contrary to Convention No. 87, but also to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). During the consultation procedure concerning the Bill, there had been criticisms not only from trade unions, but also from think tanks, law firms and recruitment agencies. It had also been found that British employers already had many means to replace striking workers. In conclusion, he claimed that strike-breaking should be prohibited as had been successfully done in the United Kingdom in 2003.

The Employer member of Turkey stressed that the case relied solely on the observations of the Committee of Experts and emphasized that the issues surrounding the right to strike modalities were not within the scope of the Convention. Conflicts, such as the one witnessed in 2012 and following years, had been settled with the tremendous efforts of the tripartite constituents. The outcome of the settlement on the matter, while not definitive, had to be taken into serious consideration by the Committee of Experts. The issues raised by the Committee of Experts, such as essential services, strike ballots and picketing related to highly contentious strike restrictions which had no legal

basis in the Convention and could lead to further conflicts within the ILO system. Furthermore, the comments of the Committee of Experts in this case predominantly referred to a draft Bill which had not yet been implemented. This approach contradicted the rationale behind the existence of the Conference Committee and its fundamental mission to supervise the actual implementation of the Conventions instead of reviewing draft laws.

The Worker member of Zimbabwe expressed his serious concern over the recent changes to the legislation in the United Kingdom concerning freedom of association and was shocked to see that the Government had now started to adopt the same strategies as the Government of Zimbabwe. Some provisions in the Trade Union Act were very similar to the provisions in the legislation of Zimbabwe, which had contributed to mass violence and economic downfall. In 2008, a Commission of Inquiry had been established with an overwhelming majority in the Governing Body to examine the situation in Zimbabwe. The Commission of Inquiry had found that the list of essential services (including fire and health services as well as transport) was excessive in depriving workers from their right to strike. The United Kingdom had now created additional barriers for workers in essential public services (including health, education, fire, transport and nuclear services) concerning their right to strike in the form of a 40 per cent threshold of all workers entitled to vote with respect to strike ballots. Moreover, the notice period for taking industrial action in the United Kingdom had now been increased from seven to 14 days, a period similar to the one required in Zimbabwe, which had substantially undermined the right of workers to take industrial action. Indeed, the Commission of Inquiry found that the procedure for the declaration of strikes was problematic and explicitly confirmed that the right to strike was an intrinsic corollary of the right to organize protected by the Convention. He emphasized that even though Zimbabwe had been operating under similar provisions to those recently adopted by the United Kingdom that had not led to more jobs or economic security. On the contrary, Zimbabwe had one of the highest unemployment rates in the world. In conclusion, he expressed the firm belief that promoting fundamental rights and most importantly the right to freedom of association was the only way to create decent jobs and shared prosperity.

The Government representative reiterated that the approach throughout the legislative process on the Trade Union Act had been to strike a reasonable, proportionate and careful balance between the rights of trade unions and their members, and the legitimate interests of others affected by their actions. The measures in the Act had been subject to extensive democratic scrutiny. In addition, there had been three public consultations: on the scope of the 40 per cent support ballot threshold for important public services; on whether the legal framework for picketing had to be strengthened; and on a proposal to repeal the ban on hiring agency workers during strike actions (a measure that had not been included in the Trade Union Act). The Government had listened to the views expressed on specific measures during consultations and scrutiny by both Houses of Parliament, and had made revisions in the light of all the evidence put forward. For example, the Government had revised proposals concerning the duration of strike ballot mandates. It had also modified proposals to ban check-off

arrangements in the public sector. Indeed, uniquely there was a separate independent Select Committee set up during the passage of the legislation through Parliament on the proposals regarding the contribution mechanism for union political funds. The Government had accepted the vast majority of the recommendations of that Committee and the requirement to opt-in to a union's political fund now only applied to new union members. This had been welcomed by all political parties. Concerning the new powers of the Certification Officer, this agency was independent from the Government and trade unions could appeal any decision. With regard to electronic voting, the Government had to assess certain issues and would provide information in this regard in due course. Finally, the Trade Union Act had only received Royal Assent on 4 May 2016 and key provisions were yet to come into effect, including through secondary legislation. Observing that there was a wide range of views concerning the perception on industrial action among ILO constituents, the Government remained confident that the Trade Union Act struck a fair balance between the rights of unions and their members and their responsibilities towards the rest of society to everyone's benefit – and that it fully complied with its international obligations.

The Worker members indicated that the discussion had reflected the Government's determination in adopting the legislation. The Trade Union Act did not enjoy the support of the people, did not enjoy support among elected representatives of all parties and would put the United Kingdom on the far fringes of industrial relations systems in Europe. Moreover, the Act also contravened well-settled observations and conclusions of the ILO supervisory bodies that had enjoyed decades of tripartite support. The United Kingdom appeared to be associating itself more with countries that had been identified by the ILO supervisory bodies for their non-compliance with freedom of association rights. The Trade Union Act would mean that workers would face even greater limitations to stand up for decent services and safety at work, or defend their jobs or pay. The legislation appeared to be motivated wholly by ideological considerations without forethought as to its social and economic consequences. And the issues were not limited to the right to strike. The Act also granted to the certification officer significantly expanded powers to engage in highly intrusive investigations into trade union activities and obtain records at his own initiative, even without any complaint from a union member. The certification officer would thus have an insight into the internal organization and access to confidential union records (including correspondence between unions and members, membership records, including members' names and addresses). The certification officer would also be able to investigate all such information in employers' organizations and even in companies – as they were also a party in collective bargaining agreements. In the view of the Worker members, this very serious case, like many others cases discussed, deserved to be included in the list. The Government was seeking to effectively eliminate by law the fundamental right of freedom of association. Furthermore, the case had been included in the list in consensus with the Employer members. In conclusion, the Government should be urged to: (1) immediately repeal the Trade Union Act and organize full consultation and dialogue with the social partners on any preparation of legislation relating to industrial relations; (2) amend secondary

regulation in full compliance with the Convention, including by: (i) withdrawing the proposal to remove the ban on the use of agency workers during strikes; and (ii) remove references to the transport and education sectors from the draft regulations regarding the 40 per cent threshold for strike balloting; (3) in consultation with the social partners, develop and introduce legislation to permit the use of forms of ballots other than postal ballots, including electronic ballots and workplace balloting; (4) with the social partners, review new restrictions on picketing, on union political freedoms and the greater overall control of trade unions through enhanced powers of the certification authority, in order to bring them into conformity with the Convention; (5) refrain from interference in the collective bargaining agreements which have been voluntarily agreed between employers and unions; (6) refrain from interference into trade union activities and into the internal organization of trade unions; and (7) provide a detailed report on progress to the Committee of Experts.

The Employer members welcomed the Government's commitment to continue the constructive engagement and debate with both employers' and workers' organizations. Moreover, the information on the process of consultation and dialogue in the drafting process and on the proposed opt-in clause for union member contributions to political funds was welcomed. The Government also referred to the complexity of the issues and the need to balance competing rights. Acknowledging the constructive attitude of the Government, the Employer members requested more information on: (1) the status of the proposed abolition of a dues check off across all public sector organizations; (2) the status of the proposed opt-in clause with limited time validity for union members' contributions to political funds; (3) the status of the proposal to increase the powers of the certification authority, including information on how it may limit employers' and workers' organizations to organize their programme in accordance with their own rules. Finally, there was a lack of consensus in the Committee on the relationship between the Convention and the right to strike. The Employers' group was of the view that the issue of strike action could be regulated at national level, in line with the Government group statement of February 2015. Therefore, the Government should not be requested to repeal the Act or amend its strike regulations. This position, which diverged from the views of the Committee of Experts should be reflected in the record of proceedings of the Conference Committee.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted the Government's indication that secondary legislation was still under discussion and noted with interest the Government's comments regarding the engagement of the social partners in this ongoing process.

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

- respect the rights of workers and employers organizations to establish and join organizations of their own choosing without previous authorization;
- define the power of the certification authority in such a way that it will not be in contradiction with the provisions of Convention No. 87 and provide information regarding the status of the proposal to increase the powers of this Authority;

■ provide information regarding the status of the opt-in clause with limited time validity for union members' contributions to political funds accompanied by reporting obligations; and

- report to the Committee of Experts before its next session in November 2016.

The Government representative thanked the Committee for its careful and thorough examination. He took due note of the conclusions and undertook to report back to the Committee accordingly.

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

ECUADOR (ratification: 1959)

A Government representative, referring to the earthquake that had occurred on 16 April 2016 and its serious consequences, said that the Government had given priority to the region in question and had delivered human, material and financial resources to the affected areas and population, and for this reason it had not been in a position to send an accredited delegation from the capital and had provided explanations to the secretariat. Ecuador had ratified all international human rights instruments and 61 ILO Conventions, including the eight fundamental Conventions. The significant measures adopted, such as its policies on people with disabilities and their placement in employment, the fight against child labour, particularly its worst forms, the reduction of extreme poverty and the improved distribution of wealth, had enabled the country to set an example through its achievements in such areas. The 2008 Constitution was based on the ancestral Andean philosophy of "Buen Vivir" (good living), which gave priority to the human being over capital. It guaranteed the rights of workers, including freedom of association. With a view to updating the Labour Code, which dated from 1938, the Act on labour justice and the recognition of household work had been adopted and entered into force on 20 April 2015. The Act took into account several of the recommendation of the ILO technical mission which visited Ecuador from 26 to 30 January 2015, following an invitation from the Government. The Act provided for: (i) the elimination of types of recruitment that reduced labour stability; (ii) the adoption of measures to eliminate all forms of discrimination, whether direct or indirect, affecting workers, as a result of which any dismissal of trade union leaders or pregnant or breastfeeding women would be without affect; (iii) the democratization of worker representation, which meant that workers had the right to freely elect persons to represent them on enterprise committees, whether or not its members belonged to a trade union; (iv) the implementation of universal social security; and (v) the repeal of the provision that required authorization for foreign workers to work in Ecuador. Other issues addressed by the ILO technical mission and raised by the Committee of Experts were related to the draft amendments to several constitutional rules. Those draft amendments, in relation to which the Constitutional Court had issued a favourable ruling, provided for, inter alia, the removal of Article 229(3) of the Constitution, which provided that "workers from the public sector shall

be subject to the Labour Code". The removal of this provision had been proposed with a view to ensuring equal treatment for public employees, so that as from the entry into force of the new rules, all public employees would be covered by the Basic Act on the Public Service (LOSEP), which provided greater benefits than the Labour Code. The Committee of Experts had referred to the amendment of Article 326(16) of the Constitution, which provided that only the private sector had the right to engage in collective bargaining. In this regard, she emphasized that in the public sector employers did not make a profit, and that collective agreements had no meaning in balancing employer-worker relations. Furthermore, section 221(2) of the Labour Code provided that public sector employees could negotiate collective agreements through the establishment of a single central committee comprising over 50 per cent of such workers. She thanked the Government of Uruguay for having offered to share information on experiences and good practices in this regard.

Regarding the observation of the Committee of Experts, which indicated that the responsibility of the Ministry of Labour to determine the abusive nature of collective agreements in the public sector should be transferred to the judicial authorities, she emphasized that Ministry Labour Orders Nos 76 and 155A guaranteed employment equality in state institutions, ensuring that workers enjoyed the benefits granted to them by the law, establishing a procedure to revise collective agreements and providing equal support to employers and workers. If mediation failed, conciliation and arbitration tribunals intervened. That process would be distorted if the matter was referred to the judiciary. Finally, she emphasized that the commitments undertaken by the Government when it concluded collective agreements as an employer had material and legal limitations that were directly related to budgetary availability, which made it impossible to give effect to abusive clauses, also because all agreements that favoured minorities created discrimination in the enjoyment of fundamental rights by the vast majority of public sector workers. Ecuador had shown its will comply with international labour standards, as concluded by the ILO technical mission the findings of which had already been mentioned, and to adopt new labour laws that strengthened the protection of workers' rights.

The Employer members recalled that the Convention had been ratified by Ecuador in 1959 and examined by the Conference Committee on three occasions, most recently in 2014. Regarding the failure to recognize the right of certain public sector workers to engage in collective bargaining, they noted with concern that the Government had emphasized that, while public employees enjoyed the right to organize, they did not have the right to engage in collective bargaining, which constituted a violation of Article 4 of the Convention. According to the findings of the ILO mission of January 2015, the draft constitutional amendments, which had since been implemented with the aim of unifying the regulations governing public servants, established that the wage earners previously subject to the Labour Code would be governed by the LOSEP, in the same manner as the other public servants who enjoyed the right to organize but were not entitled to engage in collective bargaining. In that regard, they supported the call by the Committee of Experts to amend the LOSEP and other administrative laws to bring them into line with the Convention.

Concerning the requirement of a level of representativeness for participation in collective bargaining that was deemed excessively high by the Committee of Experts, they emphasized that, due to the absence in the Convention of a specific provision on the levels of representativeness for collective bargaining, national legislation prevailed, within the parameters of rationality and objectivity and with the prior determination of the levels of representativeness required for collective bargaining. The system in force in Ecuador granted preferential rights to the most representative trade unions, which prevented abusive practices and provided guarantees for both employers and workers. On that point, they considered that it would not be possible to recommend the amendment of the legislation in isolation, without assessing the impact that it might have on the rules governing collective bargaining as a whole. Concerning the limitations on collective bargaining in the public sector, the Employer members agreed with the Committee of Experts that such limitations were in violation of the Convention, and they supported the request for the Government to take the necessary measures to restore the right to collective bargaining regarding all issues that affected the employment and working conditions of public servants covered by the Convention. Only the judicial authorities could determine whether some agreements were abusive. They also supported the request for the Government to provide information and take the measures called for by the Committee of Experts, and they encouraged the social partners to avail themselves of article 23(2) of the ILO Constitution.

The Worker members expressed their solidarity concerning the recent earthquake. They expressed concern at the Government's failure to grant accreditation for the Conference to any worker representatives, which was a violation of the ILO Constitution. Attacks against public sector trade unions had begun in 2008 with the adoption of constitutional amendments which placed a ceiling on public sector pay, limited compensation for termination of the employment relationship, and empowered the Government to review the clauses of collective agreements unilaterally. Furthermore, the Basic Act on Public Enterprises (LOEP) and the LOSEP of 2010 restricted the trade union rights and the right to collective bargaining and to strike for public sector workers. Despite the repeated comments of the supervisory bodies, which emphasized the various violations of the Convention and requested that the situation be remedied, as well as the recommendations of the ILO mission of January 2015, the situation had only deteriorated. Of more concern was the fact that in December 2015, without consulting the unions, and following the violent repression and detention of peaceful protestors, regressive constitutional amendments had been adopted which completely eliminated the right to collective bargaining in the public sector by reclassifying public sector wage earners as public servants as a result of which collective bargaining was confined to the private sector. Similarly, although the right to strike was generally recognized in the public sector, it was prohibited in a large number of sectors, an exclusion which went far beyond the definition of essential public services established by the ILO supervisory system. In addition, as indicated by the Committee of Experts, other issues still needed to be addressed: (i) the need to amend section 221

of the Labour Code so that, where there was no organization with over 50 per cent of the workers as members, minority trade unions could, either alone or jointly, negotiate on behalf of their members; (ii) the lack of adequate protection against anti-union discrimination, including practices such as the procedure known as “compulsory purchase of redundancy”, which allowed the public administration, through the payment of compensation, to unilaterally remove public servants without having to indicate the grounds for their termination; and (iii) the empowerment of the Ministry of Labour to determine the abusive character of collective agreements in the public sector, a decision which should lie within the competence of the judicial authorities. The Worker members urged the Government to meet the trade unions as soon as possible to identify solutions to ensure that the Constitution and national laws were in full conformity with the Convention.

An observer representing the International Organisation of Employers (IOE) and the National Federation of Chambers of Industries of Ecuador referred to the recent constitutional amendments adopted in December 2015, according to which public sector workers were no longer covered by the Labour Code, but by the LOSEP. This Act did not include collective bargaining mechanisms, which was contrary to Article 4 of the Convention. The Government should align its legislation with the Convention, in consultation with the social partners within the framework of an open dialogue to find solutions adapted to the national situation. This would encourage and promote the development and use of collective bargaining mechanisms for employment conditions between the public authorities and organizations of public servants. While international standards did not contain requirements with regard to the minimum number of workers to start a collective bargaining process, the legislative provisions in Ecuador were aimed at ensuring the representativeness of the parties to negotiation. Any amendment envisaged should, in any case, take into account the institution as a whole. Global solutions should be sought which went beyond the mere amendment of isolated provisions. ILO technical assistance would help to find a way of harmonizing the constitutional provisions with the laws governing public servants.

An observer representing Public Services International said that the absence of a worker delegate at the Conference illustrated the Government’s unilateral approach in decision-making. In 2014, the Government had been called to appear before the Committee due to persistent and systematic violations of the Convention. Since 2007, the country had been backtracking on labour matters, with the State, as an employer, abandoning the fundamental principles of international labour standards, especially freedom of association, tripartism and social dialogue. The constitutional reform undertaken by the Government on 3 December 2015 had put an end once and for all to collective bargaining in the public sector, culminating a systematic process which began in 2008. The constitutional reform, through one of one of its transitional provisions, left workers classified as public sector wage earners in legal uncertainty until the reform came into force, although providing that they would not lose their individual and collective rights. He indicated, however, that this transitional measure was not viable and that public sector wage earners, represented, inter alia, by

the National Federation of Provincial Council Wage Earners of Ecuador, would indeed lose their acquired rights. This showed that the reform in question represented a major retrograde step in the history of Ecuador. He added that the Trade Union of Workers of the Pichincha Provincial Government was the target of a range of Government strategies to neutralize it. He referred by way of illustration to the manoeuvres by the Ministry of Labour to prevent that trade union from participating stoppage of 13 August 2015 to protest against the constitutional reform process. Despite the Government’s attempts to eliminate certain trade union organizations and collective bargaining, the organizations affiliated to Public Services International, the National Union of Educators and the United Workers Front, were still operational.

An observer representing Education International (EI) said that the situation of public servants had deteriorated since 2014. The Government had not implemented the recommendations of the supervisory bodies or of the ILO technical mission, primarily relating to the teachers’ union, the National Union of Teachers (UNE) with the exception of creating a national consultative labour council. Teachers were covered by the LOSEP and the Basic Act on Intercultural Education and therefore did not enjoy the right to freedom of association or the right to collective bargaining. Moreover, the rights of the country’s trade unions, such as the deduction of union dues or leave for trade union activities, were restricted. There was constant harassment of trade unionists and social protest was criminalized, while union leaders were taken to remote locations and administrative proceedings were brought against them. The executive boards of trade unions were not being registered, which limited their ability to receive dues from members and national or international donations. The Government had also confiscated union funds. An initiative to reform the Basic Act on Intercultural Education had been introduced to allow for better living conditions for teachers through collective bargaining. The Government was urged to respect international labour law and guarantee social dialogue and collective bargaining.

The Government member of Mexico, speaking on behalf of the group of Latin American and Caribbean (GRULAC) countries, expressed solidarity following the earthquake that had devastated the country in April 2016. He emphasized the systematic progress made in labour legislation, particularly with respect the insertion into employment of persons with disabilities; the “My First Job” programme; the eradication of the worst forms of child labour; and the implementation of the “Dignified Wage” to cover the basic shopping basket. In addition, the Labour Justice Act had been in force since 20 April 2015 and contained provisions such as “dismissals without effect” to protect union leaders in their functions as representatives of workers’ organizations. He also drew attention to the significant number of trade unions registered over the last decade (1,001) which demonstrated the existence of freedom of association. Moreover, it should be emphasized that the recently adopted constitutional amendment expressly recognized both the right of public servants to organize in defence of their interests and the right to strike. Implementing provisions were now being drafted. In conclusion, he expressed confidence that all outstanding issues before the Commit-

tee of Experts would be duly addressed, with the vital assistance of the ILO, and that Ecuador would continue to adopt labour policies that were in conformity with international labour standards.

The Government member of Uruguay endorsed the statement made on behalf of GRULAC and reiterated her Government's readiness to collaborate with Ecuador, particularly with regard to collective bargaining in the public sector, within the framework of a South–South collaboration process promoted by the ILO.

An observer representing the Confederation of University Workers in the Americas (CONTUA) said that the Government restricted the right of public sector workers to freedom of association, collective bargaining and to strike. In Ecuador, practices persisted known as the “compulsory purchase of redundancy”, which was euphemism, and a linguistic and legal contradiction used to conceal over 15,000 discriminatory dismissals in the public sector, many of which concerned trade union leaders. Moreover, the Government hoped to amend the LOSEP and LOEP in the near future, without consulting trade union organizations. Union leaders were systematically attacked and prevented from carrying out their duties. The Government was urged to talk to the social partners and amend policies that denied people their rights. He wished to draw particular attention to the situation of the Andean Simón Bolívar University, in Ecuador, which was undergoing a difficult period concerning respect of the principle of the independence of the universities. In this connection, workers belonging to trade unions affiliated with CONTUA were systematically attacked to prevent them from exercising their rights in a context of respect for freedom of association. The independence of universities and trade unions were two pillars of social democracy which, in this specific case, were being threatened. Due to the commitment with which they performed their tasks, workers were victims of threats, interventions and interference aimed at restricting their independence and rights. In conclusion, he called for a tripartite mission to visit the country on an urgent basis.

The Government member of Cuba endorsed the statement made on behalf of GRULAC, especially the expression of solidarity with the Government and people of Ecuador following the earthquake that had occurred in April 2016. She appreciated the detailed information provided by the Government concerning the application of the Convention and recognized the achievements of the citizens' revolution in its efforts to guarantee the right to work and to strengthen inclusion and social protection. She welcomed the recognition by the Committee of Experts of the progress made in the labour legislation in the country. The sustained increase in the registration of new trade union organizations demonstrated the Government's efforts to guarantee the full exercise of the right to freedom of association. These efforts should be supported by technical assistance from the ILO, especially during the difficult time that the country was going through. She hoped that the focus in this case would be on the cooperation which should characterize relations between the ILO and its member States.

The Worker member of the United States said that the sustained attack on the labour rights of public sector workers had been a long-standing issue in Ecuador. Many parts of the world, including parts of the United States, had sought to reduce or eliminate public sector collective bargaining.

In Ecuador, this had been a consistent policy of the Government since 2008. In past years, the Committee on Freedom of Association and the Committee of Experts had noted the measures taken by the Government to limit collective bargaining rights in ways that were inconsistent with the Convention. The Committee of Experts had noted with concern: (i) the persistent problems faced by public sector workers, especially those in education; (ii) the measures introduced in the new Constitution to reduce public sector collective bargaining rights, which were inconsistent with the Convention; (iii) the exclusion of certain public sector workers from the guarantees laid down in the Convention; and (iv) the provisions of the LOEP and of the LOSEP. He hoped that the Committee would adopt clear conclusions on this case, despite the absence of Workers' delegates from the country. The Committee of Experts had requested the Government to extend the right to collective bargaining to teachers, municipal workers, public services and air transport workers. Despite the consistent comments of the Committee of Experts concerning the exclusion of these workers from the application of the Convention in Ecuador, the Government had amended the Constitution and had adopted laws against the inclusion of public sector workers. This year, the Committee of Experts had clearly indicated that the Convention applied to the following public servants: teachers, municipal employees, public enterprise employees and air transport personnel. The Government should extend the right to collective bargaining to these categories of workers as required by the Convention. He called upon the Government to ratify the Labour Relations (Public Service) Convention, 1978 (No. 151), and the Collective Bargaining Convention, 1981 (No. 154), in order to provide specific coverage for officials involved in the administration of the State.

The Government member of the Plurinational State of Bolivia endorsed the statement made by GRULAC and conveyed a message of solidarity to the Ecuadorian people following the earthquake that had occurred in April 2016. The Ecuadorian legislative process had achieved significant progress in the field of labour rights since 2007. She applauded the adoption in April 2015 of the Act on labour justice and the recognition of household work, which protected trade union members from summary and unjustified dismissal. She emphasized that the amendment to the Ecuadorian Constitution, which explicitly recognized the right of public servants to organize in defence of their interests, and the right to strike, was in the process of implementation. Progress in relation to wages in Ecuador included the increase in the statutory minimum wage of workers by over 100 per cent over recent years, and the introduction of a living wage (*salario digno*) to cover basic living costs. There had also been an increase in the number of workers registered with the social security system. The country was continuing to develop labour policies that were in line with its national legislation and it would surely continue to share its best practices. In conclusion, she hoped that the Committee would appreciate the progress made by Ecuador taking into account the country's priorities in the present economic situation.

The Employer member of Mexico began by expressing his condolences and solidarity with the Ecuadorian people in view of the recent earthquake. He questioned the way in

which the Committee of Experts was once again addressing the question of the representation of workers for the purposes of collective bargaining. The comment made by the Committee of Experts was excessive in considering that, when the majority of workers did not wish to exercise the right to conclude a collective agreement, any group of workers, irrespective of their number, could do so by themselves or through a trade union. The right to organize and collective bargaining were not obligations, but rights that workers could choose to exercise or not. The Supreme Court of Ecuador had ruled that a collective agreement in a workplace would be extended to workers who were not members of the organization that had concluded the agreement. According to the criteria of the Committee of Experts, Ecuador should amend its legislation. He considered that in such a scenario, everyone was a loser: (i) workers ran the risk of their trade union representation becoming fragmented, and, if a minority of workers engaged in collective bargaining and the outcome was then applied to the other workers, the exercise of the right to collective bargaining of those who had not participated was impaired; (ii) governance was affected, and problems increased in the registration of collective labour agreements; (iii) employers could be obliged to negotiate a variety of collective labour agreements within the same enterprise, which would complicate the administration of human resources and have an impact on costs and industrial relations. If majority representation in any form of social organization was a democratic principle, the concept of the “bargaining agent” acknowledged by the Committee of Experts and the Committee on Freedom of Association as a suitable measure, should not be eliminated, nor should Ecuador be asked to remove the majority principle from its legislation without considering the consequences.

The Worker member of Argentina referred to the unacceptable interference by the Government of Ecuador in the fundamental right to organize and bargain collectively of public employees not engaged in the administration of the State. It was an issue that had already been examined by the ILO’s supervisory bodies and had prompted a technical mission to Ecuador in January 2015. As a result of the entry into force of the Constitution approved in 2008, the adoption of constituent amendments and the enactment of new legislation on public enterprises and employees, the labour rights of workers in the public sector in Ecuador had been seriously prejudiced. Executive Decree No. 813 of 2011 provided that public employees could be dismissed through the process known as “compulsory purchase of redundancy”. In the first six months following the Decree’s entry into force, the Government ordered the dismissal of 5,000 public sector workers without any grounds being given (see Committee on Freedom of Association Case No. 2926). The so-called “compulsory purchase of redundancy” was a violation of the Convention on two counts: not only was it used in a discriminatory manner against public employees who were members of trade unions to decimate the trade union movement or encourage the formation of organizations close to the interests of the Government, but it also undermined the stability clauses included in collective agreements. Under the Basic Act on the Public Service, workers were denied their right to freedom of association, to strike and to bargain collectively. In

addition, the Act and the legislation applicable to employees in public enterprises and in the education sector provided no protection against anti-union discrimination or interference. The draft amendment to the Constitution was also designed to achieve the complete eradication of freedom of association and collective bargaining in the public sector, by proposing that “wage earners” in public enterprises be brought under the labour legislation governing the public sector, thereby denying the right to collective bargaining of the last category of public employees still entitled to do so. The legislation did not allow State “wage earners” to negotiate their wages, even though their conditions of employment were governed by the Labour Code.

The State was increasingly interfering in collective bargaining, where it now had the unilateral power to review public sector collective agreements on the grounds that of the possible abusive nature of clauses of agreements. Both the Committee of Experts and the Committee on Freedom of Association had emphasized that such review would be admissible only if the determination of the alleged abusive nature of such clauses was made by the judicial authorities. In conclusion, he called on the Committee to urge Ecuador in the strongest terms to comply with the observations formulated time and again by the ILO supervisory bodies.

The Government representative expressed thanks for the various interventions and the support from GRULAC, and agreed with the position outlined on several occasions concerning the method and criteria for the selection of cases. She also welcomed those delegations which had expressed their support and intention to share information and good practices on issues relating to the Convention. The non-attendance of a delegation from the capital was due to a situation of force majeure which had hit Ecuador and continued to affect it; and fell within the scope of the Union Nations General Assembly Resolution 56/83. Regarding the minimum percentage requirement for collective bargaining, she said that collective agreements applied to all workers, whether or not they were members of a labour organization, whether a trade union or a works council. Therefore, the requirement that the organization or group of organizations which were to negotiate collectively should represent over 50 per cent of the workers with stable contracts was based on the principle of representativity. With regard to the alleged penalization of strikes, it needed to be taken into account that the right to strike was a principle enshrined in Article 326 of the Constitution, and was therefore not punishable by law. However, as in the laws of many countries, the Constitution established limits on stoppages in basic services, defined essentially by the non-infringement of other peoples’ rights. Turning to the alleged acts of anti-union discrimination in access to employment, Article 11(2) of the Constitution provided that all persons were equal and enjoyed the same rights, duties and opportunities, and were therefore protected against any form of discrimination. The constitutional rule, which was applicable in possible cases of anti-union discrimination, was given effect by section 452 of the Labour Code, which sought to guarantee the exercise of the right to organize by establishing an increased compensation for summary dismissal, as well as guaranteeing the continuation of the process of forming the labour organization that was being established. The purpose of removing Article 29(3) from the

Constitution was to ensure and to unify the legal framework protecting workers, thus ending the hateful distinction between wage earners and public servants which divided and differentiated physical and intellectual effort. Its objective was the protection of all public servants so that, with the entry into force of the new regulations, they would all be covered by the LOSEP, the benefits of which were broader than those of the Labour Code. They included the right to annual leave of 30 days, which was double the 15 days provided by the Labour Code. On the establishment of trade unions, she recalled that, while 2,178 worker organizations had been registered between 1961 and 2007, 1,001 had been registered since 2007. Those figures were a clear indication of the opportunities to organize in the country.

The intention of the Constitutional Assembly with regard to the reforms had not been to negatively affect the trade union movement or collective bargaining in the public sector, but to avoid the perpetuation of the abusive practices of certain minority higher-level workers' organizations, which generated inequality for the vast majority of Ecuadorian workers by accruing disproportionate privileges and benefits. A key point to bear in mind was that little more than a year before, the Act on labour justice and the recognition of household work had entered into force, which not only updated several provisions of the Labour Code, but also extended labour protection to vulnerable actors in the tripartite relationship. The main aim of the Act was to bring labour legislation into line with reality and make it as consistent as possible with the Conventions ratified by Ecuador. She welcomed the 2016 report of the Committee of Experts, which indicated that "its opinions and recommendations" were "non-binding, being intended to guide the actions of national authorities" and that they were "persuasive" in nature. She agreed with the comments of the Committee of Experts on the value of opinions and recommendations and considered that, although their application was not mandatory, they provided precious guidance to be taken into account. Lastly, she said that she had taken due note of the statements made by the representatives of the Employers and Workers and that their messages would be forwarded to the Ecuadorian labour authorities, who maintained an open attitude to dialogue, which they considered as the basis for good tripartite relations. Ecuador had appeared before the Committee willing to listen to the social partners and felt strengthened by the discussion that had taken place. It did not take the view that it had been subjected to criticism, but to a democratic exercise of tripartite dialogue, even in the face of the adverse conditions resulting from a natural phenomenon beyond the State's control.

The Worker members said that the Government had shown neither consideration nor respect for the rights of workers in the public sector, particularly the fundamental right to collective bargaining, and for the ILO's supervisory system. Although it had on several occasions received guidance on compliance with the Convention, as well as technical assistance from the Office, the Government had chosen to do precisely the opposite. Furthermore, in 2016 the Government had not appointed any workers to attend the Committee to express their views on the case, which was a clear violation of the ILO Constitution. Ecuador was far from complying with the Convention. The main amendments to the Constitution and labour laws had been adopted

without consulting the trade unions. When trade unions and workers took action to express their opposition to the reforms, they had been met with teargas and in many cases had been detained or imprisoned. The Worker members were very worried about the serious anti-union climate in Ecuador and called on the Government to immediately take the necessary measures to bring an end to the constant attacks on workers and trade unions. They also urged the Government to meet the trade unions, which had already drafted and submitted specific proposals on how to comply with the Convention. Taking fully into account the observations of the Committee of Experts, they urged the Government to engage in a process of social dialogue to: (i) establish a clear timetable and process for bringing the Constitution into line with the Convention; (ii) amend the LOSEP and the LOEP to ensure that all workers, with the possible exception of persons who exercised authority in the name of the State, enjoyed the right to organize and bargain collectively in accordance with the Convention; (iii) amend section 221 of the Labour Code so that, when there was no union whose membership comprised more than 50 per cent of the workers, minority trade unions could, on their own or jointly, negotiate on behalf of their members; (iv) bring an end to the practice known as the "compulsory purchase of redundancy"; and (v) repeal Ministerial Orders Nos 80 and 155, which allowed clauses in public sector collective agreements to be declared "abusive", a power that should only be exercised by the judicial authorities. They also urged the Government to cease all acts of violence and intimidation against trade unionists, refrain from making statements that discredited trade unions and accept a high-level tripartite mission to examine the issues raised by the Committee of Experts in its report and to devise a plan to address them without delay. Finally, in view of the seriousness of the case and the Government's failure to appoint Workers' delegates, they called for the conclusions on this case to be included in a special paragraph of the Committee's report.

The Employer members thanked the Government for the information it had provided. In their view, collective bargaining could not be replaced on the grounds of greater benefits would accrue. They requested the Government to provide updated information on the situation regarding the amendments to the Constitution and on their impact on the legal aspects of the case. Before amending the law in any way and to ensure that any legal texts adopted complied with the approved constitutional amendments and the Convention, they called on the Government to launch a consultation process with the most representative employers' and workers' organizations. They reminded the Government that it could in any case avail itself of ILO technical assistance to conduct such consultations and the subsequent legislative reform.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the information provided by the Government and asked it to provide additional information on the state of the situation in relation to the constitutional amendments and on their impact on the legal aspects of the case.

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

- initiate a process of consultation with the most representative employers' and workers' organizations prior to any amendment to the law, in order to bring all the relevant legislations into compliance with Convention No. 98;
- amend the LOSEP and LOEP so as to ensure that all workers, with the possible exception of persons engaged in the administration of the State, enjoy the right to establish trade unions and to bargain collectively in accordance with the Convention;
- repeal Ministerial Orders Nos 00080 and 00155 which allow clauses in public sector collective agreements to be qualified as abusive, an authority which should come only within the purview of the Judiciary;
- accept a programme of ILO technical assistance in conducting the consultations referred to above and the subsequent legislative reform;
- ensure that collective bargaining can be exercised in a climate of dialogue and mutual understanding.

The Committee deeply regrets that the Government failed to accredit a tripartite delegation to the Conference to enable a tripartite delegation to register for the discussion of its case before this Committee. The Committee refers the Government to article 3 of the ILO Constitution.

The Government representative took due note of the Committee's conclusions and said that they would be sent to the Government for consideration.

IRELAND (ratification: 1955)

The Government provided the following written information.

With reference to previous detailed reports from Ireland on the Convention, there has been no significant change in the implementation of the Convention since the previous report was submitted in 2011. The Government, however, outlines recent developments and progress with the enactment of the Industrial Relations (Amendment) Act 2015, which came into effect on 1 August 2015. Enactment marked the fulfilment of the commitment in the Programme for Government to reform the current law on employees' right to engage in collective bargaining in order to ensure compliance by the State with recent judgments of the European Court of Human Rights. The legislation provides a clear and balanced mechanism by which the fairness of the employment conditions of workers in their totality can be assessed in employments where collective bargaining does not take place and will bring clarity and certainty for employers in terms of managing their workplaces in this respect. It also explicitly prohibits the use of inducements by employers to persuade employees to forgo collective bargaining representation and will provide strong protections for workers who invoke the provisions of the 2001/2004 Industrial Relations Acts or who have acted as a witness or a comparator for the purposes of those Acts. Enactment of the legislation follows a lengthy consultation process involving extensive engagement with stakeholders with a view to putting in place an effective and practical solution to all concerned. The legislation ensures the retention of Ireland's voluntary system of industrial relations, but it also means that where an employer chooses not to engage in collective bargaining either with a trade union or an internal "excepted body", and where the number of employees on whose behalf the matter is being pursued is not

insignificant, the 2001 Act was remediated to ensure that an effective framework exists which allows a trade union to have the remuneration and terms and conditions of its members in that employment assessed against relevant comparators and determined by the Labour Court, if necessary.

The legislation ensures that where an employer is engaged in collective bargaining with an internal "excepted body", as opposed to a trade union, that body must satisfy the Labour Court as to its independence of the employer. Specifically, the legislation includes: a definition of what constitutes "collective bargaining"; provisions to help the Labour Court identify if internal bargaining bodies are genuinely independent of their employer and not under their domination or control; bringing clarity to the requirements to be met by a trade union advancing a claim under the Act; setting out the policies and principles for the Labour Court to follow when assessing those workers' terms and conditions, including the sustainability of the employers business in the long-term; new provisions to ensure cases dealt with are ones where the numbers of workers are not insignificant; provisions to ensure remuneration, terms and conditions are looked at in their totality; provisions to ensure that there is some management of the permitted frequency of reassessment of the same issues; and enhanced protection by way of interim relief in the case of dismissal for workers who may feel that they are being victimized for exercising their rights under the proposed legislation. An explicit prohibition on the use by employers of inducements (financial or otherwise) designed specifically to have staff forgo collective representation by a trade union was introduced with the adoption of a statutory Code of Practice on Victimization on 28 October 2015.

In relation to the competition issue referred to by the Committee, under both European Union (EU) and Irish competition legislation, self-employed persons are regarded as "undertakings". There is ample evidence of EU case law at the Court of Justice of the European Union (CJEU), which has determined that such workers are regarded as undertakings from an EU competition law angle. Section 4 of the Irish Competition Act 2002 prohibits and makes void all agreements between undertakings, decisions by bodies representing undertakings and concerted practices which have, as their object or effect, the prevention, restriction or distortion of competition in trade in any goods or services in the State or in any part of the State. This reflects the provisions of Article 101 of the Treaty on the Functioning of the EU (TFEU), which contains a similar prohibition in relation to agreements, decisions and concerted practices, which may affect trade between Member States. The current situation is that representative bodies and self-employed persons acting collectively cannot decide on the fees for services provided by them nor can they collectively agree a price between themselves for their services, as this is regarded as price fixing contrary to the Competition Act 2002. Competition law does not prohibit consultation with undertakings (or their representatives) as long as the power to ultimately set the price does not lie with that collective group. Under EU law, a worker, within the meaning of Article 45 of the TFEU is a person who, for a certain period of time, performs services for and under the direction of another person, in return for which he or

she receives remuneration and such a person is not an undertaking. However, the formal classification under national law of a person as “self-employed” does not exclude the possibility that the person is a worker within the meaning of Article 45 of the TFEU. Accordingly, a person will not be considered to be an undertaking for the purposes of EU competition law where the nature of his or her work is such that he or she becomes incorporated into the undertakings for which he or she is engaged to provide services thus forming an economic unit with those undertakings. In this context, the right of employees to be represented by trade unions is not disputed. Under the *Towards 2016 Social Partnership Agreement*, the (then) Government agreed to the following:

9.6. The Government is committed to introducing amending legislation in 2009 to exclude voice-over actors, freelance journalists and session musicians, being categories of workers formerly or currently covered by collective agreements, when engaging in collective bargaining, from the provisions of Section 4 of the Competition Act, 2002, taking into account, inter alia, that there would be negligible negative impacts on the economy or on the level of competition, and having regard to the specific attributes and nature of the work involved subject to consistency with EU competition rules.

Since that commitment was entered into, the EU–International Monetary Fund Programme of Financial Support for Ireland was agreed. The Memorandum of Understanding under the EU–IMF Programme of Financial Support for Ireland committed Irish authorities to: Ensure that no further exemptions to the competition law framework will be granted unless they are entirely consistent with the goals of the EU–IMF Programme and the needs of the economy. No such exemptions were granted. There are no plans to introduce such exemptions, especially in light of the post-programme surveillance process that is currently in place. Following on from the CJEU *Dutch Musicians judgment*, December 2014 in *FNV Kunsten Informatie en Media v Netherlands*, the Competition and Consumer Protection Commission was asked if, in light of the judgment, the Commission needed to revise Decision (No. E/04022): *Restriction on the Right of Self Employed Workers to Collectively Bargain Through a Trade Union*, dated 31 August 2004. The Commission concluded, having fully considered the matter, that the Authority’s analysis and conclusion of the Decision (No. E/04022) remained consistent with Irish competition law as interpreted in the light of the relevant principles of the EU competition law set out by the CJEU in its *Dutch Musicians judgment*.

In addition, before the Committee, a **Government representative** affirmed that his Government took its ILO obligations very seriously. Ireland had ratified all eight fundamental Conventions and a number of other important ones, including the *Domestic Workers Convention*, 2011 (No. 189). In 2015, the Government had completed several legislative and administrative reforms regarding its employment and industrial relations framework. In this same period, it had also made great progress in submitting outstanding reports to the Office; regrettably, the report on Convention No. 98 had been submitted in April 2016, too late for the Committee of Experts’ examination. He said that the Government had met representatives of the social partners to discuss the present case. He recalled that two issues had originally been raised relating to the application

of the Convention. The first concerned the promotion of collective bargaining, in light of an Irish Supreme Court case involving Ryanair that was the subject of a complaint to the Committee on Freedom of Association. In this respect, significant work over the past few years, following extensive and positive engagement with the social partners, had resulted in important legislative developments. These developments greatly enhanced the rights of employees to collectively bargain with their employer and to access the State’s workplace relations machinery in order to vindicate their rights. In 2015, a new *Industrial Relations Act* had been enacted which provided for a number of important reforms. The Act strengthened the statutory Code of Practice on Victimization to explicitly prohibit inducements to forego trade union representation. It reaffirmed compliance with recent judgments of the European Court of Human Rights and addressed the issues raised by the ILO Committee on Freedom of Association in the context of the complaint arising out of the Supreme Court’s *Ryanair case*. Moreover, the Act significantly strengthened the position of workers and trade unions to improve the terms and conditions of members in instances where collective bargaining was not engaged in by the employer; in such situations it ensured that workers, aided by their union, could advance claims regarding pay and other terms and have these determined by the Labour Court based on comparisons with similar companies. The reforms also included strong anti-victimization measures and new interim relief through the Irish Circuit Court pending the determination of a claim for unfair dismissal. The *Industrial Relations Act* provided for the reinstatement of collectively bargained Registered Employment Agreements at enterprise level, and for new Sectoral Employment Orders to give full statutory backing to sector-specific remuneration, sick pay schemes and pension schemes for specified classes, groups and categories of workers. The Government had noted with satisfaction the comments of the Committee of Experts’ on this legislation. A further significant development was the adoption in 2015, of the *Workplace Relations Act*, which had delivered Ireland’s most ambitious reform programme ever with regard to the State’s workplace relations machinery. The Act streamlined five workplace relations bodies into just two, greatly simplifying the system and facilitating access for those seeking to vindicate their rights. It also provided for enhanced compliance measures. Yet another law enacted last in 2015 was the *National Minimum Wage (Low Pay Commission) Act*, which placed the Low Pay Commission on a statutory footing. The Commission was mandated to make recommendations to the Minister for Jobs, Enterprise and Innovation on a minimum wage that was fair and sustainable, and when appropriate, was adjusted incrementally. It was clear from the above summary of developments that the Government was actively ensuring a comprehensive and up-to-date legal framework for employment rights and industrial relations.

The second issue regarding the application of the Convention concerned a decision made in 2004 by the then-Irish Competition Authority (now the Competition and Consumer Protection Commission), which was the statutorily independent authority in Ireland mandated to enforce both Irish and EU competition law. The decision concerned the application of the *Irish Competition Act of 2002* to an agreement made between the trade union *Irish*

EQUITY/SIPTU (on behalf of self-employed actors working as voice-over artists) and the Institute of Advertising Practitioners in Ireland (on behalf of advertising agencies). The Competition Authority had held that the agreement in question was in breach of competition law, as it established the level of fees for services rendered and so constituted price-setting contrary to the Competition Act. The self-employed workers in this case were deemed to be “undertakings” within the meaning of the Competition Act. The setting of prices by an association of undertakings ran counter to EU and national competition law. Following the Authority’s investigation, Irish EQUITY and the Institute had undertaken not to enter into or implement any agreement that directly or indirectly fixed the fees that the Institute or its members paid to self-employed actors. Neither party had challenged the Authority’s decision in court at that time, or since. He stressed that in its decision the Competition Authority stated that, while it was perfectly legal for a trade union to represent employees in collective bargaining with their employers, its trade union mantle could not exempt its conduct when it acts as a trade association for self-employed contractors in the area of price setting. This did not preclude, however, anyone from representing self-employed workers with respect to terms of work other than price setting. The decision thus related to the setting of fees by an association of self-employed actors deemed to be undertakings. It also related to an association of undertakings contracting those self-employed workers. He added that a corollary of this decision, was that a group or association of contractors could not set the level of fees to be earned by the self-employed. Additionally, under both Irish and EU competition law, self-employed persons, including professionals who were not employees, were regarded as undertakings, and there was ample case law in the CJEU supporting this position. The Government recognized that there could be instances where self-employed workers could be regarded as being in a situation comparable to employment, often referred to as false self-employment, as was the case in the *Dutch Musicians* judgment of December 2014 relating to self-employed substitute orchestral musicians. The musicians in that case were part of a trade union, and had argued that they had been excluded from minimum fee provisions under a collective agreement they had formerly enjoyed. The CJEU judgment emphasized that self-employed service providers were undertakings, and thus subject to competition law. The CJEU had also acknowledged that it was important to examine in each case whether individuals who appeared to be self-employed should in fact be categorized as “falsely self-employed”, who would in reality be employees who should not be subject to competition law. The Court had made it clear that it was for national courts to examine the facts of particular cases in order to determine whether an individual should be classified as a “false self-employed” or truly self-employed person. In light of the CJEU’s decision, the Irish Congress of Trade Unions and the then-Minister for Business and Employment had asked the Competition and Consumer Protection Commission to review the 2004 decision. The Commission had carefully considered the case and was satisfied that the CJEU judgment constituted a re-statement of well-established principles of EU law. It had also considered that the analysis and conclusions of the former Competition Authority in 2004 remained consistent with

the relevant principles of EU competition law set out in the CJEU judgment. It had further acknowledged that, had the undertaking in the 2004 case been proven to be “false self-employed”, then a different conclusion would have emerged. Referring to the EU–IMF Programme of Financial Support for Ireland, he indicated that, pursuant to the Memorandum of Understanding, the agreement of the Troika had to be sought in advance of any initiatives that might potentially impinge on the fulfilment of the Programme’s objectives. The Troika, and in particular the EU Commission, were fully aware of the Government’s commitments to exempt voice-over actors, freelance journalists and session musicians. The EU Commission had been consulted on two separate occasions on draft legislation which sought to limit the application of the Competition Act in order to establish rights for self-employed workers to be represented by trade unions for the purposes of collective bargaining, and on both occasions it had indicated that it saw no need for exemptions to the competition law. He said that the Government recognized the need to protect vulnerable workers. Ireland had a well-resourced labour inspectorate, equipped to identify and address issues of false self-employment. He further acknowledged that, notwithstanding the fact that the case under examination concerned Irish and EU competition law, it also raised wider issues relating to the protection of particular groups of workers and noted that the issue of the false self-employed presented very real challenges. The Government looked forward to future discussions on these issues, and in this connection welcomed the consultations recently launched by the European Commission on a European pillar of social rights, which aimed to address the gaps in rights and protections for vulnerable self-employed and other workers in atypical situations. Concerning the illegality of price setting, he warned of the danger of applying the particular to the general. The illegality of price setting was not an all-encompassing restriction, and did not restrict association generally, or negotiations on other terms of work. In conclusion, he emphasized that the Government had addressed many of the issues raised in the present case through legislative and administrative reforms that resulted in a much stronger industrial relations landscape.

The Worker members noted that the present case raised fundamental questions relating to the future of work, including the placing of democracy under the supervision of international agencies and the subjugation of social justice to the imperatives of free market. In this regard, it was important to recall three principles related to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and Convention No. 98: the right of collective bargaining was a fundamental right accepted by ILO members, simply by virtue of the fact that they belonged to the Organization, which they were obliged to respect, promote and realize in good faith. The recognition of the right to collective bargaining was of general application in both the private and public sectors, and only the armed forces, the police and public servants engaged in the administration of the State could be excluded from this right. When the outcome of collective bargaining was questioned or dismissed by a decision of the administrative authorities, employment relations were destabilized. Such interventions were not compatible with the principle of free and voluntary collective bargaining. This case concerned a

collective agreement that had entered into force on 1 October 2002, which provided for the remuneration of self-employed workers in the audiovisual industry. The agreement had been declared illegal and the social partners had had to negotiate a new agreement. According to information from the Government, in European law, self-employed workers were considered businesses, in the broad sense. Under Article 101 of the TFEU, any agreements between self-employed workers and their business partners were prohibited, particularly if they had as their object or effect the prevention, restriction or distortion of competition. The Worker members were of the view that this placed a considerable restriction on self-employed workers to organize themselves collectively. In 2006, an initial direct request from the Committee of Experts, henceforth repeated many times, had referred to restrictions on the right to organize and to bargain collectively introduced by the Competition Authority of Ireland when it had declared unlawful a collective agreement between Irish EQUITY/SIPTU and the Institute of Advertising Practitioners. The Committee of Experts had noted in 2009 that the Government had committed itself to amending the legislation on competition to allow for the conclusion of collective agreements. However, the Government had not fulfilled its commitment, owing to a programme of financial support granted by the IMF, the European Commission and the European Central Bank, which prohibited it from amending the Competition Act and honouring its commitment to the social partners. The Worker members considered that the national authorities were being subordinated to the imperatives of international institutions. While some of the legislative progress noted by the Committee of Experts in 2015 was to be commended, the question of the right for self-employed workers to bargain collectively had not been settled. The Competition Authority, drawing on, *inter alia*, the jurisprudence of the CJEU, had affirmed that legislative provisions on competition took precedence over labour rights. This argument lacked grounds and the examination of the right by the CJEU, in conformity with economic freedoms, was too restrictive.

At the ILO, the word “worker” was used in a broader sense than in European law, and the principle of freedom of association had a universal application that covered workers and employers “without distinction whatsoever”, as stated in Article 2 of Convention No. 87. Convention No. 98, for its part, provided that, apart from organizations of categories of workers that could be excluded from the scope of the Convention, the recognition of the right to bargain collectively was a blanket provision and, as such, should cover independent workers. In the light of the case law of the Committee on Freedom of Association (Case No. 2602 concerning the Republic of Korea and Case No. 2786 concerning the Dominican Republic) and several of the ILO’s General Surveys, the proper criteria for defining the workers covered was not the existence of an employment relationship, which might be absent. Self-employed workers needed to be able to defend their interests, *inter alia*, by means of collective bargaining, and yet in many countries they were excluded from national legislation guaranteeing trade union rights. The fact was that self-employed workers were covered by the Conventions and were accordingly fully entitled to establish workers’ organizations and to bargain collectively. Following a request

from the Irish Parliament in 2013, the European Commission had affirmed that the law of the European Union did not entitle self-employed workers to bargain collectively. Irish and European legislation on competition thus fell short of the principles of the ILO since, inasmuch as the right of competition restricted the right of self-employed workers to bargain collectively, it ran counter to Convention No. 98. As to the principles of collective bargaining, they were not respected when the Irish authorities were rendered subordinate to the imperatives of international agencies. Referring to the comments of the Committee of Experts, the Worker members recalled that although, in the name of an economic stabilization policy (*i.e.* for compelling reasons of national economic interest), it might be admissible for wage levels not to be fixed freely by collective bargaining, such restrictions must constitute an exceptional measure, be restricted to what was necessary and not exceed a reasonable period of time. As the Committee on Freedom of Association had pointed out, a three-year limitation on collective bargaining on wages as part of an economic stabilization policy constituted a significant restriction. The IMF, the European Commission and the Central European Bank had prohibited the Irish Government from complying with commitments it had entered into. Those measures had been in force since 2002 and the European Commission still maintained its point of view. From the standpoint of the Worker members, the reasonable period of intervention by the public authorities had long been exceeded, and the attitude of the three international institutions (the Troika) was in conflict with the right to bargain collectively. By way of conclusion, the Worker members considered that the examination of this case must not be allowed to mask the basic issue, which was that the right of a category of workers to bargain collectively should be recognized. Labour law was an interventionist law designed to regulate the economy, and refusing to apply a collective agreement because it hampered competition was tantamount to arguing in favour of complete deregulation. As the economy evolved and the number of workers with wage contracts declined, more and more people fell into the category concerned. In the twenty first century, recognizing the right of self-employed workers to bargain collectively was as important as decriminalizing trade union activities had been in the nineteenth century, and national legislation needed to adapt accordingly and to take it fully into account.

The Employer members pointed to the fact that the Convention had been ratified by Ireland in 1955, but that this was the first time that the Committee of Experts had adopted an observation and that the case had been considered by the Conference Committee. The information provided by the Government, and more specifically the adoption of employment legislation in 2015, should be welcomed. However, it was regrettable that the Government’s report on the application of the Convention had not been received in time for the last session of the Committee of Experts. As a result, no information except for the observations made by the Irish Congress of Trade Unions (ICTU) in September 2015 had been taken into account in the comments of the Committee of Experts. A first recommendation should be that the Government should submit its report without any further delay. It should be recalled

that the Committee of Experts had made positive observations with regard to the introduction of the Industrial Relations (Amendment) Act 2015 and it should be welcomed that the enactment of the legislation had followed a lengthy consultation process with the social partners and extensive engagement with stakeholders. The majority of the comments of the Committee of Experts related to self-employed workers. The Committee of Experts had focused primarily on the ICTU's observations, i.e. the categories of workers classified as "undertakings" who were therefore excluded from the right to collective bargaining. In the opinion of the Committee of Experts, organizations representing self-employed workers should also be covered by the right to collective bargaining. The Committee had also noted that the mechanisms for collective bargaining in traditional workplace relationships might not be adapted to the specific circumstances and conditions in which the self-employed work. The Committee of Experts had then invited the Government to ensure that self-employed workers could bargain collectively and develop specific collective bargaining mechanisms relevant to them. The Government had also explained that this was primarily a competition issue in both EU and Irish competition law, whereby the self-employed were considered to be "undertakings" and that, in this case, the restrictions focused on price-setting issues and did not interfere with bargaining. Ireland had a sophisticated labour relations system, including the jurisprudence to determine whether an individual was an employee or self-employed. There also existed case law of the CJEU in order to determine whether an individual should be considered a worker or self-employed. It should be recalled that Article 4 of Convention No. 98 referred to the promotion of voluntary negotiation between employers or employers' organizations and workers' organizations, but not to other forms of relationships (such as to independent or self-employed contractors). In their view this was a complicated issue of interaction between the principles of the Convention and EU competition law. Moreover, the Committee of Experts had only had limited information at its last session. There was insufficient information to consider this complex and very important issue of self-employed workers and collective bargaining. They therefore encouraged the Government to provide a full report for the consideration of the Committee of Experts at its meeting in 2016.

The Worker member of Ireland pointed to the observations provided by the ICTU in September 2015, including the significant step taken with the introduction of the Industrial Relations (Amendment) Act 2015. However, there were outstanding issues that needed to be addressed. An artificial distinction had been created between employees and self-employed workers, which was contrary to the proper observance of the Convention and was damaging the ability of vulnerable workers to bargain collectively on their pay and conditions of employment. In this regard, he recalled that the points of consensus adopted by the Global Dialogue Forum on Employment Relationships in the Media and Culture Sector, held in May 2014 at the ILO, called for fundamental principles and rights at work to apply to all workers in the media and culture sector, regardless of the nature of their employment relationship. He recalled that the collective agreement between Irish EQUITY/SIPTU and the Institute of Advertising Practitioners (effective from 2002 until the intervention of the

Competition Authority) set minimum rates of payment and other conditions of work for actors employed to perform adverts in radio, television and the visual arts. The Competition Authority had decided that the collective agreement was in breach of section 4 of the Competition Act 2002, as each actor was considered to be a business "undertaking", and that it was unlawful for undertakings to agree to fix prices for the sale of their services. On the threat of being fined, the two parties to the collective agreement had been obliged to agree not to make use of that collective agreement. The decision of the Competition Authority had also affected other trade unions representing self-employed workers, such as the National Union of Journalists (NUJ), which was no longer in a position to engage in collective bargaining with newspaper owners to set rates for the payment for articles and photographs, or to use the Freelance Fees Guide that it had established reflecting agreed rates for freelance work, because of the fear of the parties of being pursued for breaching competition law. Despite the CJEU judgment (*Dutch Musicians*) which mitigated the rule that every self-employed worker was an undertaking so that a collective agreement in respect of them was contrary to EU competition law, the Competition Authority had upheld its position. Despite the diverse efforts at the national level to exclude certain categories of self-employed workers from the scope of the Competition Act through amendments to this Act and a solemn commitment with the Government in this regard ("Towards 2016"), the Government argued the opposite. The Government had recently stated that the European Commission had advised that EU Law would not permit self-employed workers to exercise the right to bargain collectively. He emphasized that the Government could not argue that, following interpretation of EU rules, it was exempt from its obligations under ratified ILO Conventions. Such a position was contrary to a number of comments of the ILO supervisory bodies. Ireland was now ranked as the most competitive economy in the Euro area. It could hardly be argued that Ireland's gold standard competitiveness would be undermined by a derogation for niche cultural sector workers. The economy was not so fragile that securing negotiating rights or setting minimum rates for actors and session musicians should shake the foundations of the country. In conclusion, the Committee should call on the Government to take action to be in compliance with the Convention. The agreement reached by all sides in "Towards 2016" to amend the Competition Act to exclude self-employed "workers" should be implemented; and the Government should report back in a timely manner on the progress made in this regard.

The Employer member of Ireland noted the position of the ICTU outlined in the comments of the Committee of Experts in relation to the application of the Competition Act 2002 to self-employed workers. While the right of employees to freedom of association and collective bargaining was not being disputed, she supported the view of the Competition Authority that independent contractors did not have the protection of the Industrial Relations (Amendment) Act in so far as there was a conflict with the provisions of the Competition Act. The request by the Committee of Experts for the Government to hold consultations on the Competition Authority's decision was not understandable. Moreover, it was not understandable that the Government should

review the Authority's position in light of the *Dutch Musicians* case of the CJEU. If anything, that case reinforced the view that collective labour agreements only enjoyed exclusion from Article 101(1) of the TFEU when they related to terms and conditions of employees or those who were considered by a court of national competence to be "false self-employed". The ICTU held the view that collective bargaining should cover the self-employed. However, there was nothing in the wording of the Convention to support this view. Article 4 of the Convention referred to the conclusion of collective agreements between "workers" and "employers", which was distinct from other forms of contractual relationships, whereby a client or customer engaged the services of an independent contractor or "self-employed" person. In the latter event, the Convention did not apply. It was evident from the TFEU, the *Dutch Musicians* case and other sources of EU law that independent contractors had to be considered as "undertakings", and not as "employees". Both EU and Irish competition legislation regarded self-employed persons as "undertakings", and there was a plethora of national and EU case law which provided direction on whether an individual was an employee or an independent contractor. The proposal of the ICTU to amend the Competition Act 2002 would be likely to bring Ireland's competition legislation into conflict with its obligations under EU law. Such an amendment would be in direct conflict with the most recent decision of the CJEU on this very issue, which was jurisprudence by which the Irish legislature and courts were bound. The current situation was that representative bodies and self-employed persons acting collectively could not decide on the fees for services provided by them nor could they collectively agree a price between themselves for their services, as this was regarded as price-fixing contrary to section 4 of the Competition Act 2002. Amending the existing Competition Act would also have significant adverse implications for Ireland's competitiveness. There was a reason that workers operating under a contract of employment enjoyed significant additional levels of protection in law, given the level of control usually associated with an employment relationship. An independent contractor did not face these constraints or controls. In conclusion, there was no basis in international or EU law and no legitimate justification for changing the position articulated by the Competition Authority.

The Worker member of the Netherlands recalled that the Committee of Experts had referred to the case brought by the FNV to the CJEU, which was similar to the case under discussion. The FNV had signed a collective agreement covering both musicians with a permanent contract and those that were self-employed. Following the prohibition by the Dutch Competition Authority in this regard, the FNV had made a submission to the CJEU asking whether they could organize self-employed workers and include them in their collective bargaining agreements. The Court had ruled that the collective agreement was valid. When discussing restrictions on the organizing and bargaining rights of self-employed workers, the ILO instances concerned had considered that these restrictions were contrary to the principles of freedom of association and the right to collective bargaining. For example, in Case No. 2888 concerning Poland, the Committee on Freedom of Association

found that the narrow definition of "employee" in the Labour Code deemed freedom of association rights to self-employed workers. It had requested the Government to ensure that all workers and their representatives enjoyed adequate protection against acts of anti-union discrimination, regardless of whether they fell into the definition of employees under the Labour Code or not. The case of the self-employed had also been discussed during the Global Dialogue Forum on Employment Relationships in the Media and Culture Sector in 2014. Culture and media employers and workers had successfully concluded that the overly strict application of competition rules, intended to counter cartels, had in some cases resulted in the exclusion of self-employed workers from collective bargaining. Both employers and workers had agreed that this was an issue of growing concern, as it hampered the capacity of trade unions to represent creative workers and, as a result, undermined the standards that they had managed to set. The parties had agreed on points of consensus, acknowledging that fundamental principles and rights at work applied to all workers in the media and culture sector, regardless of the nature of their employment relationship, and had called on governments to ensure that competition legislation did not obstruct the right of workers in this sector to freedom of association and social dialogue. In conclusion, she called on the Government to accept that all the fundamental rights covered all workers, including to those that were self-employed.

The Government member of Spain, also speaking on behalf of the Government members of Italy and Portugal, said that, with respect to self-employed workers, the case presented two questions of great interest which had been carefully addressed by the Government. Firstly, the issues of competition and consumer rights, on which the community regulations of which also applied to other EU Member States and, secondly, the challenges that these new forms of work posed to society. With regard to defending competition and protecting consumers, within the strict limitations negotiated with the Troika within the framework of the Memorandum of Understanding on financial assistance to Ireland, the Government had sought to ensure, in line with EU legislation, that price-fixing did not prevent new agents, mainly young workers, from entering the sector. With regard to new forms of work, the Government was confronted with the problem of the so-called "false self-employed" who, as they were not subject to the regulations on competition, as they applied to businesses, could see their working conditions restricted owing to the inappropriate equation of self-employed workers with company workers. In conclusion, he indicated that Ireland had a robust system for the protection of vulnerable workers and that the debate would be followed closely, trusting that the Government would continue its dialogue with the social partners as the most effective approach for addressing these issues.

The Worker member of New Zealand, also speaking on behalf of the Worker members of Australia and the International Transport Workers Federation (ITF), referred to the events surrounding the production of the *Hobbit* movies in 2010, where all workers in the film industry had been consigned to contractor status in order to deny their collective bargaining rights. The issue of collective bargaining

for film and television workers was well known. All working people, irrespective of whether they were employees or other workers, should be granted the basic rights of freedom of association without distinction, which necessarily included the right to bargain collectively. Both the Committee on Freedom of Association and the Committee of Experts backed this view. In Case No. 2786 regarding the Dominican Republic, the Committee on Freedom of Association had asked the Government: (i) to ensure that “self-employed” workers fully enjoyed freedom of association rights, in particular the right to join organizations of their own choosing; (ii) to hold consultations to this end with all the parties involved with the aim of finding a mutually acceptable solution so as to ensure that workers who were self-employed could fully enjoy trade union rights for the purpose of furthering and defending their interest, including by the means of collective bargaining; and (iii) in consultation with the social partners concerned, to identify the particularities of self-employed workers that had a bearing on collective bargaining so as to develop specific collective bargaining mechanisms relevant to self-employed workers, if appropriate. In paragraph 209 of the 2012 General Survey concerning fundamental principles and rights at work, the Committee of Experts stated that the right to collective bargaining needed to be extended to organizations representing (among others) self-employed workers, temporary workers, outsourced and contract workers. Along the same lines, the 2015 Tripartite Meeting of Experts on Non-Standard Forms of Employment had concluded that: “[F]reedom of association and the effective recognition of the right to collective bargaining help support the attainment of decent work. Non-standard forms of employment may pose challenges when it comes to the effective realization of freedom of association and collective bargaining rights. Governments, employers and workers should use social dialogue to develop innovative approaches, including regulatory initiatives that enable workers in non-standard forms of employment to exercise these rights and enjoy the protection afforded to them under the applicable collective agreements.” Effective recognition of human rights such as collective bargaining was challenged by the rise of the on-demand or “gig” economy. There were certainly particularities, and not all workers should be treated exactly the same way. However, the ILO should not condone arrangements that shifted costs and risks to workers, while stripping them of their basic rights. Laws which facilitated the exploitation of workers under the guise of protecting competition or freedom of contract should not be tolerated. In conclusion, he called on the Government to work with the social partners to ensure that self-employed workers were granted the effective right to collectively bargain.

The Worker member of France said that self-employed workers were currently alone in bearing the uncertainty of supply and demand. They were in a grey area, as neither entrepreneur nor salaried employee, and they alone were responsible for their training and social protection. They were placed in a separate realm based on, through employability or flexicurity, individual rather than collective risk-taking. The model of permanent contracts was being replaced by “on demand” offers of work, and self-employed workers accumulated small tasks, just like the pieceworkers at the beginning of the twentieth century. However, most self-employed workers found themselves well and

truly in a subordinate relationship. The 2012 General Survey of the Committee of Experts emphasized that it was “essential to guarantee effective access to freedom of association and collective bargaining to ensure that workers in an employment relationship were recognized as such”. The number of self-employed workers was constantly increasing and this rise corresponded with an increase in complaints submitted to the Committee on Freedom of Association. The Committee emphasized that these forms of work could constitute complex obstacles to the collective organization of workers and, when they were not adequately regulated and supervised, could be used to circumvent or weaken freedom of association and the right to bargain collectively. The Government could not hide behind the decisions of the EU or the IMF, and forget the international obligations that it had taken on through the ratification of ILO Conventions, including Convention No. 98. The economy was based on the rights of its workers and on strong labour market institutions. The right to collective bargaining was a fundamental right guaranteed to all workers, including self-employed workers.

The Employer member of Belgium emphasized that the right to bargain collectively was a fundamental right and as such was irrefutable. It was recognized as a means of regulating terms and conditions of employment and, according to Article 4 of the Convention, *only* that. There was therefore no call to extend the scope of the Convention to all contractual relations entered into when providing services or labour. By definition, self-employed workers were free to manage their own time and employment conditions and to enter into contracts quite independently. From the legal standpoint, they were looked upon as businesses, and the Convention was not designed to regulate relations between businesses or between business people. Furthermore, national and European regulations existed that guaranteed healthy competition. The assertion in the 2012 General Survey that self-employed workers were entitled to bargain collectively was not justified: firstly, because the argument was based on only a few cases, whereas the instances of collaboration within countries varied widely, and because the national authorities themselves were responsible for establishing the criteria to distinguish between wage earners and self-employed workers; and, secondly, because the Convention established the framework for collective bargaining only within an employment relationship. Labour relations, however, evolved and raised challenges for ILO constituents as a whole. For that reason, the issue needed to be taken up within the context of a tripartite discussion and on the basis of more extensive information.

The Worker member of the United Kingdom highlighted the differences between the situations of the United Kingdom (UK) and Ireland regarding the right to bargain collectively. In the UK, collective agreements relating to the payment of both freelance workers and employees existed. In Ireland, by contrast, the commitment in 2008 of the Government to ensure that these self-employed workers had access to collective bargaining had never been fulfilled. Journalists, session musicians and voice-over actors had to bargain individually and were unable to be protected by collective agreements. The promised amendments to the legislation had not been adopted, with the explanation by the Government that such amendments would be in conflict

with the EU-IMF Programme and the needs of the economy. Despite leaving the Troika programme, the Government's position remained the same. The rights provided for in the Convention should not be differentially available according to the contractual status of the worker's employment relationship, which most workers were unable to choose. In both the UK and Ireland, areas of the media industry had experienced major redundancies, resulting in many workers finding themselves competing against each other for a smaller pool of work. Some workers were especially vulnerable to the negotiating power of the employing companies. Low pay, casual work arrangements and sporadic self-employment were widespread in the new media sections of the communication industry, which was particularly attractive to younger workers. The position of the ILO clearly demonstrated that the protection of the Convention had to be available to self-employed workers, temporary workers, outsourced and contract workers. Technological developments which changed the nature of work could not remove the fundamental rights to organize and bargain.

The Employer member of Denmark indicated that the question of self-employment was under discussion in many countries and presumed that trade unions were particularly interested in the issue because of the alleged "unfair competition" of self-employment towards "normal workers" and the desire to attract self-employed persons to unions. The distinction between the self-employed and workers was not artificial and was important for the balance of the labour market. Both Denmark and Ireland were required to comply with EU competition rules. The CJEU stated in its decision of 4 December 2014 (C-413/13) that: "*On a proper construction of EU law, it is only when self-employed service providers who are members of one of the contracting employees' organisations and perform for an employer, under a works or service contract, the same activity as that employer's employed workers, are 'false self-employed', in other words, service providers in a situation comparable to that of those workers, that a provision of a collective labour agreement, such as that at issue in the main proceedings, which sets minimum fees for those self-employed service providers, does not fall within the scope of Article 101(1) TFEU. It is for the national court to ascertain whether that is so.*" This decision clearly established that only "false self-employed" persons would fall outside the scope of competition rules. The comment of the Committee of Experts suggested that the judgment of the CJEU provided a basis for collective bargaining by all self-employed persons. However, the reading of the decision did not support this position.

The Employer member of Australia recalled that the case involved a decision by the Competition Authority of Ireland to declare as unlawful a collective agreement made between Irish EQUITY/SIPTU and the Institute of Advertising Practitioners which sought to fix rates of pay and conditions of employment within radio, television, cinema and the visual arts. The report of the Government had not been received in time to be considered by the Committee of Experts. The provision of further information was welcomed, as the Convention specifically referred to national conditions. It was acknowledged that practices such as price fixing, cartels and other behaviours that would lessen competition could create market distortions and adverse

outcomes for other businesses, consumers and the broader economy. The legislation regulating anti-competitive practices was needed and careful attention was required not to encourage an approach that might negatively impact the competitive landscape. The report of the Committee of Experts rightly indicated that the ICTU: "[did] not dispute that competition law should not preclude price fixing agreements among cartels of business". The distinction between persons who were conducting a business and persons entitled to the benefits of collective agreements had to be considered in the national context. Thus, the jurisprudence in Ireland would be essential in determining which persons had access to terms of conditions of employment by means of collective agreements. An alternative question, regarding competition and consumer law, would be whether categories of independent businesses had to be considered in breach of competition laws to the extent that the law rendered collective bargaining by businesses unlawful. However, such issue was outside the mandate of the Commission and was a domestic matter for the consideration of the Government. Regarding the past commitment to review section 4 of the Competition Act, she noted that the absence of such legislation did not in itself give rise to a failure to observe the Convention and that the Government had changed since that commitment had been made. In conclusion, she called for the provision of further information by the Government.

The Government representative welcomed the numerous interventions that had reflected a diversity of opinions on how the different principles at stake should interplay and had provided thoughts for further consideration. The Government was committed to protecting all vulnerable workers, and not just the few categories raised in the current discussion, in dialogue with the social partners with the expectation that the social partners would take into account the Government's broad responsibilities to the breadth of interests in Irish society and in the international community. Competition law and employment law could work together to protect all the interests at stake. Noting that a common theme at the present session of the Conference was the need to connect with the wider world and to build bridges across gaps in the world of work, he said that the Government was contributing to those important discussions. A balance between the different principles at play should be found to take into account the evolving nature of work. He said that he would convey the opinions voiced during the discussion to his Government and undertook to provide timely and comprehensive information.

The Employer members welcomed the detailed submission provided by the Government and its commitment to providing a detailed report on the issues raised by the Committee of Experts. The observation referred to two specific issues: collective bargaining and self-employed workers. On the issue of self-employed contractors, the discussion touched upon a number of issues of great interest to all tripartite stakeholders, including issues related to EU competition and consumer laws and the application of the Convention in the challenging context of the emergence of new forms of work. One clear question was the consideration as to whether Irish law prohibited self-employed workers from bargaining over price setting or fees for services, but permitted organization and bargaining on other types of issues, such as conditions of employment. The Employer

members concluded that the complexity of the matter required further information to consider appropriately the nature and details of the relevant provisions. They therefore encouraged the submission of a full report by the Government.

The Worker members thanked the Government representative for the explanation provided. Before concluding the Committee's examination of the case, certain principles under the Convention needed to be emphasized: the mere fact of membership of the ILO meant that member States were required to promote, respect and ensure in good faith the right of workers to bargain collectively; that right was of general scope, and only very specific categories of workers could be excluded from it; when a decision by the administrative authorities called into question the outcome of collective bargaining, the principle of free and voluntary negotiation was also called into question. When it had ratified the Convention, the Government had undertaken to adopt the necessary steps for its implementation in law and practice, irrespective of the degree of juridical complexity and the actors involved. While the Convention called on governments "to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations", the Troika, in agreement with the national authorities, had made it impossible to conclude collective agreements. Clearly such interference was unacceptable. But it was the Government's responsibility to encourage collective bargaining and to instruct the national authority accordingly. In the case of self-employed workers, it was undeniable that they were fully entitled to bargain collectively, and it was therefore the responsibility of the Government to engage in consultations with all the parties concerned so as to minimize restrictions on collective bargaining. It should therefore amend the Competition Act to allow self-employed workers to exercise their right to bargain collectively, and it needed to devise negotiating machinery that was specifically designed for their purpose. The Government would have to report back on the matter in 2017. In conclusion, the Worker members emphasized that, quite apart from the juridical considerations that it raised, the case also needed to be examined from the economic standpoint. If increasingly broad categories of workers were to be denied the possibility of negotiating the terms of their employment, unfair business practices were bound to proliferate. And if the right of competition prevented negotiations in more and more areas of the economy, then the rules of the game would no longer be fair and it would be impossible to formulate a long-term economic and industrial project.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the Government's indication that a significant step was taken with the introduction of the Industrial Relations (Amendment) Act 2015 (No. 27), which entered into force on 1 August 2015.

The Committee expressed disappointment that the Government had not provided a report in time for the Committee of Experts' review. It noted that the Government advised that it had submitted a report in April 2016 and the Government undertook to ensure that its report was fully responsive to the issues raised by the Committee of Experts so that the experts

can fully consider the Government's responses on all of the issues raised in this case.

The Committee noted that this case related to issues of EU and Irish competition law. To this end, the Committee suggested that the Government and the social partners identify the types of contractual arrangements that would have a bearing on collective bargaining mechanisms.

The Committee invited the Government to report in detail to the Committee of experts before its next session in November 2016.

The Government representative thanked the Chairperson for conveying the conclusions.

MALAYSIA (ratification: 1961)

A Government representative wished to share the various efforts and measures that had been taken by the Government, both internationally and domestically, with a view to minimizing the issues related to the right to organize and collective bargaining, thereby enhancing Malaysia's credibility and integrity. Regarding the observations made in 2015 by the International Trade Union Confederation (ITUC) and the Malaysian Trades Union Congress (MTUC), he said that the Government was currently amending the Industrial Relations Act 1967 (IRA) and the Trade Unions Act 1959, taking into consideration the comments of the Committee of Experts. Malaysia, as a signatory to the Trans-Pacific Partnership Agreement (TPPA), was embarking on labour law reforms. Out of a total of eight complaints raised by the MTUC, three had been resolved and five were pending before the Industrial Court or the relevant authority. Detailed comments by the Government would be forwarded in writing. The observations made in 2014 by the World Federation of Trade Unions (WFTU) and the National Union of Bank Employees (NUBE) concerned two cases: *NUBE v. Hong Leong Bank Bhd* and *Nur Hasmila Hafni Binti Hashim & 26 others v. Hong Leong Bank Bhd*. In both cases, the Industrial Court had dismissed the documents' claims on the substance. The Court had not yet received any notice for judicial review from the aggrieved parties.

With respect to the holistic review of labour laws, he said that the Government was currently drafting the amendments and had requested ILO technical assistance so as to facilitate the drafting of the amendments and to ensure that they were in line with the requirements of the Convention and the principles of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The length of the process of trade union recognition varied from case to case and depended on the cooperation of the parties. Furthermore, the recognition process could be subject to judicial review. Until the case was finally decided by the courts, the status of recognition could not be finalized. As to the criteria and procedure for recognition, section 9(4B)(b) of the IRA provided that during the recognition process the Director General of Industrial Relations (DGIR) could refer to the Director General of Trade Unions (DGTU) to ascertain the union's competence. The main criteria for recognition of trade unions were competence and majority support from employees (50 per cent plus one person), to be determined through secret ballot. Details on the formula were provided in Regulation 11 of the Industrial Relations Regulations 2009. Part IXA of the IRA, as amended, granted the power of investigation and prosecution to the DGIR to determine the competency of a

union to represent employees in a particular establishment, trade, industry or occupation. The investigation process would only commence after the DGIR had received a recognition claim from a trade union. The DGIR would carry out an investigation to examine the business activities carried out by the company. Among the criteria to determine eligibility were the final product; the raw materials used; the validation by the Companies Commission of Malaysia; the licence issued by the Ministry of International Trade and Industry; the relevant industrial sector; previous cases resolved; and legal court cases. The decision taken by the DGIR in light of the findings and information obtained through the investigation was forwarded to the DGTU for further action.

With respect to migrant workers, he reiterated the commitment of his country as an ILO member State and a State party to the TPPA to adhere to the principles of Convention No. 87. Non-citizens would be able to run for election for union office if they had been legally working in the country for at least three years. That amendment would enable trade unions to elect their representatives freely, especially with regard to representatives of migrant workers. As to the scope of collective bargaining, the Government had agreed, under the Labour Consistency Plan which formed part of the TPPA, to repeal during the upcoming amendment exercise section 13(3) of the IRA, which contained restrictions on collective bargaining with regard to transfer, dismissal and reinstatement. The Government would also look into and discuss the matter of compulsory arbitration, as it had been included in the Labour Consistency Plan. Concerning the restrictions on collective bargaining in the public sector, he said that the process in the public sector was different from the private sector. It was based on meetings or dialogues between workers' representatives and the management team, the outcomes of which could be used at various levels and brought to the attention of the Prime Minister. The benefits and welfare of public sector workers were far better compared to previous years. In conclusion, he reiterated that the labour law reforms would transform the landscape of industrial relations and labour practices in the country and would hopefully improve national labour laws so as to meet international labour standards, including the Convention.

The Worker members recalled that the application of the Convention by Malaysia had previously been examined by the Committee in 1999. Yet, certain issues of concern raised by the Committee of Experts dated back to 1989 and were still topical. They therefore considered that the discussion of this case by the Committee was timely and critical. The Government had failed to address the major shortcomings in its laws and practices, as well as in its institutional framework, to give effect to the Convention. Regrettably, the deficiencies concerned key issues, including trade union recognition, compulsory arbitration, the scope of collective bargaining, collective bargaining in the public sector, anti-union discrimination and the right of migrant workers to collective bargaining. They noted from the report of the Committee of Experts that the procedure for union recognition took at least three months and that, according to the Government, judicial reviews were conducted within a timespan of at least nine months. However, certain cases had been pending before the Industrial Court for more than three years including the case of a multinational

producing copper wire in the metal sector. These time frames were excessive, and were particularly problematic in light of the criteria and procedure under section 9 of the IRA. A union could submit a claim with the DGIR, if an employer rejected its request for voluntary recognition. Unions representing over 50 per cent of the workforce were entitled to participate in collective bargaining. However, the DGIR did not use the total number of participants in the ballot, but instead the total number of workers on the date that union requested recognition. If in this period (of up to three years) the number of workers in the factory had been substantially reduced, the union might lose the recognition, even if it got an overwhelming majority of the votes. The criteria and procedure were therefore open to abuse by certain employers, who sought to delay and prevent good faith collective bargaining. The Government had also repeatedly refused to comply with the request by the Committee of Experts to amend section 26(2) of the IRA, which provided that the Minister of Labour could refer a dispute to the Industrial Court for arbitration, even without the consent of the bargaining parties, in clear violation of Article 4. The Committee of Experts had also made repeated requests for the repeal of legislative texts imposing restrictions on the scope of collective bargaining, and specifically section 13(3) of the IRA, which contained restrictions on collective bargaining with regard to transfer, dismissal and reinstatement, which were essential terms and conditions of employment. Workers in the public sector were excluded from the right to collective bargaining, with consultations about working conditions taking place in the National Joint Council and the Joint Agency Council. The Committee of Experts had repeatedly urged the Government to allow public servants to bargain collectively over wages, remuneration and other working conditions.

The Worker members also expressed serious concerns over various discriminatory tactics used by certain employers against workers engaged in union activities, and the lack of remedies and dissuasive sanctions. Examples were numerous. Union officials in the railway industry had been subject to disciplinary actions for conducting a picket; ten workers in the rubber production industry had been dismissed for participating in a picket; a union leader employed in a waste collection company had been dismissed for sending out circulars to union members, and the Industrial Court had not ordered his reinstatement, despite the recognition by the court that he had acted as a union official in accordance with the law and the president of a union that sought recognition for collective bargaining purposes in a cement company had been transferred to another branch and then dismissed for allegedly making slanderous comments about management. The Committee of Experts had also raised concerns that migrant workers could only be elected as trade union representatives with the permission of the Minister of Human Resources pursuant to section 28(1)(a) and section 29(2) of the Trade Union Act. They observed that the practical obstacles to collective bargaining faced by migrants went much further. Migrant workers were likely to be subject to dismissal and non-renewal of residence permits if they joined a union or engaged in union activities, as had already happened in the electronics sector. In a case in the paper industry, the Industrial Court had ruled that migrant workers working un-

der a fixed-term contract could not benefit from the conditions agreed in collective agreements. The Worker members wished to draw to the attention of the Committee the fact that the MTUC could not engage in collective bargaining, which meant that there was no collective bargaining at national level. According to the principle of free and voluntary collective bargaining embodied in Article 4, the determination of the bargaining level was essentially a matter to be left to the discretion of the parties. They welcomed the Government's statement that it was currently undertaking a holistic review of its principal labour laws and emphasized the importance of social dialogue in the context of this review. They hoped that the Government would take into account the comments provided by the MTUC, which contained a detailed review of the legislation, taking into account the comments provided by the ILO supervisory mechanisms.

The Employer members noted that the case had been examined by the Committee in 1994 and 1999. Since then, the Committee of Experts had made nine observations on it, mostly dealing with Article 4 of the Convention. As the Government was conducting a holistic review of its labour laws, they considered that the observation of the Committee of Experts was a "laundry list" of issues with the current legislation in the hope that any new legislation would conform to such views. They therefore considered that it was not the right time to examine the case of Malaysia and would have preferred to do so after the long list of revisions had been made by the Government, which had welcomed the ILO's assistance. As the situation stood, five main issues were at stake.

First, regarding recognition, the law provided for a secret ballot if an employer did not voluntarily recognize a trade union. Prior observations of the Committee of Experts concerning the duration of the recognition process mentioned that it took nine months on average, but the Government had stated that the duration was only three to four-and-a-half months. While the Committee of Experts believed it was still too long, the Employer members considered that this was shorter and that Article 4 said nothing about the duration of the recognition process. In addition, regarding the ballot, a majority of 50 per cent of workers on the date that the union sought recognition was required, whereas the Committee of Experts considered that it should be 50 per cent of actual voters. Again, Article 4 did not provide any details on the ballot process. Such matters were inappropriate for a binding Convention. Second, the law potentially restricted migrant workers from holding union office, although it did not establish a blanket ban on migrant workers, but only required permission from the Minister of Human Resources. In the view of the Employer members, Article 4 did not deal with the question, which moreover appeared to be a sovereign right consistent with the term used in Article 4 "measures appropriate to national conditions". The Government had stated that it planned to amend the national legislation in this regard, and the Employer members welcomed that initiative. The third issue concerned management rights, including promotion, transfer, employment, termination, dismissal and reinstatement. In the past, there had been discussions in the Conference Committee on the matters that could be subject to collective bargaining. Determining matters that could be the subject of collective bargaining should be the right of a member State.

The Convention did not enumerate matters that were not subject to collective bargaining. Any such detail should be part of a non-binding recommendation, not a Convention. Detailing matters in that way contradicted the voluntary character of collective bargaining and was not appropriate for an observation. While noting the Government's intention to change the law, the Employer members considered that the existing provision was not contrary to Article 4 of the Convention. The fourth issue concerned restrictions on the right to collective bargaining for public servants other than those engaged in the administration of the State. The Government had noted that committees existed to discuss working conditions with the State. It would however be useful to receive precise information on the bargaining that had taken place, the number of those committees and the nature and number of the collective agreements that had been concluded. Finally, regarding compulsory arbitration if collective bargaining failed, the law allowed either social partner to request such arbitration and the Minister of Labour to refer the parties to arbitration. They raised the question as to why the Committee of Experts had only taken issue with the latter. In conclusion, the Employer members did not consider that the case was about the failure of collective bargaining, but mostly about the Committee of Experts expressing detailed views on a broadly worded provision.

The Worker member of Malaysia said that, while the enactment of the IRA upon ratification of the Convention had been laudable, collective bargaining was subject to statutory restrictions which ran counter to the Convention. When workers succeeded in establishing and registering a union, they still had to go through the rigid, agonizing and costly legal process of recognition under section 9. Related to this was the competency check of trade unions by a third party, as well as the secret ballot to determine whether a union represented the majority of workers. A union's locus standi to represent the workers could also be challenged by judicial process, which was time consuming and extremely costly for trade unions. Even if trade unions succeeded in the recognition process, they could not determine the scope of negotiable issues due to the restrictive provisions in the Act. Union security clauses were prohibited from being included in collective agreements, and the highest court in Malaysia had held that the check-off provisions contained in collective agreements were no longer enforceable against employers because they were not a trade dispute, as defined in the Act. He welcomed the Government's assurance that section 13(3) of the IRA would be amended at the next sitting of Parliament. For over 40 years, the trade union movement had raised this issue, which prevented proposals for collective agreements to include provisions that were purported to be management prerogatives.

Malaysian workers also faced other impediments such as: (i) Industrial Court presidents and judges who refused to acknowledge international labour standards; (ii) the lengthy adjudication process; (iii) the equity and good conscience of the Industrial Court's being subject to legal technicalities; (iv) no order of reinstatement for workers wrongfully dismissed, including trade union leaders, despite the remedy provided for in the Act; (v) compensation in lieu of reinstatement restricted to 24 months and reduced by the court; (vi) unlawfulness of pickets when disputes were referred to the Industrial Court; and (vii) no real right

to strike in practice, although it was provided for by law. Although the Employment Act and the IRA granted migrant workers the right to collective bargaining, they were excluded from joining a trade union and faced threats of dismissal and deportation. There were no sanctions, penalties or measures applied to errant employers. That allowed for widespread and extensive victimization of workers, including the dismissal of union members and leaders for upholding their rights, as well as attacks on unions, such as applying to the courts to de-register unions or suing them for defamation. In a recent award, the Industrial Court had concluded that the company had violated the protection accorded to trade union leaders and members, but had not imposed a penalty. Another example was the victimization and dismissal of 27 clerical workers of a bank who had appealed against their transfer, followed by the bank's injunction to stop the union from picketing and its application to de-register the union and, after one year, the court's dismissal of the application, which was currently being challenged. Since 2014, relations between the social partners in the country had improved under the leadership of the Secretary-General of the Ministry of Human Resources and workers' issues would hopefully be addressed soon for the benefit of all stakeholders. He acknowledged the Government's decision to take a holistic review of the labour laws further to the TPPA Labour Chapter, but emphasized that the labour legislation should comply with international labour standards. Finally, he urged the Government to immediately engage with the ILO High-level Mission to address the backlog of cases, so as to clear all pending issues, and to work on the holistic review of the labour and other legislation contravening ILO Conventions. The provisions for trade union recognition should be simplified and it should be mandatory for employers to give due recognition. Government organs should give effect to ILO Conventions and employers acting contrary to the Convention and to the principles of bargaining should be penalized. He hoped that the Employer member of Malaysia would be a responsible social partner and promote meaningful collective bargaining so as to enable the Government to comply with the Convention.

The Employer member of Malaysia said that, with regard to allegations of anti-union discrimination and interference in several sectors, including dismissals and non-recognition of unions, raised by the ITUC and the MTUC, disciplinary action had been taken by employers after due inquiry arising from employment misconduct committed by employees and could not be categorized as anti-union discrimination. On the issue of recognition claims filed by unions, the fact remained that the union needed to go through the process of claiming recognition before it could be recognized by the employer. In the event that the union failed to fulfil the criteria required for recognition, the employer was given discretion to recognize the union or not to do so. Furthermore, the issues raised by the WFTU and the NUBE on two cases pending before the Industrial Court were premature and should not be entertained as the matters raised were currently pending before the Industrial Court. The claims filed in the two cases had since then been dismissed and the aggrieved parties had decided to file applications for judicial review to the High Court. Referring to the issue of the holistic review of labour laws, he confirmed that the Government had actively carried out consultations

with the stakeholders to review existing labour legislation. The labour law review should be carried out after getting the views and inputs from the relevant stakeholders, which required time. He considered that labour legislation should facilitate rather than hinder the growth of businesses. With regard to the observations that the duration of proceedings for claiming recognition were still excessively long, he said that the length of time taken to handle trade union recognition depended on the complexity of each case. The recognition claim could also be subjected to judicial review up to the highest level of the judicial system, which would delay the process further. The case would still be pending until a final decision by the highest court, it would not therefore be possible for the Government to impose a fixed period of time for recognition claims to be resolved. With reference to the criteria and procedures for assessing the competency of a trade union for the purposes of recognition, he was of the view that it was appropriate to consider those in employment at the date when the claim for recognition was submitted to the company, and not a future percentage of union membership, which would be unfair. Regarding the scope of collective bargaining, the restrictions under section 13(3) of the IRA were not absolute and were not a hindrance to effective collective bargaining, as many collective agreements covered the matters set out in section 13(3), such as transfer, retrenchment and promotion. He was surprised by the position taken by the Committee of Experts on the issue of compulsory arbitration and noted that the existing system in Malaysia ensured harmonious industrial relations, considering that where both parties could not resolve the dispute it was only appropriate that the matter be subject to arbitration. Referring to collective bargaining in the public sector, he emphasized that, despite the comments made by the Committee of Experts, wages and terms and conditions in service of the public sector were generally better when compared with those in the private sector, and he believed that content was more important than form.

The Government member of Cambodia, speaking on behalf of the member States of the Association of Southeast Asian Nations (ASEAN), as well as Bahrain, Bangladesh and China, acknowledged the observations made by the Committee of Experts and welcomed the commitment and efforts of the Government of Malaysia to ensure that its labour legislation was in line with the requirements of the Convention. Further noting that the country was conducting a major holistic review of its main labour laws – the Employment Act 1955, the Trade Union Act 1959 and the Industrial Relations Act 1967, he urged the Committee to grant ample time to Malaysia to conduct such a substantial exercise.

The Government member of Qatar welcomed the Government's efforts as part of the holistic review of its main labour laws and emphasized that the Office should provide technical assistance to support those efforts.

The Worker member of Italy considered that in Malaysia there was an unacceptable situation of discrimination and exploitation towards migrant workers. Although it was possible for a migrant worker to join an existing union, section 28(a) of the Trade Union Act required that union officers be citizens of Malaysia, thus disqualifying migrant workers from serving as union leaders. The Committee of

Experts had already in the past observed that such a requirement hindered the right of trade unions to choose their representatives for collective bargaining freely, and she raised the question of what concrete action had been taken by the Government in this regard. In addition, the conditions set out by the Ministry of Home Affairs (MHA) for issuing work permits to migrant workers included an absolute prohibition on these workers from joining any sort of association. Employers had interpreted this to mean that migrant workers were forbidden to join trade unions, and the MHA had declined repeated appeals by the MTUC to take a stand on this interpretation by employers. In addition, employers had included these restrictions in the contracts of migrant workers, in contradiction with the legal guarantees of freedom of association, notably section 8 of the Employment Act of 1955, and the MHA had taken no steps to prevent this. Violation of the terms of a contract was an offence that could be punished with termination, which in turn led to the revocation of the migrant's work permit and the initiation of deportation proceedings. Employers also held the passports of migrant workers, making them vulnerable to detention by the police immediately until their identities could be verified with their employers. This situation represented a real obstacle to the implementation of the Convention in Malaysia, since the country had the fourth largest number of migrants in East Asia and the Pacific. She therefore called on the Government to act urgently in order to ensure that discriminatory rules and practices were removed and the legislation brought into line with ILO Conventions.

The Worker member of Canada, also speaking on behalf of the Worker member of the United States, indicated that national labour law remained non-compliant in almost every aspect of the Convention. The Committee of Experts had noted non-compliance concerning compulsory arbitration, dismissal, non-recognition of unions and unfair labour practices. The right to organize and collective bargaining were regularly violated and collective bargaining was restricted in companies and the public sector. Section 13(3) of the IRA provided for unfair restrictions against the freedom to bargain collectively and should be repealed with immediate effect, as it excluded from the negotiable issues that could be discussed at the bargaining table, the promotion, transfer, dismissal and reinstatement of workers, as well as assignment of duties and termination by reason of redundancy or reorganization. While recognizing the efforts made by the Government to conduct a holistic review of its main labour laws, she acknowledged that the driver of the reform was membership of the TPPA, the 12-country free trade agreement that included Canada and the United States. Despite the characterization of the TPPA as a "gold standard" by those who promoted it, its Labour Chapter and the Malaysia consistency plan proposed by the Government of the United States offered watered-down and partial measures that invoked the spirit of ILO Conventions, rather than their full content. The TPPA could have provided an impetus and some ideas for Malaysia to pursue badly needed reforms to comply with the Convention, but meeting goals set by the TPPA would not produce compliance. She concluded by expressing concern that the existence of trade agreements such as the TPPA which referred to the 1998 Declaration on Fundamental Principles and

Rights at Work, but did not require compliance with fundamental Conventions, had opened the door to countries looking to be associated with the spirit of ILO Conventions, but not with their full content.

The Worker member of Japan recalled that various violations of the Convention by the Government had been continuously examined by the Committee on Freedom of Association and the Committee of Experts since the early 1970s and late 1980s, respectively. Malaysia had achieved rapid economic growth in the past decades, and the country should now take a high road towards improving its labour and employment policies. Recalling that Japan was a signatory to the TPPA, he indicated that, in the course of a parliamentary hearing in Japan related to the Labour Chapter of the TPPA, non-recognition and anti-union discrimination in Malaysia had been considered as the most serious cases where the principles of the 1998 Declaration on Fundamental Principles and Rights at Work were not respected. He emphasized that, if the Government of Malaysia was looking for further expansion of its trade and investment into the country, it should review the main labour laws that had been barriers to adequate protection of trade union rights.

The Worker member of France referred to two archetypal cases concerning violations of the right to collective bargaining. The first concerned the Hong Leong Bank and the NUBE union. In 2013, the bank had decided to centralize part of its activities, thereby imposing forced mobility on 49 workers who were members of the union, which had made their family life difficult. The workers affected by this measure had immediately protested, expressing their disagreement by means of pickets and subsequently calling for conciliation at the ministerial level, but the management of the bank had refused to reach a compromise, and the 27 workers refusing transfer had been dismissed. The bank had then initiated legal proceedings with the Supreme Court in order to obtain an injunction against the union to stop it picketing the bank's premises and to have the trade union removed from the register, which was contrary to Articles 1 and 2 of the Convention. The second case had been running for 26 years and involved Sabah Forest Industries (SFI) and the Sabah Timber Industry Employees Union (STIEU). Attempts to register the union in 2003 and 2010 had failed. Nonetheless, in 2010, the results of a secret ballot held following a request for recognition had revealed that 85.9 per cent of staff at SFI supported the STIEU. The need for a union presence had sadly been felt after the death of a worker in the wood and pulp factory because of inadequate safety measures. At the end of 2015, the STIEU had still not been recognized. Disputes of this sort were on the increase and affected all sectors. Time and again, the same methods cropped up: lack of consultation with the trade unions; unilateral decision-making; anti-union harassment and discrimination; recourse to the highest courts; dismissed trade unionists who were simply seeking to exercise their rights peacefully; and delays in registration, which showed how difficult it was to ensure that the principles of collective bargaining were applied in Malaysia.

An observer representing the World Federation of Trade Unions (WFTU) said that, of the 24 cases selected this year, five related to Convention No. 98, or 20.8 per cent, which gave a clear idea of the situation of freedom of association

and collective bargaining in a number of countries. What was happening in Malaysia and Tunisia and in other countries reflected the attitude of governments in penalizing trade union movements, discriminating against them and preventing them from enjoying their right to collective bargaining. In Tunisia, for example, the Government refused to recognize certain trade union organizations that operated outside the unionist majority in both the public and private sectors. It was important for the ILO to impose compliance with the fundamental Conventions in order to promote social justice.

The Worker member of Indonesia regretted that the Government still did not have a concrete proposal to guarantee the right to collective bargaining of public servants so as to comply with the Convention. The Government had referred to the specific characteristics of the public administration to justify the exclusion of public servants from collective bargaining. However, it was precisely the absence of the right to collective bargaining in a country that had ratified the Convention which rendered “peculiar” the situation of public servants in Malaysia. He requested the Government to respect the commitments made when ratifying the Convention and to give effect to the recommendations of the supervisory bodies of the ILO. Being part of an organization such as the ILO and pledging to abide by its rules was an act of responsibility, significance and commitment. He called on the Government of Malaysia to live up to the values and honour the commitments it had freely chosen to assume.

The Government member of India thanked the Government of Malaysia for the comprehensive reply that it had provided on all matters, including the allegations made by the ITUC and the MTUC. He recognized that three out of eight MTUC complaints had already been settled and the detailed updates on the remaining cases were expected. The IRA and the Trade Unions Act were being amended in the context of a holistic review of labour laws. Under the Labour Consistency Plan, the Government had agreed to: repeal section 13(3) of the IRA, which contained restrictions on collective bargaining with regard to transfer, dismissal and reinstatement; eventually allow migrant workers to run for election to trade union office; and address the issues of compulsory arbitration and the scope of collective bargaining. The Government had requested ILO assistance to ensure that these legislative amendments were in line with Conventions Nos 87 and 98, thereby demonstrating its commitment to international labour standards. India supported Malaysia in its efforts to reform labour legislation and requested the Committee to fully take into account the detailed information provided by the Government and its continued commitment to strengthening the compliance of its labour laws with the Convention.

The Government member of Bangladesh considered that the Committee should recognize the significant progress made by the Government in addressing the outstanding issues. He welcomed the Government’s legislative initiatives, in particular those aimed at amending the laws dealing with industrial relations and trade union activities, and encouraged the ILO to provide technical assistance to Malaysia in this regard.

The Government representative emphasized that, where trade unions and employers’ organizations existed at the national level, as was the case in the plantation, banking

and insurance sectors, collective bargaining took place. The allegation that workers were not free to establish trade unions was not substantiated. He emphasized that the presidents of the Industrial Court were free from any external influence or pressure when making awards, and that there were therefore no privileges given to union leaders when the cases were adjudicated. With respect to the cases involving the dismissal of employees of the Hong Leong Bank, he explained that in 2013 the bank had decided to centralize its credit processing standards located across the country into three main regions in Peninsular Malaysia and that 27 employees who had refused to comply with the transfer order were dismissed following due inquiry. He said that the bank’s prerogative to transfer employees was part of the letter of appointment, as well as the collective agreement, and it was therefore issue of misconduct by employees and not an act of union victimization. In conclusion, he referred to the following benefits enjoyed by public sector employees achieved through negotiations between trade unions and management: security tenure, guaranteed annual increment, pension schemes, lump sum gratuity upon retirement, free health care, government quarters, fully paid maternity leave, low interest rate for certain loans, higher minimum wage compared to the private sector, annual leave of 35 days and other cash payments.

The Employer members recalled that this case had last been examined by the Committee in 1999. Nothing had changed since then and there was nothing to supervise, and thus discuss, until the holistic legislative reform announced by the Government was completed. Indeed, the Committee of Experts had duly noted the information provided by the Government to the effect that in the last two years no cases had been reported of employers opposing the directives of the authorities granting trade union recognition, except in cases where the employer had obtained a stay from court due to judicial review, or regarding employers refusing to comply with Industrial Court orders to reinstate unlawfully dismissed workers. They requested the Government to provide detailed information on the collective bargaining rights of public servants not engaged in the administration of the State and on the outcome of the holistic legislative review, once it had been completed.

The Worker members, while welcoming the Government’s commitment to provide details on the ongoing legislative review, considered that the challenges concerning the exercise of collective bargaining rights in Malaysia were enormous and a cause of concern. The Worker members, in response to the Employer members, noted that in order to assess compliance of the laws and practices in Malaysia with the principles of Article 4 of the Convention, it was unavoidable to look at the specifics and the details of those laws and practices, as the Committee of Experts had done in accordance with its mandate. They expressed the view that it was precisely those details of the laws and their implementation that hindered compliance with those principles and the promotion of collective bargaining in Malaysia. They believed that the Government had not taken adequate measures to encourage and promote voluntary negotiations between workers and employers to regulate terms and conditions of employment by means of collective bargaining. The percentage of workers in Malaysia covered by collective agreements was extremely low. Despite a unionization rate of almost 10 per cent, only 1–2 per

cent of workers were covered by collective agreements. The right to collective bargaining was an essential element of freedom of association, as it was key to the representation of collective interests. Collective representation was only meaningful if workers could negotiate and improve their conditions. The Worker members urged the Government to bring its law and practice into line with the Convention, in consultation with the social partners. A conducive framework for collective bargaining required an efficient process for the recognition of trade unions for collective bargaining purposes. It was crucial to simplify and speed up the procedure for claims submitted by the unions to the Industrial Relations Department seeking recognition. This was necessary in order to ensure that the recognition of representative unions by employers was mandatory. It was also important to discourage employers from abusing lengthy recognition procedures as a means of protracting negotiations. The Worker members hoped that the criteria for determining the representativity of trade unions for collective bargaining would be reformed so as to ensure a genuinely democratic process. A trade union which could obtain the support of the majority of workers who cast a vote should be entitled to bargain on behalf of those workers. The holistic review of labour laws that was currently being undertaken should also include the repeal of sections 13(3) and 26(2) of the IRA which, respectively, limited the scope of collective bargaining and allowed compulsory arbitration without the agreement of the bargaining partners. Furthermore, section 27(a) of the Trade Unions Act should be amended to allow workers in the public sector to unionize and engage in collective bargaining. The number of workers, and trade union officials who had suffered from anti-union discrimination and the lack of remedies against such acts were shocking and unacceptable. The Government should immediately take legal and practical measures to ensure that remedies and penalties against acts of anti-union discrimination were effectively enforced and all outstanding legal cases be settled. The Worker members emphasized that there were over 2 million migrant workers in Malaysia. This number would rise dramatically, as the Government had just signed a Memorandum of Understanding with Bangladesh to bring 1.5 million workers into the country within the next three years. In practice, migrant workers were currently excluded from collective bargaining as the employment contracts of migrant workers had typically a duration of two years, the Worker members remained concerned that, even after reforms had been undertaken, most migrant workers would be excluded from the right to be elected as union officials. The Government should therefore explicitly grant migrant workers the full right to join unions and to engage in collective bargaining and ensure that all of its institutions respected and enforced this right, particularly the Industrial Court. The Worker members hoped that the Government would take guidance from the discussion in the Committee. They called for a direct contacts mission to visit the country and requested the Government to avail itself of ILO technical assistance.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the Government's indication that it is undertaking a holistic review of its key labour

legislation – the Employment Act 1955, the Trade Unions Act 1959 and the Industrial Relations Act 1967 (IRA).

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

- **Provide further detailed information regarding the announced repeal of section 13(3) of the IRA on the limitations with respect to the scope of collective bargaining.**
- **Report in detail on the holistic review of the national labour legislation described above to the next meeting of the Committee of Experts in November 2016.**
- **Ensure that public sector workers not engaged in the administration of the State may enjoy their right to collective bargaining;**
- **Provide detailed information on the scope of bargaining in the public sector.**
- **Review section 9 of the IRA in order to guarantee that the criteria and procedure for union recognition are brought in line with the Convention.**
- **Undertake legal and practical measures to ensure that remedies and penalties against acts of anti-union discrimination are effectively enforced.**
- **Ensure that migrant workers are able to engage in collective bargaining in practice.**

The Committee calls upon the Government of Malaysia to avail itself of ILO technical assistance with a view to implementing these recommendations and ensuring that its law and practice are in compliance with Convention No. 98.

MAURITIUS (ratification: 1969)

A Government representative indicated, with respect to collective bargaining in export processing zones (EPZs) and the textile sector, that seminars and talks were being conducted on an ongoing basis by the information, education and communication section of the Ministry of Labour targeting workers in different sectors of employment, including the EPZ and textile sectors. Between July 2015 and April 2016, 39 training and sensitization activities had been carried out and 312 male and 430 female employees of the EPZ and textile sector had benefited from these sessions, in which emphasis was placed on legal provisions and rights at work, including those pertaining to the right to collective bargaining and unionization as guaranteed in the labour legislation. Moreover, sensitization of workers on their rights at work, including those pertaining to collective bargaining and unionization, was also carried out on an ongoing basis during inspection visits at workplaces. For the period 2009–15, a total of 757 inspection visits had been carried out in EPZs, reaching out to some 102,127 local workers (38,376 men and 63,751 women). During the same period, 2,059 inspection visits had been carried out in undertakings employing migrant workers, who currently numbered about 30,468 (20,455 men and 10,013 women) working in the manufacturing sector. During these visits, the workers had been sensitized on their rights of unionization and collective bargaining. With regard to the issue of compiling statistics on collective agreements, since February 2009, the legislation had provided that all collective agreements should be registered with the Ministry of Labour within 30 days of the date of signature. The Government had transmitted to the Committee a full list of 62 collective agreements registered at the Ministry for the period May 2010 to May 2016, and it should be noted that four of those collective agreements applied to EPZs. The Government had also taken due note of the Committee's recommendations regarding interference in collective bargaining and compulsory arbitration, and it should be noted that

there had been no such intervention since. In addition, the labour law review currently under way, in consultation with the social partners, was expected to be finalized by the end of 2016. The recommendations of the Committee on how best to encourage and promote the full development of collective bargaining would, to the extent possible, be taken into account in this context. Finally, technical assistance in relation to the issues raised by the Committee would be sought from the ILO under the second generation Decent Work Country Programme, the preparation of which is under way.

The Employer members recalled that the Committee had last examined this case in 2015 and that since 1995 the Committee of Experts had made 11 comments on it. The 2016 comments of the Committee of Experts focused on the following three areas: anti-union discrimination; collective bargaining in EPZs; and interference by the Government in collective bargaining. With regard to the latter issue, the Employer members were surprised by the Government's statement denying that such interference existed and remained concerned that interference persisted in collective bargaining. The country had an extensive system of collective bargaining and minimum employment standards. The National Remuneration Board (NRB) promulgated orders on minimum wages and terms of employment in 30 sectors and periodically reviewed those orders to ensure that their terms remained appropriate. 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 areas of disagreement where the parties had defaulted on the terms set out in the remuneration order. Several weeks later, the NRB had partially reviewed the remuneration orders that applied to the sugar industry, focusing on the areas in which no agreement could be reached during collective bargaining. The Government had withdrawn the referral of these issues to the NRB in August 2012. However, once again in 2014, the same problems had arisen. Following the expiry 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 NRB, 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 a clear violation of the Convention. The Employer members considered that the Government's statement did not constitute a full reply to the comments of the Committee of Experts and encouraged the Government to provide full information.

The Worker members recalled the fundamental principles on which the Convention was founded and emphasized that the economic life of Mauritius was primarily based on EPZs and on cane sugar cultivation. The Port Louis export processing zone was a central element of the national economy, with around 300 enterprises employing some 60,000

workers. EPZs constituted a major trade union issue, because of both the number of workers they engaged – over 65 million according to the ILO – and because of the difficulties experienced by those workers. The right of workers in EPZs to collective bargaining must not be limited by reason of the special status of these zones, as recalled in the ILO Tripartite Declaration of Principles concerning Multi-national Enterprises and Social Policy, adopted by the Governing Body in 1977. However, freedom of association and the right to collective bargaining were violated in the Port Louis export processing zone, as in almost all EPZs throughout the world, despite the fact that the countries which had established them were ILO members. In all its observations since 2002, the Committee of Experts had noted that trade unions and freedom of association were barely existent or non-existent in EPZs due to the repeated violation by employers of the principles and fundamental rights of workers and the lack of adequate legislative protection; that anti-union discrimination in the textile sector was prevalent, especially vis-à-vis migrant workers; and that trade unions faced difficulties in meeting workers. All too often, when trade unions were established in EPZs, trade union representatives were faced with harassment, intimidation, threats, discrimination and unfair dismissals. Sometimes, substitute unions were established by employers, in contravention of ILO standards. The recognition of the right to collective bargaining was of general application and where this right was not given effect, the national authorities should take concrete measures to promote collective bargaining, as requested by the Conference Committee and the Committee of Experts, and it was regrettable that the Government had not provided any information on this subject. Furthermore, with regard to the right to collectively negotiate salaries in the sugar cane sector, the Committee of Experts noted the Government's interventions in the collective bargaining process, the effect of which was to submit to compulsory arbitration, in contravention of ILO standards, the 21 issues which had not been resolved through collective bargaining. In a communication addressed to the ILO in 2011, the national authorities had justified the interference in collective bargaining that had been discussed by the Conference Committee in 2015. In practice, the priority given to economic commitments in relation to the European market had led to interference in collective bargaining, which ran counter to ILO Conventions. However, the imposition of arbitration was unacceptable, even in view of the economic situation or in the context of a structural adjustment policy. The restrictions on collective bargaining should be applied as exceptional measures rendered necessary only by compelling reasons of national economic interest, but should not exceed a reasonable period and should be accompanied by adequate safeguards for the effective protection of the living standards of the workers concerned, particularly those who risked being most affected. In the present case, agriculture, to which the sugar cane sector belonged, represented only 6 per cent of national economic activity and a collective dispute in this sector would not have threatened national economic interest. The intervention in the collective bargaining process was therefore not justified and the Government should have respected the autonomy of the social partners.

The Worker member of Mauritius said that anti-union discrimination still existed by way of biased and fake disciplinary committees in state-owned and private organizations. In this regard, he referred to the case of Alain Edouard, President of the Port Louis Maritime Employees Association (PLMEA), who had been dismissed following the findings of a disciplinary committee. His dismissal had in practice been the result of his fight against a prospective privatization of some of the activities of the Cargo Handling Corporation (CHC). Despite the intervention of the Minister of Labour, Mr Edouard had not been reinstated. He also referred to anti-union discrimination in Mauritius Post Limited. Recalling the Government's commitment under both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), he urged it to provide strong safeguards against the unfair dismissal of workers and trade union leaders, including the immediate reinstatement of the victims of such practices. With respect to collective bargaining in EPZs, around 60,000 Mauritian and 15,000 foreign workers were employed in EPZs. Collective bargaining was almost inexistent because employers contested the recognition of trade unions. The degree of unionization was extremely weak in the private sector (around 15 per cent of the workforce). Labour laws gave the right to foreign workers to organize, although none of them had joined a trade union for obvious reasons: they were employed under fixed-term contracts; they feared deportation; and they feared that their contract of employment would not be renewed. In units where trade unions had recognition, employers used threats and their economic power to urge workers to leave the unions. Furthermore, trade unions did not have easy access to workplaces. The Ministry of Labour had already started procedures for the amendment of the labour law. In the light of the amendments proposed by workers' organizations, the latter were expecting the new labour law to afford considerable protection to workers. However, the fear was that employers would object to most of these legislative amendments. He recalled that collective bargaining did not exist at all in the public sector. While the salaries of public servants were decided unilaterally by the Pay Research Bureau, a body established by the Government, conditions of service were determined at bipartite meetings between the Ministry of Civil Service and the Pay Research Bureau, without the participation of trade unions. There were no faithful and meaningful tripartite negotiations over salaries and conditions of service. The Government was therefore urged to promote an appropriate mechanism for collective bargaining in the public sector and to remove the arbitrary power of the Pay Research Bureau to take decisions concerning conditions of service, and to transform the Bureau into a platform for tripartite consultation. With respect to the Government's interference in collective bargaining in 2010 and 2014, he concluded that, in light of what had been said and the Government's total disregard for last year's recommendations by the Committee, matters were now outside the ambit of technical assistance.

The Worker member of Germany indicated that the positive economic, social and industrial development of his country would not have been possible without over 71,000 collective agreements that defined solutions and conditions

tailored to specific industries and enterprises. Recalling that free collective bargaining between employers and their federations, on the one hand, and trade unions, on the other, was the foundation of collective agreements, he reaffirmed that collective agreements provided a guarantee for fair remuneration and good working conditions for workers, while their respect also offered important insurance of peaceful industrial relations for employers. While encouraging the Government, workers and employers to regulate working conditions through collective agreements, he regretted that the Government had not been successful in adopting new legislation on collective bargaining. He said that there were two essential preconditions for the right to collective bargaining: the freedom to establish trade unions, which also included protection against discrimination; and the negotiation of collective agreements on an equal footing. In this regard, he called on the Government to establish a national framework for the implementation of the Convention. While noting that in Germany the basic law guaranteed freedom of association and the right to collective bargaining without interference from the Government, he welcomed the temporary influence of the Government for setting minimum wages in some cases, for example when the structure of the labour market still needed further development. Welcoming the Government's indications on initiatives and proposals for fixing minimum wages, he emphasized the importance of social dialogue in this regard and called on the employers in Mauritius to respect the freedom of association of the workers.

The Worker member of Togo, speaking also on behalf of the Worker members of Burkina Faso, Benin, Niger, Côte d'Ivoire, Congo, Ethiopia, Chad and Mali, regretted the total absence of collective bargaining in EPZs in Mauritius. The wages and working conditions of the 60,000 Mauritians and 15,000 foreign nationals working in EPZs were less favourable than those in other areas of the private sector in the country. Because the employers refused to recognize trade unions, collective bargaining was virtually non-existent and, so long as the issue was not resolved by the industrial relations tribunal, they obliged their workers to renounce union membership by means of intimidation and sanctions. Moreover, it was difficult for trade unions to have access to workplaces in EPZs, which made it almost impossible for them to carry out trade union activities. Although the protective provisions of Convention No. 87 had been incorporated in Mauritius' legislation, labour laws allowed employers considerable latitude to dismiss their employees. Workers were therefore discouraged from joining unions, of which there were practically none in EPZs. Although the labour legislation allowed foreign workers to establish trade unions, none of them took advantage of their right to do so because they were threatened that their fixed-term contracts would not be renewed or that they would be expelled from the country. In those EPZ enterprises where collective bargaining did exist, employers deliberately made the process drag on so much that it was difficult to have any constructive negotiations. In particular, employers hindered wage negotiations and threatened to reduce the workforce if the Commission for Conciliation and Mediation ruled in favour of the workers. He finally indicated that there were other issues that EPZ workers wanted to discuss, including maternity benefits, safety and health,

compensation for occupational injuries, and the organization and payment of overtime. Meanwhile, the absence of a conducive environment for collective bargaining meant that these workers were in a position of vulnerability in relation to their employers and perpetuated the existence of unacceptable conditions of work.

The Worker member of Norway, speaking on behalf of the trade unions of the Nordic countries, said that there had hardly been any improvement in this case since its discussion by the Committee the previous year. The number of collective agreements was abysmally and deliberately low and collective bargaining was absent in the public sector. Although union representatives could express their views, there were no real negotiations. As a consequence, she urged the Government to take measures to allow real negotiations in the public sector which could result in collective agreements. Moreover, there was no legal framework to support collective bargaining in EPZs. While welcoming the Government's commitment to promote voluntary negotiations between employers' and workers' organizations in EPZs, she recalled that a pre-condition for collective bargaining was that the trade unions had access to EPZs, which was not the case in Mauritius. Another challenge for negotiations was that trade unions were only entitled to recognition as bargaining agents for a bargaining unit in an enterprise or an industry where they had the support of not less than 30 per cent of the workers in the unit. She emphasized that, in the Nordic countries, workers enjoyed the right to establish and join trade unions of their own choosing and the right to bargain collectively. In those countries, collective bargaining took place both at the national and local levels and in the public sector. National level public employees also enjoyed the right to strike. She considered that the same should apply to workers in Mauritius, as required by the Convention. Recalling that strong collective bargaining laws and practices ensured that unions were able to agree with employers on more detailed and favourable conditions of work, she urged the Government to promote the full development and utilization of collective bargaining mechanisms and laws, in both the private and public sectors, to increase the number of workers covered by effective collective bargaining agreements in the country. This was particularly important for vulnerable workers employed in EPZs, including women workers in the textile sector and migrant workers.

The Worker member of Australia, also speaking on behalf of the workers of New Zealand, emphasized that the interference by the Government in collective bargaining occurred in the sugar industry, a sector in which the bargaining parties were experienced and mature and the timing of negotiations was critical to the bargaining process, because there was a limited period of time each year in which sugar cane could be harvested and crushed. He noted that any outside interference in this process could have a serious impact on the relative bargaining strength of the parties, and potentially on bargaining outcomes. Acknowledging that the Employment Relations Act 2008 provided that it was for the parties themselves to negotiate collective agreements, he emphasized that the use of arbitration processes under section 63 of the Act was admissible only if the parties agreed, and that this had not been the case in the events referred to in the observation of the Committee of Experts.

He emphasized that the imposition of a settlement in collective bargaining negotiation was inconsistent with the Convention and urged the Government to amend the Act. In this regard, he encouraged the Government to avail itself of the technical assistance of the ILO.

The Government representative recalled the measures that had been taken by the Government to give effect to the Convention. The NRB resolved disputes and determined minimum wages at the sectoral level. Employers' and workers' organizations actively participated in this process. In addition, collective bargaining existed between employers and workers and their organizations. Referring to his introductory statement, he recalled that 62 collective agreements had been signed since 1 May 2010, including four in EPZs. A list of collective agreements concluded and registered for the period 1 May 2010 to 31 May 2016 had provided to the Committee. In accordance with the Employment Relations Act, workers were free to join trade unions and to bargain collectively with employers. Interference by the Government in collective bargaining in the sugar sector in 2010 and 2014 was recognized, although he added that the Government had intervened in good faith, at the request of one party, in order to assist the parties to obtain an agreement. Following conclusions on this case of the Conference Committee in June 2015, the Government, in line with Article 4 of the Convention, was now avoiding any intervention in collective bargaining between employers and workers. He added that some organizations carried out their trade union activities during the working time of employees, creating some difficulties with the employers concerned. The Government did not interfere in those matters. Referring to remuneration orders, he said that wages could not be set below minimum wages. With respect to collective bargaining in EPZs, Mauritian and foreign workers were free to join unions and bargain collectively. Courses were being offered to workers, including on collective bargaining. Working conditions were not less favourable in EPZs. No sectoral discrimination occurred and he cited the example of maternity leave, of which 14 weeks was provided in EPZs, a duration which was comparable to other sectors.

The Worker members observed that the Government representative had taken the employers' side even though, as the regulator of industrial relations, it was obliged to maintain a balanced stance. They emphasized the importance of complying with the Convention, the principles of which were applicable both to EPZs and to the sugar cane industry. Recognition of the right to collective bargaining was general in scope and applied equally to the private and the public sectors and only members of the armed forces and the police could be excluded, while specific arrangements could be established for public servants engaged in the administration of the State. Workers in EPZs were therefore fully entitled to bargain collectively. In addition to the statistics provided by the Government and its reference to certain regulations in force, the Government also needed to take specific measures to combat the anti-union reprisals that occurred in EPZs and to promote the exercise of the right to collective bargaining. Such initiatives would send an important signal to EPZs throughout the world, which should not be considered no-rights zones, and where trade unions could play a key role as watchdogs. Under the terms of the Convention, interventions by the public authorities

in collective bargaining was only possible under specific circumstances, and the Committee of Experts had established very precise criteria on the subject, the value of which had been recognized by all constituents, including the Employer members of the Conference Committee. Intervention by public authorities in collective bargaining was admissible only when justified by overriding reasons of national economic interest and should only be an exceptional measure, limited to what was essential, and should not exceed a reasonable period and be accompanied by guarantees that effectively protected the standard of living of the workers concerned. Finally, they emphasized that, even though the Government claimed to have acted in good faith, its interference in collective bargaining in the sugar sector was unfortunate. It must respect the autonomy of the social partners fully, as required under the commitments that it had entered into when it ratified the Convention. The Government needed to promote appropriate collective bargaining machinery and respond to the workers' fear of reprisals. While noting its commitment to comply with the Convention, the Worker members called on the Government, in a report to the 2016 session of the Committee of Experts, to provide details of measures taken and the specific progress made on the issue.

The Employer members, indicating that there continued to be confusion about the facts and allegations of interference by the Government in collective bargaining, emphasized that in 2010 the Government had intervened in the voluntary collective bargaining process in the sugar industry by referring 21 unresolved issues to the NRB. Moreover, in November and December 2014, after protracted voluntary collective bargaining negotiations, which had resulted in a strike, following which a collective agreement had been concluded with the intervention of the Minister of Labour, three unresolved issues had been referred to the NRB. While more information was required from the Government on the role played by the NRB in relation to minimum wages, the Employer members emphasized the basic principle according to which the Government should not intervene in collective bargaining by imposing conditions. The selective renewal of remuneration orders in response to the outcome of collective bargaining had to cease immediately, as it constituted undue interference in voluntary collective bargaining. They encouraged the Government to engage in social dialogue with the social partners on collective bargaining and on the functioning of the NRB. They looked forward to further information in the next report of the Government to the Committee of Experts and encouraged the Government to take action in order to ensure the application of the Convention in law and practice.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee noted with interest the Government's information concerning measures taken to favour collective bargaining in the export processing zones. However, it expressed concern at the Government's failure to respect collective bargaining in the sugar industry.

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

- **Cease its intervention into free and voluntary collective bargaining between employers and workers in the sugar industry.**

- **Take concrete measures to promote and encourage the greater development and utilization of procedures of voluntary negotiations between employers/employers' organizations on the one hand and workers' organizations, on the other, in order to regulate the terms and conditions of employment through collective bargaining agreements. This includes collective bargaining in export processing zones, in the garment sector and in the sugar industry.**
- **Provide detailed information on the current situation of collective bargaining in the export processing zones and on the concrete measures to promote it in those zones.**
- **Refrain from infringing Article 4 of the Convention and from committing similar violations in the future.**
- **Cease all interference in collective bargaining in the private sector with respect to principles related to mandatory arbitration.**
- **Accept technical assistance from the Office to comply with these conclusions.**

ZIMBABWE (ratification: 1998)

The Government has provided the following written information:

In 2010, the Government of Zimbabwe unequivocally accepted all the recommendations of the ILO Commission of Inquiry and proceeded to devote a lot of effort to full implementation of the same, on a wholly tripartite basis. In its last deliberations on Zimbabwe in 2013 vis-à-vis the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Conference Committee noted the progress that had been achieved in the implementation of the recommendations and encouraged the Government to continue making progress. Since that time even greater strides have been made, both in law and in practice, to fully implement Conventions Nos 87 and 98. The basis of much of the progress has been the adoption of Constitutional Amendment No. 20 of 2013 which fully domesticated the principles and provisions of Conventions Nos 87 and 98 by expressly guaranteeing the rights to freedom of association, to collective bargaining and to organize, including the right to collective job action, in section 65 of the Bill of Rights. The remaining elements of the ongoing reforms include harmonization of the various labour statutes to the new Constitution for easier legal interpretation so as to effectively guarantee the rights in the two ratified Conventions. Considerable progress has been made to date to finalize the Labour Law reform exercise to take into account outstanding comments of the ILO supervisory bodies. A duly appointed Tripartite Labour Law Reform Advisory Council, working under the oversight of the Tripartite Negotiating Forum completed the redrafting of the Principles for the Amendment of the Labour Act during the period February to April 2016. On 22 May 2016, the Principals of the Tripartite Negotiating Forum, that is, the Minister of Public Service, Labour and Social Welfare and presidents from both Business and Labour organizations, commenced deliberations on the Council's recommendations and agreed to finalize the discussions by 31 August 2016 to pave way for the drafting of a labour amendment bill.

More specifically on Convention No. 98, the latest report of the Committee of Experts notes the extensive progress so far realized, but goes on to express a few concerns on Articles 1 and 4 only, for which the Government of Zimbabwe

babwe is happy to share the following clarifications and information: with respect to protection against anti-union discrimination in practice, sections 4 and 7 of the Labour Act already provide for protection against acts of anti-union discrimination by providing for penal sanctions against employers that violate “employees’ entitlement to membership of trade unions and workers committees” and “employees’ right to democracy in the work place”, including custodial sentences for periods of up to two years. Section 89(2)(c) of the Labour Act further legislates for reinstatement or employment for anyone unlawfully dismissed, including the awarding of punitive damages where reinstatement is deemed no longer possible. Furthermore, article 65(2) of the Constitution of Zimbabwe states that “except for members of the security services, every person has the right to form and join trade unions and employee or employers’ organisations of their choice, and to participate in the lawful activities of those unions and organisations”. The challenge in practice may therefore be, generally, inadequate capacity on the part of trade union members to sufficiently assert the existing rights in courts of law. In order to address the issues at stake, from 31 August to 3 September 2015 the Government engaged all Labour Court judges in training sessions facilitated by ILO specialists from the Decent Work Team in Pretoria, South Africa, to sensitize them on how to better protect workers in cases of anti-union discrimination, among other issues. Going forward, the Government is also committed to discussing with the social partners ways to undertake legal and practical reforms to make protection against anti-union discrimination more user-friendly and accessible. The Government is indeed confident that these efforts will lead to better application of Convention No. 98; with respect to the scope of collective bargaining, as the Committee of Experts notes (with interest), the Constitution of Zimbabwe has extended collective bargaining to public servants. In order to fully guarantee the constitutional right to collective bargaining, the Public Service Act is already at an advanced stage of being harmonized with the Constitution in line with principles agreed to by workers’ representatives in the public service. While these amendments are being processed, workers in the public service are now able to collectively bargain within the National Joint Negotiation Council; with respect to prior approval of collective bargaining agreements, the Government of Zimbabwe and the social partners, through the tripartite Labour Law Advisory Council, have agreed on amendments to the Labour Act to incorporate the recommendations of the Committee of Experts by amending section 79 to limit the requirements for registration of collective bargaining agreements to “procedural flaws and representations made by the parties themselves” as recommended by the Committee of Experts.

It is pertinent to report that in the context of Convention No. 87, the Government of Zimbabwe has recently complied with the recommendations of the Committee on Freedom of Association of March 2016 to register two workers’ organizations whose registration had previously been turned down. The Government of Zimbabwe is therefore committed to continue working with the social partners in fulfilling its international obligations with respect to ratified Conventions.

In addition, before the Committee, a **Government representative** referred to the information supplied in writing to

the Conference Committee. In addition, she stated that the High-level Technical Mission to Zimbabwe, requested by the Conference Committee in 2013 to assess progress in implementing the recommendations of the 2009 Commission of Inquiry, had been well received by both the Government and the social partners in February 2014. Various activities had been undertaken and were still being pursued by the Government and the social partners to give effect to the recommendations of the Commission of Inquiry: labour law review, capacity building of state actors and judicial officials, as well as the development of a customized user-friendly handbook on international labour standards to be used for the training of law enforcement agencies and other state actors. She recalled that since the Conference Committee’s conclusions in 2013, the Committee of Experts had noted with interest progress made on a number of issues, including on full domestication of the principles and provisions of Conventions Nos 87 and 98. She further specified that the withdrawal of a number of cases involving trade unionists that had been pending before the courts had greatly improved the scope of trade unionists to freely enjoy their fundamental rights, especially the right to organize. Moreover, numerous knowledge-sharing seminars on international labour standards for diverse state actors, including the police, prosecutors, magistrates and judges of the Supreme Court, High Court and Labour Court organized from 2011 to 2015 had resulted in a remarkable decline in the number of incidences of clashes between trade unionists and law enforcement agencies.

Recalling the most recent observations of the Committee of Experts and its points of concern, she indicated that progress had been made with regard to the harmonization of labour laws. The review of the Public Service Act to ensure that it gave effect to the principles enshrined in Convention No. 98 was based on principles agreed upon at a Tripartite Negotiating Forum meeting held on 4 August 2014 in Harare, and the Government intended to convene a National Joint Negotiating Council meeting to consider the draft Amendment Bill no later than September 2016 to give public service workers an opportunity to contribute to the law development process. With regard to the Labour Act, the new set of Principles for the Amendment of the Labour Act, agreed to in the Tripartite Labour Law Reform Advisory Council in 2016, addressed, among other aspects, the revision of the entire section 79 of the Labour Act cited in the 2016 report of the Committee of Experts in order to rationalize the powers of the Minister with respect to the registration of collective bargaining agreements. Some sections of the Labour Act which were directly or indirectly linked to collective bargaining were also to be amended: (1) sections 14, 25 and 81, so as to ensure that collective agreements were not subjected to Ministerial approval on the grounds that the agreement was or had become “... unreasonable or unfair” or “contrary to public interest”; (2) section 63A(7), so as to remove the powers of the Minister to appoint a provisional administrator and to give the power to the Labour Court to appoint the administrator having given the parties concerned the right to be heard in compliance with article 69(2) of the Constitution; (3) section 104, so as to streamline procedures for declaring a strike; and (4) sections 107, 109 and 112, so as to remove excessive penalties and to decriminalize collective job ac-

tions and ensure protection against anti-union discrimination. Other principles not necessarily relating to freedom of association and collective bargaining should be agreed upon by 30 June 2016, in order for the drafting of the Amendment Bill to commence. She expressed the belief that the Worker and Employer members from Zimbabwe could corroborate the Government's submission to the Conference Committee and emphasized that her Government cherished social dialogue that was at the heart of labour market governance. Apart from addressing the concerns of the Committee of Experts under Convention No. 98, the Government and the social partners had also made progress in a number of areas related to labour market governance, including the strengthening of social dialogue by negotiating and agreeing on a chamber for social dialogue; to that end the Attorney-General's Office was working on the second draft of the Tripartite Negotiating Forum Bill, which sought to incorporate the comments and recommendations of the social partners on a first draft bill published in November 2015. Moreover, in August 2015, the Government had acted swiftly by amending the Labour Act in order to halt massive lay-offs following a Supreme Court ruling that stated that, in law, employers in Zimbabwe had the right to terminate contracts of employment on notice based on common law. To conclude, the Government representative indicated that her delegation was looking forward to a constructive engagement and dialogue with other Governments and the representatives of the workers' and employers' organizations in the Conference Committee.

The Employer members recalled that the examination of the application of Convention No. 98 by the ILO supervisory bodies had a long history: it had been the subject of 11 observations of the Committee of Experts since 2002; a Commission of Inquiry had been set up in 2009 in accordance with article 26 of the ILO Constitution; the present Committee had discussed the case four times, in 2002, 2003, 2004 and 2005; a complaint had been made before the Committee on Freedom of Association (Case No. 3128); and a High-level Technical Mission of the Office had taken place in February 2014. Most of the recommendations made had been carried out, as explained by the Government representative, but the Committee of Experts had identified some outstanding issues of concern in its latest observation. The first was about protection against anti-union discrimination. Following allegations of anti-union acts by the Government, including the arrest and harassment of trade unionists and trade union leaders, made by the trade union movement in Zimbabwe and the International Trade Union Confederation (ITUC), the Committee of Experts had requested the Government to provide statistical information on the number of complaints of anti-union discrimination lodged and examined, sample judicial decisions issued, the average duration of procedures, and sanctions applied. The Government had responded that, due to the lack of a proper labour market information system, it was not possible to provide such statistical information. As the ITUC and the Zimbabwe Congress of Trade Unions (ZCTU) had made more allegations of anti-union activities in 2015, the response of the Government had been that it was for the trade unions to submit more details to enable an investigation. In this context, the Committee of Experts noted with concern the absence of specific information regarding the protection granted in practice to

victims of anti-union discrimination, and requested the Government to make every effort to submit detailed elements in this respect and to reply to the observations of the ITUC and the ZCTU. The additional information submitted in writing by the Government showed the progress made to ensure that labour laws complied with Article 1 of the Convention: sections 4 and 7 of the Labour Act provided for penal sanctions for violation of workers' rights to join trade unions and workers' committees and to democracy in the workplace. The initiative of the Government to train, with the assistance from the ILO, all Labour Court judges on better protection of workers against anti-union discrimination was welcomed. Its commitment to engage with social partners to consider legal and practical reforms to make protection against anti-union discrimination a reality was also to be commended. Concerning the Government's response to the request for statistical information about complaints, the Employer members observed that such information already existed, although not structured; the Government was encouraged to consider gathering that information for submission to the Office, and to explore the possibility of developing a labour market information system or to implement alternative measures allowing the tracking, monitoring and reporting of incidents of non-compliance, with the support of technical or other assistance from the ILO, if needed.

The second issue raised by the Committee of Experts related to the promotion of collective bargaining. It noted the Government's efforts to harmonize its labour and public service legislation with the Convention, as well as the adoption of a new Constitution in 2013, which guaranteed collective bargaining rights to all workers, negotiations with the social partners in the Tripartite Negotiating Forum, the passing of Labour Amendment Act No. 5 in August 2015, and the ongoing labour law reform process. The Employer members welcomed the progress made to date and urged the Government to continue consultations with the social partners to complete the harmonization process. Concerning the right to collective bargaining of civil servants, the Committee of Experts had noted with interest that the new Constitution guaranteed that right to all workers, but remained concerned that it was not enjoyed by all public servants. It encouraged the Government to seek technical assistance from the Office to ensure that public servants not engaged in the administration of the State effectively enjoyed the right to collective bargaining. According to the information submitted by the Government to the present Committee, the process of amending the Public Service Act to put it in line with the Constitution was at an advanced stage. The information supplied by the Government made clear that the right to collective bargaining of all public servants, with the exception of "members of the security services", was protected by the Constitution. In the view of the Employer members, this was laudable progress. They urged the Government to finalize the last legislative amendments needed to ensure the full harmonization of public service laws with the Convention.

The final concern of the Committee of Experts was that, by giving to the authorities the right to approve or reject collective agreements based on considerations such as the agreement having become unreasonable or unfair, section 79 of the Labour Act was contrary to the principle of

voluntary bargaining protected by the Convention. It requested the Government to repeal the offending provisions. The information provided by the Government showed progress in that respect: section 79 of the Labour Act had been amended, by agreement with the social partners and on the advice of the Tripartite Labour Law Reform Advisory Council, to limit the grounds for refusing registration of collective agreements to “procedural flaws and representations made by the parties themselves”. The Employer members were pleased to note progress on this aspect, and believed that the amendment enhanced compliance with the Convention. In conclusion, the Employer members believed that notable progress had been made to comply with the Convention and, given the history of the case, commended the Government for that. While accepting that the process to harmonize national laws with the Convention was not yet completed, they considered that much had been done, and they urged the Government to cooperate with the social partners and to avail itself of technical assistance from the Office to complete the harmonization process.

The Worker members observed that eight years had passed since the present Committee had discussed Zimbabwe’s flagrant disregard for the most basic freedom of association rights and recommended the establishment of a Commission of Inquiry. In March 2010, the Commission of Inquiry had concluded that there were systemic violations of Conventions Nos 87 and 98 in the country, with a clear pattern of arrests, detentions, violence and torture of trade union leaders and members by the security forces, in a calculated attempt to intimidate and threaten members of the ZCTU, and had expressed particular concern over the routine use of the police and army against strikes, widespread interference in trade union affairs, and failure to guarantee judicial independence and the rule of law. The Government had repeatedly expressed its commitment to give effect to the recommendations of the Commission of Inquiry, including during a High-level Technical Mission to the country in February 2014. The Worker members were not only deeply disappointed at the absence of progress despite the promises made, but also alarmed about regressive measures and steps recently undertaken. Although the right to collective bargaining was recognized as a fundamental right by article 65 of the Constitution of 2013, labour laws did not give it effect in practice. Indeed, none of the shortcomings raised by the Committee of Experts for the past 15 years had been effectively addressed. Under section 17 of the Labour Act, the Minister of Labour continued to maintain their prerogative to issue regulations on an extensive list of matters, including conditions of employment, while denial of registration of collective agreements considered “unreasonable or unfair” continued to be allowed by sections 78 and 79. These provisions were clearly contrary to the principle of voluntary bargaining protected by Article 4 of Convention No. 98. Nevertheless, the Government had reinforced its discretionary powers with the adoption of the Labour Amendment Act of 2015 which provided that collective agreements had to include measures to “promote high levels of productivity” and “economic competitiveness”. In addition, section 19(1) of the Public Service Act continued to deny public employees the right to collective bargaining.

The Government continued to blatantly violate Article 1 of the Convention, which required that workers enjoy adequate protection against acts of anti-union discrimination. The Commission of Inquiry had concluded that there was no such adequate protection in the country. Not only had there been no progress in this regard, but workers were increasingly victimized for their trade union activity without access to effective remedies. Among many examples, Ms Mutsambirwa, a union leader in the banking sector, had first been transferred and then dismissed in 2015 on accusations of inciting to strike, although she had successfully challenged her transfer in the Labour Court. Mr Katsande, President of the Zimbabwe Banks and Allied Workers’ Union, who had been suspended from his position in his employment bank, had his case heard in June 2014 by the Constitutional Court, which had yet to deliver its judgment. Another worrying development was the Special Economic Zones Bill, which sought to exempt from the application of the Labour Act investors operating in those zones. Instead of the Labour Act, the Minister would provide rules for conditions of service, termination, dismissal and disciplinary procedures to apply in the zones. This meant that workers in these zones would be excluded from the right to collective bargaining and subject only to regulations unilaterally made by the Special Economic Zones Authority, which might consult with the Labour Minister but not with Worker representatives. Since the Bill vested the Special Economic Zones Authority with the power to declare any area or premise a special economic zone, the impact on workers could be devastating. The right to collective bargaining was inextricably linked to the right to freedom of association and the right of workers and employers to establish organizations of their own choosing. The Commission of Inquiry and the Committee of Experts had found provisions of the Labour Act and the Public Order and Security Act contrary to the right to freedom of association with respect to issues such as registration of trade unions, supervision of the elections of trade union officers or regulation of trade union dues. The Labour Amendment Act of 2015 only made the situation worse by empowering, under section 120, the Government to appoint an administrator to run the affairs of a trade union it believed was mismanaged. This provision contravened Article 3 of Convention No. 87 which protected the right of trade unions to administer their activities without interference by the public authorities.

In addition, there had been a serious clampdown on public protests. Workers who had taken to the streets to hold the Government accountable to promises made during the elections faced arrests and intimidation by the police. On 11 April 2015, the police made a public announcement stating that demonstrations called by the ZCTU against a wage freeze announced by the Government would be banned – it was disavowed by the High Court which issued an order allowing the protest action. Moreover, more than 100 riot policemen turned up at the ZCTU’s office and blocked its entrance from 8 to 15 August 2015, when a national protest action was due to take place following the Supreme Court’s decision to allow employers to terminate employment contracts without a valid reason. ZCTU leaders George Nkhwane and Japhet Moyo were arrested, together with Runesu Dzimiri (General Secretary of the Food Workers), Ian Makoshori (General Secretary of the Young Workers)

and Sekai Manyau (member of the Women's Advisory Council). Finally, the non-remittance of union dues by employers had become a widespread practice that had brought unions into serious financial difficulties. The Labour Act prescribed that employers violating agreements with unions for the collection and transfer of union dues were liable to a fine or imprisonment of up to two years. However, the Zimbabwe Construction and Allied Trades Workers Union was still owed US\$485,000 by various employers in the construction industry, the Ceramics and Associated Products Workers Union US\$15,700 by various employers in the ceramic industry, and the National Mine Workers Union of Zimbabwe US\$39,360 by employers in the mining industry, with devastating consequences for the unions affected. Zimbabwe was facing an acute jobs crisis and the workers of the country were bearing the brunt of repeated failed economic policies of the Government. Most workers earned salaries far below the poverty level, and many workers went for months without receiving their wages. Repression had never helped any government in tackling economic crises while collective bargaining and social dialogue had proven to be effective tools against job losses. The Government was therefore called to bring its laws and practices in line with the Convention as a matter of urgency.

The Employer member of Zimbabwe stated that in the past the extremely adverse situation prevailing in the country had affected both workers and employers. Both suffered at the hand of law enforcement authorities. Employers were not spared as they were arrested for breaking price control regulations which led to the appointment of a Commission of Inquiry. He explained that progress had been made and that it ought to be commended; for instance, improvements had been made in the manner in which employers and the Government interacted. He supported the statement made by the Employer members which posed a very pertinent question concerning cases of anti-union discrimination which had been reported to the Government. In particular, he agreed that in that state of affairs, an additional request for information from the Government would seem unreasonable; considering that had it taken the responsibility for investigating the allegation, the information would have been readily available. However, the Government had to be congratulated for setting up the Tripartite Labour Law Reform Advisory Council which had agreed to the 13 principles which would inform the labour law reform in the country. The said principles had been crafted in a tripartite manner; for instance, cases where there had been excessive ministerial power had been looked at, and it had been agreed that those powers would be curtailed. Although employers had been let down before they were still prepared to give the Government and workers another chance.

The Worker member of Zimbabwe indicated that five-and-a-half years had elapsed since the Commission of Inquiry had formulated its recommendations. Despite the Government's promise to bring all the pertinent labour laws into conformity with Conventions Nos 87 and 98, little progress had been made, with the exception of the 2013 Constitution. In August 2014, principles to align national laws with international labour standards were agreed upon in a tripartite manner. In 2015, the Government had promulgated Labour Amendment Act No. 5, ignoring the agreed principles. Labour Amendment Act No. 5 specified that a

freely concluded collective bargaining agreement would not be registered if "contrary to public interest". Furthermore, the said Act imposed a minimum retrenchment package. Moreover, the Act permitted ministerial interference in the administration of national employment councils. The speaker was of the view that the principles discussed on 22 May 2016 had been merely agreed upon for the purpose of reporting progress to the present Committee. Also, in May 2016, the Special Economic Zones Bill had been discussed and passed by the lower house of Parliament, without consultations being held. The Bill sought to exempt Special Economic Zones from the application of the Labour Act. The speaker stated that acts of anti-union discrimination were widespread, trade union members were being dismissed, as was the case of the President of the Railways Association of Enginemen, Mr Honest Mudzete, the President of the Zimbabwe Catering and Hotel workers Union, Mr Muzvidziwa, and the union's national executive member, Ms Sophia Bwera. Selective dismissals of workers were taking place during strikes, especially in the case of trade union officials and worker representatives. Moreover, the Constitutional Court had yet to determine the constitutionality of section 104 of the Labour Act that restricted the right to strike. He denounced late payments of wages and the difficulty for workers to dispose of their wages, due to limited availability of money in banks. As workers' wages had not been paid, trade union dues had not been remitted, thereby crippling unions' operations. The speaker called on the Committee to insist, with stronger measures, on the effective implementation of the Convention.

The Government member of Botswana, speaking on behalf of the Member States of the Southern African Development Community (SADC), noted the progress made by the Government in addressing the issues raised, in particular in relation to the recommendations of the Commission of Inquiry. He noted the constitutional amendments adopted in 2013 which formed a good basis for addressing the concerns raised by the Commission of Inquiry regarding compliance with the Convention. He also noted the tripartite agreement on principles which formed the basis for the amendment of the Labour Act and the Public Service Act, in the context of the labour law reform. Progress was also noted concerning the capacity building of the stakeholders. The speaker stressed the necessity to rapidly harmonize various statutes with the new Constitution. While some outstanding issues still needed to be addressed expeditiously to fully comply with the Convention, he trusted that the regular review and monitoring of the implementation of regional instruments on employment and labour, such as the SADC Decent Work Programme 2013–19, would help the Government in this regard. The continued technical assistance provided by the Office to the Government and the social partners would also facilitate compliance with the Convention.

The Employer member of Malawi expressed his solidarity with the Government on behalf of the SADC Private Sector Forum (SPSF). There was a conducive space for reforms in Zimbabwe and the employers were contributing to the current changes. The SPSF, the subregional body representing the private sector, approached tripartite consultations and social dialogue with objectivity. The interven-

tions made by the Employer member of Zimbabwe demonstrated such commitment. The employer representatives had agreed in the context of the national social dialogue platform to repeal section 79(2)(b) and (c) of the Labour Act. When instances of non-compliance with fundamental Conventions were reported, it was crucial that the situation be addressed first at the national level, and if these institutions had failed, at the subregional level, in order to ensure that existing structures with competent authority were given an opportunity to understand the reasons for the problems. In that regard, it was encouraging that the Employers Federation of Zimbabwe (EMCOZ) was using the national platforms to raise its concerns regarding the Labour Amendment Act No. 5 of 2015. The EMCOZ had not brought these concerns to the attention of the relevant sub-regional or international structures. National structures had to be taken advantage of, especially where governments, with the technical assistance of the ILO, had demonstrated their willingness to address concerns raised by the Conference Committee. The request made by the employers to the Government was legitimate and demonstrated the employers' objective approach towards social dialogue. To conclude, the speaker acknowledged the positive spirit of the Government in facilitating progresses to address the concerns raised by the Committee and was convinced that the Government and the social partners would continue the positive developments.

The Worker member of Botswana recalled that Zimbabwe had been a recurrent case before this Committee due to gross breaches of the provisions of Conventions Nos 87 and 98. The severity of these breaches, notably the serial and brazen physical and psychological attacks on workers and their trade union leaders, had led to the appointment of a Commission of Inquiry to investigate and make recommendations. However, the Conference Committee was familiar with the fact that these recommendations had been poorly implemented. The situation had not changed substantially as harassment and intimidation were still waged against workers and trade unions and had impacted the process of collective bargaining. On 8 August 2015, the police had prevented the ZCTU from demonstrating against the increase in job losses. Prior to the planned demonstration, the police had raided the ZCTU offices in Harare and had detained seven union leaders, including the President and the Secretary-General of the ZCTU, and several journalists. Those arrested had later been released and were intimidated physically and psychologically by police officers patrolling in the Harare's Central Business District with anti-riot equipment. On 11 April 2015, the ZCTU had obtained permission to demonstrate in six cities to denounce a range of practices contrary to the existing collective bargaining agreements, including wage freezes and cuts, the unilateral labour market flexibility, the non- and late payment of salaries, and the failure to remit trade union membership dues to the unions. To conclude, the speaker stressed that the Government had failed to align its laws and practices with the requirements of the Convention.

The Government member of Malawi expressed his satisfaction concerning the progress made by the Government in the implementation of the recommendations made by the Commission of Inquiry in 2010. Employers, workers and the Government had to work together for the country to

move forward economically and socially. The establishment of a Tripartite Negotiating Forum, responsible for overseeing the improvement and implementation of labour laws and other instruments was welcomed. This forum created an auspicious climate for the social partners to work together in designing a greater country to live and do business in. The commitment and progress made by the Government to improve the implementation of the Convention was commendable and should be encouraged. The measures taken by the Government to amend its Constitution was also a step in the right direction. Government, workers, and employers were to be encouraged to work together to ensure that the issues raised by the Commission of Inquiry were addressed in earnest. To conclude, the speaker encouraged the ILO to continue to provide technical assistance in the ongoing reforms to enable the Government to achieve economic growth through the development of a good, sustainable and sound social dialogue.

The Government member of Swaziland supported the statement made by the SADC Member States and congratulated the Government for the great strides made in implementing the recommendations of the Commission of Inquiry. The Government had made considerable progress, in consultation with the social partners, to ensure compliance with the Convention, in law and in practice, through the amendments of the Constitution and the legislative framework, as well as through the training of Labour Court judges. The Government had demonstrated its commitment to the promotion and protection of workers' rights. The speaker recommended that the ILO continue to provide technical assistance in order to support the measures taken to implement the recommendations of the Commission of Inquiry.

The Employer member of Swaziland, speaking on behalf of the Federation of Swaziland Employers and Chamber of Commerce (FSECC), indicated that the case was a case of progress and that it was important to acknowledge the efforts of the social partners. The labour law reforms undertaken by the social partners through the Tripartite Negotiating Forum had to be commended. Some reforms had been concluded and others were still in progress. The Government was committed to further engage with the social partners to address the concerns raised by the ZCTU. The ILO promoted the spirit of dialogue and encouraged social partners to resolve their difficulties. It was essential to deliberate these issues nationally and regionally, through existing tripartite structures. The ILO had to be used as the ultimate escalation forum. Workers and employers could do more to ensure that Zimbabwe complied with the requests of the Committee of Experts regarding anti-union discrimination. To conclude, the speaker urged the Conference Committee to commend the progress made and called on the social partners to work together in resolving their points of disagreement. The ILO should continue to provide technical assistance in this regard.

The Worker member of Swaziland expressed solidarity with the workers of Zimbabwe whose challenges were similar to the ones faced by workers in Swaziland. It was unfortunate that Zimbabwe had appeared on recurrent occasions before the Committee. When Zimbabwe had signed the 2011 Charter of Fundamental Social Rights in the SADC, it had been assumed that it had done so with a view to achieve uniformity in respect for human and workers'

rights throughout the region. However, instances where deductions had not been remitted to the unions to whom they were due, continued to happen. These practices were intended to frustrate, cripple and undermine the trade unions' capacity to defend and advance their members' rights and interests. The speaker called on the Government to fulfil its commitment to respect the Convention and the Charter of Fundamental Social Rights in the SADC and to protect the rights of the trade unions. Governments should assist the Government of Zimbabwe to comply with the obligations agreed upon, within the context of the ILO, but also in the regional and other international contexts. The workers of Zimbabwe were entitled to enjoy their rights. It was clear that no progress had been made by Zimbabwe regarding the implementation of the Convention and the conclusions should urge the Government to take action.

The Government member of the United Republic of Tanzania associated herself with the statement made on behalf of the SADC Member States and welcomed the efforts made by the Government of Zimbabwe and the social partners aimed at addressing the pending issues. These efforts had led to the adoption, in 2013, of the Constitutional Amendment; to the formulation of the Tripartite Negotiation Forum; and to the appointment of a Tripartite Labour Law Reform Advisory Council which would pave the way for the drafting of a Labour Amendment Bill. The Government and all the parties concerned should be encouraged to intensify their efforts to achieve sustained and harmonious industrial relations. The speaker called on the ILO to continue providing the necessary assistance to the Government and the social partners in this regard.

The Worker member of the Republic of Korea recalled that the Committee of Experts had reminded the Government of the need to effectively reform its labour laws to promote genuine and acceptable collective bargaining practices in full collaboration with the social partners. The Government had continued to poorly implement the requests of the Committee of Experts. Furthermore, the Government had unilaterally changed the principles that had been agreed upon by the social partners. Specifically, in August 2014, the tripartite partners had adopted, in the context of the Tripartite Negotiating Forum, 13 principles to guide the reform process. These principles had been accepted by the Cabinet in December 2014 without any changes. The Labour Amendment, which later became law in August 2015, had made significant unilateral changes to the agreed principles. The Act included provisions on the creation of a new bipartite worker–employer structure, on inspection and examination, and on the administration of the employment councils. These provisions had never been discussed nor agreed upon with the social partners. The provisions undermined the Convention and reversed the progress achieved through past national reforms, as they increased the powers of the Registrar of Unions and allowed the Minister to take control over the employment councils. Collective bargaining could not take place under the new law, which was intended to intimidate the social partners. The patience of this Committee should not be taken as a pretext to delay the implementation of the Convention.

The Government member of China emphasized that the Government had implemented the recommendations of the Commission of Inquiry, in particular by adopting amend-

ments to the Constitution and revising the labour legislation. This progress should be welcomed, since it enabled the protection of the social partners' rights and the promotion of collective bargaining. The member States needed to shoulder the responsibilities that arose from the Conventions which they had ratified and, to do that, they needed time and also technical assistance from the ILO. In conclusion, the speaker supported the efforts of the Government and expressed the hope that the assistance provided would continue.

The Worker member of the United Kingdom recalled that the Convention should be applied both in law and in practice. The right to collective bargaining was protected under article 65 of the Constitution adopted in 2013. However, when the labour law reform was discussed, the situation did not reflect the promising disposition of the Constitution. Those who had attended the tripartite discussions had not been able to recognize the legislation that was supposed to have emerged from the tripartite process. The section agreed upon by the social partners had already been highly criticized, including by the Commission of Inquiry and the Committee of Experts for interfering with collective bargaining through requiring the approval by the Minister of the collective agreements before they could be registered. Instead of bringing the law into compliance, the Government had inserted a new section that had compounded the infringement of core rights. The Minister had been given even more discretion and the power to choose when an agreement was or was not in "the public interest" before deciding whether to register it. Thus, the section gave the Ministry full discretion in granting prior approval, which was a very clear violation of the principle of autonomy of the parties. In relation to public-sector bargaining, Government agencies were able to take over employment councils. These examples showed a tightening grasp of control by the Government over what should have been a negotiated process between the social partners. The same had happened regarding retrenchment or redundancy payments, and the fixing of public sector terms and conditions. Despite the inclusion of article 65 in the 2013 Constitution, collective bargaining free of government control was not a reality in Zimbabwe.

The Government member of Namibia associated himself with the statement made on behalf of the SADC Member States and commended the Government for the adoption of the Constitutional Amendment, which gave effect to both Conventions Nos 87 and 98. This showed the commitment of the Government to implement the recommendations of the Commission of Inquiry. Moreover, the registration of two workers' organizations in 2016, demonstrated that the principles of the Convention were applied in practice. She called on the ILO to continue to provide technical assistance to the Government in its labour law reform process.

The Government member of Cuba warmly welcomed the Committee of Expert's recognition in its report of the legislative progress made, particularly with respect to the amendment of the Constitution that provided fully for the right to collective bargaining, and the process of harmonizing labour law with the Convention. In light of the will expressed by the Government to continue moving towards the fulfilment of commitments made, she called for the spirit of cooperation to prevail and the necessary technical assistance to be provided to the Government.

The Worker member of South Africa expressed solidarity with the workers of Zimbabwe and recalled that the Committee had, on many occasions, discussed on the abuse, deprivation and denial of fundamental rights of workers in export processing zones (EPZs), which in turn undermined and eroded the spaces and latitude for collective bargaining. The Special Economic Zones Bill had been discussed in the Parliament of Zimbabwe in May 2016. Section 56 of the Bill provided for the removal of the application of the Labour Act in special economic zones. The effect of this provision would be that collective bargaining, as provided for in the Labour Act, would be made impossible, giving employers and the authorities the power to determine conditions of work in these zones. Workers would be subjected to regulations unilaterally made by the special economic zones authority without consultation or negotiation with worker representatives. Moreover, recalling that the Special Economic Zones Bill, once adopted, would be administered by the Minister of Finance and the Minister of Public Service, the speaker feared that inputs from the Ministry of Labour and Social Welfare on the adoption of regulations would only be possible when the authority decided to consult it. He requested the Committee to call upon the Government to accept a high-level mission to assess progress and to assist with proposals to make rapid and lasting changes to collective bargaining laws and practices.

The Government member of Kenya noted with appreciation the various measures taken by the Government to fulfil its obligations under the Convention and address the issues raised, including with regard to the scope of collective bargaining and the protection against anti-union discrimination. There also had been significant progress and commitment by the Government to address and finalize the outstanding issues, including those concerning amendments to the Labour Act, which had been discussed by the Tripartite Negotiating Forum and the Tripartite Labour Law Reform Advisory Council. In conclusion, she welcomed that the ILO had supported the tripartite parties through technical cooperation and called on the Office to continue supporting the Government in its efforts.

The Government member of India expressed appreciation at the various measures initiated by the Government to harmonize its legislation with the provisions of the Convention. She was pleased to note that the Tripartite Negotiating Forum had agreed to finalize the discussions on the Labour Amendment Bill by the end of August 2016. Furthermore, the Government had already taken actions to implement most of the recommendations of the Commission of Inquiry, including those related to protection against anti-union discrimination, the extension of the scope of collective bargaining, and the registration of collective bargaining agreements. The Government had also shown its willingness to engage in discussions with the social partners and had benefited from ILO technical assistance in the area of training and sensitization. The Committee should take into account the progress made and the commitment expressed by the Government to pursue its efforts with a view to ensure full compliance of its labour laws with the Convention.

The Government member of Ghana acknowledged the actions taken by the Government to address, through tripartite consultation, the issues raised by the Commission of Inquiry, in particular the ongoing labour law reform which

was an important step towards compliance with the Convention. The speaker urged the Government to expedite those actions in order to achieve a harmonious industrial climate and respect of workers' rights.

The Government representative indicated that some of the issues discussed had not been raised by the Committee of Experts. Firstly, legislative issues should be discussed in the Tripartite Negotiating Forum and other national social dialogue structures and the Government was committed to address those issues with the social partners at the national level. Secondly, the overall economic performance of the country had to be taken into account. Thirdly, incidences of clashes between the law enforcement agencies and trade unions had been reduced and the Government had continued to work towards the improvement of working relations between state actors and trade unionists. The Government had always been ready to engage in dialogue with a view to finding mutually acceptable solutions to the issues discussed by the Committee. Challenges had been encountered in the labour law reform. The Supreme Court ruling of July 2015 had exposed loopholes in the existing laws giving employers the right to terminate employment contracts without notice. Since this ruling had resulted in unprecedented massive job losses, the Government had taken measures to expedite the enactment of labour legislation to stop those dismissals. The Labour Amendment Act No. 5 of 2015 prohibited the termination of employment without notice and retroactively entitling dismissed workers to compensation. While considerable progress had been realized since June 2015 with the agreement of the tripartite partners on the labour law reform based on all the comments of the ILO supervisory bodies, the need for urgent labour law amendments had meant that the reforms that had been agreed upon had to be temporarily set aside. However, this decision had been made in good faith and with the intention to benefit workers. As soon as the labour amendments had been passed, tripartite engagement had been resumed. The discussions, which had been initiated within the Tripartite Negotiating Forum, had been finalized by the Tripartite Labour Law Reform Advisory Council. The objective was to finalize the consultations by the end of June 2016 to pave the way for the drafting of a Labour Amendment Bill. The socio-economic challenges faced by the country had been exacerbated by the El Niño induced drought. In this context, some employers had been failing to fully comply with collective bargaining agreements, especially with respect to minimum wages. This had also led to delays in the payment of wages, and to delays in the remittance of trade union dues and medical aid contributions. The Government had repeatedly intervened to encourage the parties to reach agreements on how the collective bargaining agreements could be respected, notwithstanding the economic challenges at stake. The Special Economic Zones Bill that was being discussed in Parliament could not undermine the fundamental rights of workers, especially those relating to Conventions Nos 87 and 98, as the Constitution of the country already guaranteed these rights (except for the security services). Moreover, it was the Government's intention to convene a tripartite seminar to build greater consensus on how the industrial relations framework for special economic zones was to be configured. In conclusion, she emphasized that the Government had demonstrated full respect towards the comments of the ILO

supervisory bodies, as well as towards the diverse opinions of the social partners. The socio-economic challenges faced by the country required nothing short of social dialogue and inclusive participation. All efforts would be taken, in law and practice, to ensure that international labour standards were part of the country's development plan. The good record that had been achieved since the adoption of the recommendations of the Commission of Inquiry was remarkable.

The Worker members declared that collective bargaining was essential to safeguard jobs during crisis. While the Government had committed itself to guaranteeing the right to collective bargaining by ratifying the Convention, it failed to comply with its obligations by resorting to violence and repression against those who were the most affected by the economic crisis. The Worker members trusted that the discussion clarified the need for the Government to hold, without delay, genuine consultations with the social partners in relation to the recommendations of the Commission of Inquiry with respect to the amendment of the Labour Act, the Public Service Act and the Public Order and Security Act. The Government was seeking to weaken the right to collective bargaining with the Special Economic Zones Bill, while there was no justifiable ground for denying the right to collective bargaining to workers in EPZs. The Government should be reminded that failure to implement a collective agreement, even on a temporary basis, infringed the right to collective bargaining and the principle of good faith, and therefore employers who refused to remit union dues in violation of existing collective agreements should be sanctioned. Moreover, the Government should ensure that dissuasive sanctions were imposed on employers engaging in anti-union discrimination and that all workers who had been targeted for discrimination had access to effective remedies. Recalling that the right to collective bargaining could not be exercised in a meaningful way without independent and representative workers' organizations, the Worker members called upon the Government to refrain from interfering in public protests by arresting and intimidating trade union members and leaders. Past incidents should be fully investigated and those who were found to be responsible should be held accountable. The Worker members recalled that the last time the Committee had called for a Commission of Inquiry with the agreement of the three groups was in 2008 concerning Zimbabwe, including on the application of the Convention. The case being once again discussed this year, the Committee had to follow up on the recommendations already made and should call upon the Government to accept a high-level mission and to take all the necessary measures to allow the mission to note improvements before the next Conference.

The Employer members indicated that the discussion had shown that there remained challenges which affected workers and employers. However, those challenges should not detract from the fact that progress had been made towards compliance with the Convention. This progress had been recognized by all social partners in Zimbabwe as well as by the Committee of Experts. The Conference Committee should encourage member States to resolve their labour problems through social dialogue at the national level. The Government and the national social partners had established tripartite structures to review labour law reforms.

Agreements had already been reached at the tripartite level including with regard to the amendment of the labour laws, which had resulted in the amendment of the Labour Act which provided, among other things, for criminal sanctions in the event of trade union violations. This progress should be commended. The Employer members believed that the tripartite structure of social dialogue would contribute to the finalization of the process for the harmonization of the national legislation with the Convention in the near future. The parties should work together to ensure compliance and enforcement of the laws that had already been enacted, especially those offering protection to workers. To build on the momentum of progress, the Employer members encouraged the Government to: (i) continue to work with the national social partners to finalize the outstanding legislative amendments to ensure full compliance with the Convention; (ii) explore all reasonable measures to track, monitor and report on incidents of anti-union discrimination; and (iii) avail itself of any technical assistance it may require from the ILO to achieve full compliance with the Convention, both in law and practice.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the Government's indication that steps were being taken to harmonize the labour and public service legislation with Articles 1 and 4 of Convention No. 98, including effected and proposed amendments to the Labour Act, the adoption of the 2013 Constitution and the Public Service Act.

The Committee noted with disappointment the Government's failure to provide statistical information on cases of anti-union discrimination as requested by the Committee of Experts in its 2016 observation.

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

- **hold meaningful consultations with social partners in order to fully and effectively implement the Commission of Inquiry recommendations with respect to the amendment of the Labour Act, the Public Service Act and the Public Order and Security Act;**
- **ensure that dissuasive sanctions are imposed on those engaging in anti-union discrimination and that all workers who have been targeted for discrimination have access to effective remedies;**
- **collate and submit to the Office all statistical information about cases of anti-union discrimination, as requested by the Committee of Experts;**
- **provide detailed information on the current situation of collective bargaining in the export processing zones and on the concrete measures to promote it in those zones;**
- **ensure that collective bargaining can be exercised in a climate of dialogue and mutual understanding;**
- **enhance the capacity of the social partners to fulfil obligations under existing collective agreements; and**
- **avail itself of ILO technical assistance to ensure full compliance with Convention No. 98.**

The Government should accept a high-level ILO mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

The Government representative thanked the Committee for its deliberations and for the conclusions and assured the Committee that the Government would continue to work with the social partners to implement the programmes outlined in the conclusions.

Abolition of Forced Labour Convention, 1957 (No. 105)

TURKMENISTAN (ratification: 1997)

A **Government representative** recalled the relevant legislative provisions, including section 63 of the Code of Administrative Offences and section 223 of the Criminal Code, and indicated that forced labour was not imposed in cases in violation of the established procedure for the organization of assemblies, meetings or demonstrations. He explained that “corrective labour”, as a penal sanction, corresponded to the exception of Article 2(c) of the Forced Labour Convention, 1930 (No. 29). As a matter of fact, under section 50 of the Criminal Code, corrective labour was served following a court judgment, with the payment of the corresponding salary. At the same time, legislation restricted the use of corrective labour for certain categories of citizens. With regard to the comments of the Committee of Experts’ concerning the sanctions for insulting or defamation of the President of Turkmenistan, including through the publication of materials over the Internet (sections 176 and 192 of the Criminal Code and section 30(3) of the Internet Development and Services Law of 20 December 2014), citizens of Turkmenistan enjoyed freedom of opinion and expression and the right to exchange information. The implementation of the provisions of national law should not be interpreted as a punishment and should thus not fall under the prohibition of Article 1(a) of the Convention. Moreover, the Constitution of Turkmenistan guaranteed freedom of assembly and the right to hold meetings and demonstrations. On 28 February 2015, the Parliament of Turkmenistan had adopted a special law aimed at the implementation of the constitutional rights of citizens of Turkmenistan concerning the organization of assemblies, meetings and demonstrations and other large-scale public events. Administrative penalties were imposed for the violation of procedures established by the legislation, and not for the expression of political views. However, administrative arrests could be applied in exceptional circumstances, only for certain types of administrative offences, and did not include the obligation to perform public work or any other form of forced labour. He emphasized that, at the present time, the Parliament of Turkmenistan was discussing a new Constitution, taking into account international experience in the area of the protection of human rights and freedoms. In the context of the legislative reforms, work was also under way on a draft law that created and appointed a human rights ombudsperson.

With regard to the comments of the Committee of Experts on forced labour during the cotton harvest, he said that the agricultural sector accounted for less than 4 per cent of GDP. At the same time, the country paid great attention to the development and improvement of the agricultural sector, the introduction of modern innovative technologies in order to create jobs, as well as measures to support farms and small and medium-sized businesses. State support and incentives provided to farmers included preferential loans for up to a ten-year period with a rate of interest of 1 per cent per annum. Procurement prices for cotton had also been increased. In accordance with section 8 of the Labour Code, forced labour was prohibited in Turkmenistan. Moreover, in the course of the constitutional reforms, the prohibition of forced labour would be included

in the new Constitution. In accordance with the Law on education and the rights of the child, the Government was required to protect the child from all forms of exploitation at work, by measures of a legal, economic, social, medical and educational nature. Students were prohibited from working during the school year in the agricultural and other sectors which were not related to the educational process. He added that of the legislation referred to in the comments of the Committee of Experts, the Law on the legal regime governing emergencies of 1990, had been repealed. With regard to the comments on the imposition of forced labour as a method of mobilizing and using employment for purposes of economic development, the State of Emergency Act did not provide for this type of mobilization for those purposes. In accordance with the Code of Administrative Offences, sanctions, including administrative suspensions, were imposed on employers for up to three months for the failure to prohibit the use of forced labour and the employment of persons under 18 years of age. Official complaints and petitions by citizens concerning the use of forced labour could be reported. In this regard, no information or complaints had been received concerning the use of forced labour. The Government wished to continue cooperation with the ILO on the issues raised by the Committee of Experts. The Government was committed to constructive dialogue and continued collaboration, as demonstrated by recent meetings and official ILO visits to Turkmenistan, as well as activities in Turkmenistan for the implementation of international labour standards.

The Worker members said that Turkmenistan was the ninth largest producer and the seventh largest cotton exporter in the world and that it maintained that status through a system of forced labour under the auspices of the State. The Government had complete control over cotton production and obliged cotton farmers to respect annual quotas. During the harvest season, the authorities obliged public sector workers, under threat of dismissal, to either pick cotton, pay bribes or hire someone to replace them. The authorities also forced private sector enterprises to contribute to the task in cash, in labour or in kind, by quite simply threatening them with the closure of their establishments. Forced labour in the cotton industry took place in the context of widespread human rights violations in the country. The Government was accused of being responsible for hundreds of enforced disappearances and of ordering prison sentences as measures of political retaliation. The Government also denied workers’ rights to freedom of association, assembly and expression, which facilitated recourse to forced labour. Those who tried to gather evidence of forced labour in the cotton industry did so at their own risk and peril, and therefore had to act anonymously to avoid harassment and reprisals. They added that, although the Government had adopted laws against forced labour, it had repeatedly ignored the deep concerns expressed by the Committee of Experts regarding the application of Conventions Nos 29 and 105. In 2016, the Committee of Experts had once again strongly urged the Government to take specific and effective measures without delay to ensure the complete elimination of the use of compulsory labour of public and private sector workers in cotton farming. The United Nations Human Rights Council and the Committee on the Rights of the Child had also noted that children were still engaged in cotton picking. Reliable information from

NGO reports concerning the 2015 harvest clearly showed that the Government continued to use widespread forced labour, with complete disregard for the demands of the ILO and other United Nations agencies. These various factors demonstrated that the Committee of Experts had good reason to bring this case to the attention of the Conference Committee and to assign it a double footnote.

The Worker members emphasized that the Government used various forms of coercion to ensure implementation of the cotton production plans. The President of Turkmenistan threatened regional governors with dismissal if they did not fulfil their regional cotton production target. Regional and district officials in turn threatened to dismiss the leaders of agricultural associations if they did not meet their quotas. The associations then threatened to seize the land of cotton farmers if they failed to meet their targets. And workers risked dismissal if they refused to participate in the harvest, pay a bribe or hire someone to replace them. During the 2015 harvest, which had arrived late and had a low production output, the President had criticized the regional governors on several occasions for the slow production, and forced them to send more workers to the fields to speed up the process. School directors had sent teachers to pick cotton several days a week throughout the harvesting season in the Dashoguz, Lebap and Mary regions and, across the country, teachers indicated that they had the choice to either work in the harvest, pay a bribe or see the end of their careers. They referred the testimony of a public service employee forced to participate in the harvest as well as a worker hired by a teacher to do the work in their place, highlighting both the bad working conditions and the corrupt practices that accompanied the forced compliance with the targets fixed by the State.

The Worker members also emphasized that the Turkmen Agricultural University and the Dashoguz Agricultural Institute had forced around 2,000 students to pick cotton, under threat of exclusion from the establishment, and that the school directors in the Akhal and Dashoguz regions did the same with regard to their pupils. They added that the forced labour of parents organized by the Government to ensure compliance with the quotas had led to, at least in the Boldumasaz district (Dashoguz region), recourse to child labour, as the parents feared losing their jobs if they did not fulfil their designated cotton quota. The Government considered any refusal to contribute to the cotton harvest as insubordination, sabotage or contempt for the nation, which entailed the application of administrative sanctions, including dismissal. The high unemployment rate in Turkmenistan heightened the impact of the threats of dismissal in response to refusals to participate in the cotton harvest. They finally indicated that the Government should draw on examples from the Committee's conclusions relating to similar cases. The Government should, with ILO technical assistance, immediately adopt and implement an exhaustive action plan for the full abolition of forced labour in the country.

The Employer members welcomed the indication by the Government that it was prepared to cooperate with the ILO to address issues of compliance with international labour standards. They noted that the provisions of the Convention on the prohibition of the use of forced or compulsory labour as a means of political coercion or education or as a

punishment for holding or expressing political views opposed to the established political, social or economic system, as well as a method for mobilizing and using labour for purposes of economic development, appeared to be relevant in this case. They recalled that, in the first part of its observation, the Committee of Experts focused on Article 1(a) of the Convention, noting that, under both section 178(2) of the Code of Administrative Offences of 1984 and section 223 of the Criminal Code, any violation of the established procedure for the organization of assemblies, meetings or demonstrations constituted both an administrative and a criminal offence, punishable by a fine, administrative arrest or corrective action. The Government had not provided information on the application of these provisions in practice, and the Committee of Experts had noted that changes had been made to section 178(2) of the Code of Administrative Offences of 1984, while section 223 of the Criminal Code remained unchanged, and sections 176 and 192 of the Criminal Code established penalties for offences that were punishable by a fine, correctional labour of up to two years or imprisonment for up to five years. The Employer members urged the Government to provide information on the application in practice of section 63 of the Code of Administrative Offence, sections 176, 192 and 223 of the Criminal Code and to take the necessary measures in both law and practice to ensure that no penalties involving compulsory labour were imposed for the peaceful expression of political opinions or views opposed to the established political, social or economic system.

In relation to Article 1(b) of the Convention, they recalled that the Committee of Experts observed that the "needs of economic development", pursuant to section 7 of the Law on the legal regime governing emergencies of 1990, did not satisfy the definition of emergency in relation to Article 1(b) of the Convention. The Committee of Experts noted with deep concern the widespread use of forced labour in cotton production. In particular, individuals were forced to pick cotton, in fulfilment of state-established cotton production quotas, under threat of penalty. The Government forced farmers to deliver established annual cotton production quotas and thousands of workers to pick cotton under threat of loss of land, loss of employment and loss of wages. Businesses were forced to send employees to pick cotton under threat of extraordinary audit, tax inspections and fire inspections, while transport companies were forced to contribute by transporting workers to the cotton fields, without compensation, and under threat of confiscation of their licence by the police. They recalled that the Convention, by providing for the abolition of any form of forced labour in five specific cases, was intended to supplement Convention No. 29, and they emphasized that they had long opposed the use of forced labour for economic development. They strongly urged the Government to take effective measures without delay to ensure the complete elimination of the use of forced labour in relation to the cotton harvest and further requested the Government to provide information on the specific measures taken in this connection and the concrete results achieved. In this regard, they encouraged the Government to request the technical assistance of the ILO. They expressed concern with regard to the direct request, in which the Committee of Experts, noting that section 16 of the Civil Service Act pro-

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hibited strikes by civil servants, directly requested the Government to provide information on sanctions that may be imposed on workers participating in strikes in the civil service. Acknowledging that participation in peaceful strikes, where such industrial action was recognized at the national level, should not result in the imposition of forced labour, they stated that this provision of the Convention did not recognize a general right to strike and that, as a result, sanctions for workers who went on strike, which did not impose forced labour, did not fall under the scope of the Convention. In conclusion, they highlighted the seriousness of the case and expected the Government to take the necessary measures, in both law and practice, to ensure that no penalties involving forced labour were imposed for the peaceful expression of political opinions opposed to the established system and to take effective measures without delay to ensure the elimination of the use of forced labour of workers in relation to the cotton harvest.

The Worker member of Turkmenistan referred to a tripartite agreement signed between the Government and the social partners to actively promote social dialogue and move away from unfortunate situations that still existed in the country. Recently adopted laws and regulations were discussed in a tripartite setting, and national workers' organizations were actively participating in the process of amending the legislation, including the Constitution. The new Constitution would include a specific provision banning forced labour, which they supported. He also welcomed the fact that a human rights ombudsperson position would be created. Labour inspection was effective in all regions of the country and workers' organizations also carried out monitoring with labour inspectors and discussed existing practices. Cotton was an important industry which generated employment. A campaign has been launched by trade unions and the labour inspectorate which had resulted in more than 100 inspections being carried out in 2015, and some 50 complaints had been examined. However, trade unions had received no complaints with regard to forced labour. Trade unions were becoming more effective in their work and had a greater influence in the labour sphere. Trade unions were working towards guaranteeing the rights of workers, in collaboration with the labour inspection services, with the aim of improving the quality of work and ensuring that workers were paid decent wages. Collective agreements were also being signed in this regard.

The Employer member of Turkmenistan stated that farmers and producers in agriculture engaged voluntarily in cotton cultivation under preferential conditions and incentives, such as the reduction of the cost for fertilizers, the availability of loans and the exemption from the payment of taxes and other fees. Although the Committee of Experts had noted that private companies were forced to participate in the production of cotton, she was not aware of complaints of such practices and encouraged the Committee of Experts to consider each case individually. She concluded by hoping that the Committee would take her views into consideration.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Norway and Republic of Moldova, said that the EU was engaged in the promotion of the universal ratification and implementation of the core labour standards, including the

Convention, as part of the Action Plan on Human Rights and Democracy, adopted in July 2015. The EU was concerned about the serious human rights situation in Turkmenistan, characterized by the lack of freedom of expression, including on the Internet, freedom of association and freedom of movement, as well as restrictions imposed on civil society organizations and arbitrary detentions. In this context, the EU policy concerning Turkmenistan, which was intended to promote respect for human rights, the rule of law and democratic principles in that country, was maintained. In this regard, he welcomed the recent adoption of the National Human Rights Action Plan and encouraged the Government to step up its efforts for implementation. The EU was concerned about the comments of the Committee of Experts regarding the application in practice of section 63 of the Code of Administrative Offences, sections 176, 192 and 233 of the Criminal Code and the Internet Development and Services Law of 20 December 2014. It was also deeply concerned by the widespread use of forced labour in cotton production in Turkmenistan, which not only affected farmers, but also the public and private sectors at large. Workers were under threat of losing their jobs, salary cuts, loss of land and extraordinary investigations and, despite being illegal, child labour continued in cotton production. In this context, the Government was called upon to amend its legislation to bring it into conformity with the Convention and to ensure in practice that no penalties involving compulsory labour were imposed for the peaceful expression of political opinions or views opposed to the established system. The Government was encouraged to provide all the information requested by the Committee of Experts, to intensify its efforts to completely eliminate compulsory labour in cotton farming and to ensure a stronger enforcement of the law regarding child labour in cotton production. Finally, he indicated that the EU was willing to assist Turkmenistan to meet its obligations in this regard and would continue to monitor the situation in the country closely.

The Government member of Belarus congratulated the Government on strengthening its legislation to apply the provisions of the Convention. Reforms carried out by the Government were facilitating progressive change, particularly in the agricultural sector. In this regard, he referred to the preferential loans granted to farmers, which were exempt from taxes and fees. He also referred to the adoption of legislation guaranteeing the constitutional right to peaceful assembly. A new draft Constitution, reflecting international experience in the protection of human rights and freedoms, was before Parliament, and there were plans to appoint a human rights ombudsperson. He therefore suggested that the Committee should no longer consider the application of the Convention by Turkmenistan, although the ILO should continue to work with the Government.

The Worker member of France emphasized that the observations of the Committee of Experts highlighted the violation in Turkmenistan of the fundamental freedoms of expression and association, which guaranteed democracy, peace and the rule of law. Cotton production generated considerable revenue for the State and for an elite few who were closely connected to the political authorities. The use of forced labour was unfortunately very common in this context. Cotton production contributed to political repression and the absence of the rule of law made any opposition

futile and dangerous. All media in Turkmenistan were state-controlled and used for propaganda. Access to social networks and foreign media was prohibited and any form of opposition on the Internet or in the media was punishable by forced labour. In the regard, the Organization for Security and Co-operation in Europe (OSCE) had raised concerns that the Internet Development and Services Law of 20 December 2014 imposed too many restrictions on access to the Internet and the repression that could result from this Law. In addition, a United Nations document submitted to the Human Rights Council during the Universal Periodic Review of Turkmenistan indicated that all attempts to organize independent trade unions had met with resistance from the authorities. The absence of independent trade unions, as denounced by the International Trade Union Confederation, led to numerous violations of workers' rights, with forced labour being an extreme example.

However, the country was not closed to all foreign presence, as foreign, European and French multinationals, particularly in the construction and communication sectors, were concluding more local contracts. At a time when the International Labour Conference was discussing decent work in supply chains, it should be recalled that, while States were responsible for the ratification and implementation of international labour standards, enterprises could not ignore existing international standards on human and labour rights. In particular, they were obliged to take into account the United Nations Ruggie principles and the OECD Guidelines for Multinational Enterprises, revised in 2011, which encompassed the concepts of the exercise of influence and business relationships. It was therefore essential for the representatives of foreign public authorities present in the country to ensure that international principles were respected and for enterprises to ensure that their activities did not directly or indirectly support the violation of human rights and forced labour. France, which was about to inform the ILO Director-General officially of its ratification of the Protocol of 2014 to the Forced Labour Convention, 1930, needed to be particularly vigilant in that regard. The Bill on the extraterritorial responsibility of parent companies currently being debated by the French Parliament should be adopted as quickly as possible, in accordance with the recommendations of the National Advisory Commission on Human Rights in France. She supported the requests by the Committee of Experts for the Government to take the necessary measures, in both law and practice, to ensure that no penalties involving compulsory labour could be imposed for the peaceful expression of political opinions or views opposed to the established system.

The Government member of Switzerland said that her Government supported the statement made by the EU. The use of forced labour for the cotton harvest could not be justified on grounds of economic development and, as the Committee of Experts had emphasized, there were no situations of emergency or force majeure within the meaning of ILO Conventions that could, in this context, justify recourse to forced labour. She encouraged the Government to promote the free and informed consent of workers to enter at any time into an employment relationship, and to ensure their right to leave their employment at any time without fear of reprisals or loss of benefits. Lastly, she expressed the hope that the Government would put in place

concrete measures in both law and practice to eliminate forced labour.

The Employer member of the United States condemned the widespread use of forced labour in cotton production in the country. This situation affected broad categories of society, including business and private and public sector workers, farmers, teachers, doctors and nurses, who were forced to work in cotton production under threat of losing their jobs, experiencing salary cuts, loss of land and enduring extraordinary investigations, in violation of the Convention. He said that, consistent with the United Nations Guiding Principles on Business and Human Rights, many multinational companies were partnering in their supply chains with groups dedicated to eradicating forced labour in the cotton industry. As these efforts were proving insufficient, he appealed to the Committee to add its unique institutional voice to the collective effort to hold the country accountable to its international obligations and called for the initiation of a tripartite monitoring programme to ensure compliance by the Government with its international obligations. Without a free press and a robust civil society, the ability of companies to identify and monitor potential violations of human rights in their supply chains was hampered. Despite the fact that articles 28 and 29 of the Constitution of Turkmenistan guaranteed the right to hold and express opinions, as well as the right to hold meetings and demonstrations in the manner established by the law, the Committee of Experts had noted that penal sanctions were routinely imposed, including through compulsory labour, as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system. In this regard, he also referred to the observation of the OSCE on the Internet Development and Services Law of December 2014 and the concerns at the severe restrictions on freedom of expression in the country expressed in the framework of the United Nations Universal Periodic Review. Echoing the call for action made by the Committee of Experts, he strongly urged the Government to take measures without delay to ensure the complete elimination of the use of compulsory labour by public and private sector workers in cotton farming and requested the Government to provide information on the specific measures taken to this end in both law and practice, as well as the concrete results achieved.

The Worker member of Sweden, speaking on behalf of the Nordic workers, said that according to Human Rights Watch, Turkmenistan was one of the most closed and repressive countries in the world. The Government had arrested and imprisoned people based on politically motivated grounds and used "corrective labour" as punishment for violations of legal procedures, restricting the organization of assemblies, meetings and demonstrations, and thus denying freedom of association and expression. There were few, if any, signs of free, democratic and independent trade unions in Turkmenistan. She emphasized that well-functioning social dialogue was not only an important tool for eliminating labour rights abuses, such as forced labour, but also the best mechanism to promote better living and working conditions and peace and social justice. Moreover, democracy was among the enabling conditions for a well-functioning social dialogue. An appropriate institutional framework to allow tripartite discussion on important is-

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sues, such as the abolition of forced labour, was also required. She expressed the view that there was practically nothing of the above in Turkmenistan. She asserted that more information and cooperation from the Government was needed and she urged the Government to change its laws and legal practice. She emphasized that forced labour should be abolished urgently and the need to engage in social dialogue with free and independent social partners.

The Government member of the Russian Federation welcomed the detailed information provided by the Government. Important socio-political reforms were being undertaken leading to a more effective implementation of the Convention. He noted with satisfaction the constructive cooperation between the Government and the ILO, including joint seminars and other activities contributing to the implementation of international labour standards at the national level. He was of the view that this level of cooperation with the ILO confirmed the readiness of the Government to comply with its obligations under international law. In this regard, he urged the Office to continue to provide technical assistance to the Government in relation to the implementation of the Convention.

The Worker member of the United States said that for years the Government had been using social control as one of its methods to repress the workers in the country, particularly through cotton production and picking. The Government forced farmers and individuals to fulfil cotton production and picking quotas. Tens of thousands of workers from sectors, including education, health care and culture and sporting institutions, as well as manufacturing, construction and transport companies, were pulled out of their normal work day and forced to pick cotton, or to pay a bribe or hire a replacement worker to pick cotton instead. Farmers who fell short of the production quota faced the penalty of losing their lease to farm the land. The cotton pickers in the fields worked under the threat of loss of pay or termination from their employment. As a result of the mass mobilization of public sector workers to pick cotton, many services were disrupted, including education and health-care services. As a consequence, many teachers and technical school staff quit their jobs. In particular, it was deplorable that workers from the very critical industries of education and health care were ripped out of schools and hospitals to pick cotton in the fields for the sole purpose of garnering profits for the government elite. She emphasized that the practice was even more unacceptable of officials forcibly mobilizing students to the cotton fields under the guise of internships. In addition, pressure to fulfil cotton picking quotas resulted in children not attending school, but instead picking cotton alongside their parents, who feared losing their jobs if quotas were not met. Finally, she emphasized that these shocking human rights violations could not persist any longer and urged the Government to undertake serious reform in order to ensure the abolition of forced labour, as required by the Convention.

The Government member of Kazakhstan highlighted the positive measures taken by the Government. In this regard, he welcomed the efforts made to formulate a new Constitution, taking into account international experience in the areas of human rights and freedoms, and which would include a provision banning forced labour. He also welcomed the current work to establish a position of human rights ombudsperson. He referred to the measures to promote and

support the agricultural sector, including preferential loans, as well as the promotion of new and innovative technologies in the sector. The active participation of the Government in regional and international organizations was also to be welcomed.

The Government member of the Islamic Republic of Iran commended the Government of Turkmenistan for its commitment to fully complying with its international obligations, including the elimination of forced labour, through appropriate legislative and practical measures. The Government should be encouraged to pursue its efforts and the Office to provide assistance if needed.

The Government member of Azerbaijan recalled the difficulties faced by all countries of the former Soviet Union in their transition process, as well as their achievements in adopting new legislation expressly prohibiting forced labour, ensuring socio-economic development, the full development of the human potential of their peoples and the steady growth of wages. The growth of the textile industry in Turkmenistan, which allowed the increased participation of women in the labour market, bore witness to the achievements of the country. Economic development would further support the full application of international labour standards in the country.

The Government representative expressed his gratitude to the speakers who had taken part in the discussion and reaffirmed his confidence in such a constructive dialogue to ensure the full application of the rights enshrined in the Convention.

The Employer members welcomed the information provided by the Government regarding legal reforms, such as the repeal of section 7 of the 1990 Law on the legal regime governing emergencies, with the stated aim of banning forced labour in law. However, further information was required with regard to: the repeal of the above provision; the changes to section 178(2) of the Code of Administrative Offences of 1984; and the status of section 223 of the Criminal Code; as well as how these stated changes were administered in practice. The Government's stated intention of continuing to cooperate with the ILO in order to apply Convention No. 105 was duly noted. Moreover, the Employer members appreciated that, in view of the economic circumstances, it might be very helpful for the Government to continue to work with the ILO in order to fully understand the obligations under the Convention. The Government was requested to take effective measures in both law and practice to ensure that no penalties involving forced labour could be imposed for the peaceful expression of political opinions which were opposed to the established system in order to achieve compliance with Article 1(a) of the Convention. The Employer members also requested the Government to take measures without any delay to ensure that no individuals, including farmers and/or public and private sector workers, were required to work for the state sponsored cotton harvest and that no threat of punishment or penalty was permitted for the failure to fulfil state production quotas under the pretext of economic development. The Government was also requested to confirm the repeal of section 7 of the 1990 Law on the legal regime governing emergencies and to request ILO technical assistance in order to develop a national action plan to eliminate any form of forced labour in relation to the cotton harvest and to continue its cooperation with the ILO.

The Worker members agreed with the Employer members. In Turkmenistan, forced labour occurred in a climate of generalized violation of human rights, including the denial of freedom of association and expression. Anyone who tried to combat the phenomenon had to do so clandestinely and risked intimidation, arrest and detention. The forced mobilization of farmers and other workers to produce and harvest cotton violated both the national legislation banning forced labour, including section 8 of the Labour Code and Convention No. 105. The Committee of Experts noted “with *deep concern* the widespread use of forced labour in cotton production which affects farmers, businesses and private and public sector workers, including teachers, doctors and nurses, under threat of losing their jobs, salary cuts, loss of land and extraordinary investigations”. The Committee strongly urged the Government “to take effective measures without delay to ensure the complete elimination of the use of compulsory labour of public and private sector workers in cotton farming”. The Worker members urged the Government to cooperate with the ILO and the social partners to devise a plan to eliminate the use of forced labour, including child labour. The Government was thus requested to bring an end to the practice of forcing farmers to grow cotton and mobilizing workers from the public and private sectors for harvesting. The Worker members also called upon the Government to: immediately cease threatening those who failed to meet production and harvest quotas, apply the national legislation banning forced labour, instruct government officials not to use force to oblige people to work in cotton fields and punish those who did so. The Government was also requested to seek ILO technical assistance in ending forced labour in the cotton industry and to allow independent journalists and human rights activists to go about their work freely and to express their concern at the use of forced labour in the cotton industry without fear of reprisals. They also called for the drafting and implementation of a national plan of action to guarantee respect for internationally recognized labour rights in the cotton industry, inter alia, by ending the compulsory quota system for production and harvesting of cotton and, where appropriate, to ensure the liberalization of the purchasing price of cotton and financial transparency in related expenditure and income. Moreover, they noted that, while the Employer members questioned the Committee’s direct request to the Government under Article 1(d) of Convention No. 105, it was the view of the Worker members, as well as eminent jurists and regional and national high courts, that the right to strike was protected by the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). This had been recognized by both Employers’ and Workers’ groups in a joint statement: “the right to take industrial action in support of legitimate industrial interests is recognized by the Constituents of the ILO”. The international recognition of the right to take industrial action required the Worker and Employer representatives to address the mandate of the Committee as defined in its 2015 report. The Committee’s mandate to “determine the legal scope, content and meaning of the provisions of the Conventions” had been approved by the ILO Governing Body, and the Committee of Experts could thus request any information it deemed relevant through a direct request on the application by a State of its obligations under a ratified Convention.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the Government’s stated commitment to continuing to cooperate with the ILO in its efforts to apply Convention No. 105. The Committee noted with concern the allegations of the widespread use of forced labour in relation to the annual state-sponsored cotton harvest in Turkmenistan.

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

- In compliance with Article 1(a) of Convention No. 105, take measures in law and practice to ensure that no penalties involving forced labour may be imposed for the peaceful expression of political opinions opposed to the established system.
- In compliance with Article 1(b) of Convention No. 105, take effective measures in law and in practice to ensure that no one, including farmers and public and private sector workers, is forced to work for the state-sponsored cotton harvest, and threatened punishment for the lack of fulfilment of production quotas under the pretext of “needs of economic development”. In this regard, repeal section 7 of the Law on the Legal Regime Governing Emergencies of 1990.
- Prosecute and sanction appropriately any public official who participates in the forced mobilization of workers for the cultivation or harvest of cotton in contravention to Convention No. 105.
- Seek technical assistance from the ILO in order to comply with the Convention in law and practice and to develop a national action plan to eliminate forced labour in connection with the state-sponsored cotton harvest.
- Allow the social partners, and civil society organizations, to monitor and document any incidences of forced labour in the cotton harvest without fear of reprisals.

The Government representative expressed his gratitude on behalf of the delegation and reiterated the commitment of Turkmenistan to consistently fulfil its international obligations under the ratified ILO Convention. He indicated that concluding observations and recommendations are to be carefully examined. However, he mentioned that the Committee in its conclusions referred to the Law of 1990 that had already been abrogated in 2013. The Government representative reiterated the readiness to a constructive dialogue and further cooperation with the ILO.

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

CZECH REPUBLIC (ratification: 1993)

The Government provided the following written information:

The Government of the Czech Republic provided statistical data on the position of women in the labour market in document D.13, which is available at: http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_488018.pdf.

Concerning the activities of the Government in regard to the disadvantaged members of the Roma community, due to the limitations on the amount of the additional information that can be supplied, information for only a selection of projects implemented or supported by the Government is provided in order to show examples of the measures taken by the administration in cooperation with

the municipalities. *Support for labour integration of Roma minority in Vsetín district*: targeting a group of 40 Roma living in the Vsetín district, who are long-term unemployed (for a period longer than six months) and with low or no qualifications and thus representing one of the least employable groups in the labour market. The objective is to be achieved through a comprehensive package of educational and counselling services (a motivational and activation programme, a financial literacy programme, individual counselling and retraining). The secondary objective is awareness-raising of the target group impacting other family members. *Second chance for the Roma minority in Karviná*: the main objective of the project is to support work, as well as the social integration, of 48 Roma living in socially excluded localities in Karviná through one of the two possible retraining courses offered – in the professions of security guard or painter. Supplementary education and individual counselling are also provided, in order to enable the target group to acquire professional qualifications and knowledge and skills in areas important for successful job applications and which offer positive benefits for their lives in general. Last, but not least, an objective is to motivate the group to appropriately change their current lifestyle, to take part in the labour market and to increase their self-confidence. An important objective is to successfully employ at least 15 participants in new jobs. *A chance for the unemployed in Supíkovice*: the main objective is to increase the employment of disadvantaged groups of workers (ethnic minorities and persons above 50) from the municipalities of Supíkovice, Velké Kunčice, Písečná and Stará Červená Voda, through courses, lectures and other tools. Particular objectives are to increase the work competences, skills and abilities of participants to find jobs in the open labour market, strengthen work habits and skills in terms of compliance with technical procedures, and establish conditions for the creation of new jobs in municipalities. *Support to the socially excluded Roma population in Opava for labour integration*: the main objective of this project is to motivate and activate 60 long-term unemployed members of the Roma community living in socially excluded localities in Opava, and to help them with labour market integration through interconnected modules of training and counselling services (a motivational and activation module, plus individual counselling, financial literacy and counselling, and a qualification module), with great emphasis on individual approaches to the need of the participants in the target group. The primary objective is to place at least 22 successful trainees, that is 37 per cent of the persons supported, in new jobs (at least 16 positions) and vacant jobs (six positions at least), and also to promote work prospects and sustainability for the other participants. The secondary objective is a certain kind of awareness of impact on other members of the participants' households. *I live and work in Odry*: the target group of the project is the unemployed citizens of the town of Odry from the Roma community who are particularly affected by the unfavourable conditions impairing their access to the labour market. The main objective of the project is to provide assistance for the labour market integration of socially excluded persons. This is to be achieved by addressing particular issues facing persons coming from the target groups, including through motivational programmes, financial counselling, retraining and work programmes. *REALITA*: the objective

of the project is to create the conditions for and purposefully motivate participants to change their position and status in the labour market, provide them with counselling, training and assistance services, leading to the acquisition of the skills to find and retain a job. The project also tries to support the integration of young people, including people from the Roma community, into society, through preventive measures to avoid social exclusion, debts, poverty and drug addiction. Another aspect is to enhance the educational structure for the population in municipalities through the engagement of participants in retraining, and to improve work habits through work experience and "work tasting". The objective is to place at least 31 per cent of participants in new jobs. A specific objective is the establishment of contact points, supporting these efforts through proactive counselling, information services, cooperation with municipalities, labour office contact points and employers in the region. The project focuses on the Doupovské Hory micro-region (Bochov, Chyše, Valeč and Žlutice). *Hurray to work!*: the objective of the project is to allow persons from a socially excluded group to familiarize themselves with work habits. The intention is to perform retraining in a profession which would allow the participants to find a job after the termination of the project, so that they are no longer dependant on social benefits. Furthermore, the project intends to achieve a certain level of education for the participants to enable them to communicate with local authorities and possible employers, and to enable their sound economic thinking and finance management. Efforts have been made to convince the project participants that it is better to work every day and be creative than to depend on social benefits. *A profession for you*: the objective of the project is to promote the labour integration of 60 people under 25 years of age (including minors under 18) with no qualifications or with low qualifications, including people from ethnic minorities or from different social and cultural environments who are at risk of social exclusion or are already socially excluded. The project should remove barriers impairing their equal access to the labour market and their ability to remain in work. The project is designed to establish a comprehensive programme consisting of recommended components of active employment policy focused on increasing employment and facilitating access to the labour market. These main components include psychological, motivational and encouragement activities, balance and work diagnostics, retraining courses, self-presentation, rhetoric and communication skills, computer literacy, counselling, work centres and subsidized jobs. *Instead of a couch I choose a COACH*: the target group for this project is people under 25 years of age and persons from different social and cultural environments. The general objective of the project is to verify new integration methods for work with the target group (50 participants). The project will provide education for 50 participants (that is, 100 per cent), and assumes that 26 participants will successfully attend retraining (52 per cent). The objective is to provide work prospects for 39 participants (that is, 78 per cent of the target group). The project is also focused on addressing adverse living situations, leading to the social inclusion of 40 participants of the coaching programme (80 per cent) and establishing a platform for legal and work counselling, and a page on the Facebook social

network. The aim is to develop a methodology for a comprehensive employment support programme for the target group. *Opportunity for the unemployed*: the main objective of the project is for 40 persons from target groups living in Moravský Beroun and Šternberk and the surrounding area to be included and stabilized in the local labour market and in society. One target group consists of persons from socially disadvantaged environments, focusing on unemployed Roma. A second significant target group is people older than 50. Project activities include individual labour market counselling, the implementation of retraining courses, career counselling and job-seeking support, and the placement of persons from the target group in jobs. *Perspective for employment of ethnic groups*: the project is focused on the labour market integration of Roma community members who are at risk of social exclusion or are already socially excluded. Project implementation is aimed at removing barriers to access to the labour market for this community and for them to remain there. The objective is to provide counselling services leading to the activation and motivation of the target group to proactively seek a job and retain it, and their own discovery of personal and professional prerequisites, the creation of a professional portfolio assisted by experts, training in work skills, the basics of entrepreneurship, the acquisition and improvement of qualifications, the creation and retention of jobs, the engagement of local businesses and the dissemination of best practice. *Labour integration of socially excluded persons in the Javorník micro-region*: the project is focused on supporting labour market integration and on increasing employment and the employability of the target group of 40 people from ethnic minorities in the Javorník micro-region. The objective is to be achieved through activities such as a motivational module, labour diagnostics applied to a part of the target group, the creation of individual plans and counselling, the implementation of retraining courses and certified training based on the needs identified and the plans formulated. The implementing entity will generate nine new jobs and also take steps to mediate employment for other project participants. *Back to work – back to society*: the project will apply already tested or adjusted best practices, obtained through the first project, to new socially-excluded Roma localities in the Teplá and Toužim micro-regions. Populations living in excluded localities, such as Služetín, Poutnov, Horní Poutnov, Bezvěrov, Mrázov and Pěkovice, and new people from Dobrá Voda or Nová Farma interested in participation, will benefit from services provided by the project, such as labour counselling, motivation and activation courses, retraining courses, work experience or subsidized jobs in the professions of tailoring, carpentry, cleaning and auxiliary technical work. The project directly follows up another project and will provide its successful participants with one of the key activities of the project, the completion of primary education, through motivational and activation courses and retraining. One of the participants will be enabled to obtain a subsidized job. So far, none of the retraining courses have been available, due to the low level of education of the participants. The project will support at least 40 persons with the objective of obtaining ten new jobs. *Chance for better employability of persons at risk*: the project is focused on a group of socially excluded persons living in Kadaň and the

surrounding area (currently, there are two socially excluded localities – Prunéřov and Chomutovská Street). The objective is to integrate some people from the target group into the labour market, particularly those aged 16–26, and people older than 50, and also persons from different social and cultural environments. Labour assistants on the project, in cooperation with social workers (who will not participate in the project, but only cooperate with members of the implementation team), will contact approximately 150 people, and 60 of them will be involved in a three-stage training block (motivational job club, professional and balance diagnostics, and retraining). Retraining will be implemented based on the outcomes of the diagnostics and also in cooperation with the Labour Office of the Czech Republic. If possible, professional experience will be provided during retraining (for at least 40 trainees). Labour consultants will seek suitable jobs for project participants and eventually mediate a subsidized job (22 persons in total during the duration of the project). While participating in the training block, the participants will be provided with individual job counselling, or cooperation with other organizations will be mediated, if so required, due to the participants' social situations.

In addition, before the Committee, a **Government representative**, referring to the issue of protection against anti-union discrimination, said that article 10 of the Constitution established the precedence of international treaties ratified by the Czech Republic over national legislation. Hence, even without an explicit mention in national labour law, the courts could invoke the provisions of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Workers' Representatives Convention, 1971 (No. 135), which prohibited discrimination against workers or their representatives on the grounds of their membership of trade unions or their trade union activities. The right to organize was protected by section 179 of the Criminal Code, while section 49 of the Misdemeanours Act provided for penalties against any person who caused harm to another for his or her membership of trade unions. Following the request of the Committee of Experts, the Government, after consultation with the most representative organizations of workers and employers, had adopted Resolution No. 867 of 26 October 2015 which tasked the Minister for Human Rights, Equal Opportunities and Legislation to address the issue of the explicit prohibition of anti-union discrimination. In order to address the situation of the Roma population in the labour market, the Government had implemented a broad range of measures, including activities supported by the European Union, aimed at promoting social inclusion and combating poverty and discrimination. Accordingly, 76 projects, with a budget of €17 million aimed at providing social services in Roma communities, had been implemented in 2014; 24 projects worth €4.3 million focusing on training, job mediation, activation support and the creation of subsidized jobs had been implemented; and 26 projects with a budget of €4.5 million for the integration of ethnic minorities into the labour market had been implemented in 2015. In recent past years, a project with a budget of €3.5 million had been implemented in the region of Ústí nad Labem, the region with the highest rate of unemployment in the Czech Republic where a large proportion of inhabitants were of Roma ethnicity. This project, which aimed to help people in these

localities to obtain skills and work experience, had supported around 1,200 people. The Government had also implemented: (i) projects focused on increasing the employability of workers through soft skills training, which supported over 26,000 people from vulnerable groups, including the Roma; (ii) programmes aimed at pupils and students from these groups offering education assistance and financial support for schooling to improve their prospects in the school-to-work transition; and (iii) measures aimed at facilitating the return of women to the labour market after maternity leave. He said that there was no data that would indicate major distinctions between the situation of Roma women and men in the labour market. The Government, through the adoption of the Civil Service Act in 2014, had narrowed down the application of the Screening Act to those positions within the state administration which included decision-making powers and were directly involved in the development and implementation of national policies or national security and public order. Those employees in the state administration who were outside the civil service had been excluded from the application of the Screening Act since 1 January 2015.

The Worker members recalled that the violation by the Czech Republic of the principle of non-discrimination in employment and occupation had been examined on several occasions by the Committee, especially since 2008. As was the case in 2010, the Government had once again failed to submit a report in response to the observations of the Committee of Experts. The Worker members were most concerned at this turn of events and called for the Government to be firmly called to order for not complying with its obligations. Although the written submissions, which had been received just one day before the Committee was due to examine the case, did provide a certain amount of information on social integration projects aimed at the Roma community and on the direct request concerning discrimination based on gender, they contained no information on any anti-discrimination legislation or the Screening Act, namely screening based on political opinion. The Worker members nevertheless thanked the Government for the additional details it had supplied orally.

Three issues needed to be dealt with: anti-discrimination legislation, discrimination based on political opinion and the situation of the Roma community. Firstly, the revised Labour Code retained the ban on all forms of discrimination in labour relations, but dropped the reference to the actual forms of discrimination that were banned, which were the same as those referred to in the Anti-Discrimination Act. This had the effect of substantially reducing the number of forms of discrimination that were banned, compared to the situation before the reform, and workers were no longer protected against certain grounds of discrimination, such as matrimonial or family status, family responsibilities, political conviction or membership of a political party, trade union or employers' organization. Moreover, a 2011 amendment to the Employment Act had further limited protection against discrimination in employment by also referring to the Anti-Discrimination Act. The Convention required ratifying States to implement the principle of non-discrimination in practice and to improve protective arrangements for victims of discrimination. It also invited them to appoint bodies with the mandate to promote, ana-

lyse and verify the application of the principle of non-discrimination, in collaboration with the social partners. As the Committee of Experts had recommended, the Government needed to closely monitor the application in practice of the Anti-Discrimination Act and the Charter of Fundamental Rights and Freedoms, specifically in the field of employment and occupation, as well as the application of the Labour Code and the Employment Act, particularly with regard to the possibility for workers to assert their right to non-discrimination and obtain compensation. It was essential for the Government to pursue its consultations with representative workers' and employers' organizations, as required by the Convention, so as to maintain the level of protection that existed prior to the reform of the Labour Code. Secondly, the problems posed by the Screening Act, which laid down certain conditions of a political nature which must be met prior to exercising a series of jobs and occupations, notably in the public service, had been regularly monitored for over 20 years, and the Governing Body had invited the Government to repeal or amend such provisions. The Committee of Experts, which had on a number of occasions recalled that "*political opinion may be taken into account as an inherent requirement only for certain posts involving special responsibilities directly concerned with developing government policy*", had not received any information in writing on the functions referred to in the Screening Act. Thirdly, concerning the social exclusion suffered by the Roma community, especially in matters of education, training, employment and occupation, the Government seemed to have taken a more proactive approach. The Worker members emphasized that the Comprehensive Strategy for Combating Social Exclusion (2011–15) was coming to an end and they requested information on the concrete results obtained, as the experience of the Czech Republic could serve as a model for other European countries confronted with the same challenge of devising a broader strategy. They called for the creation of a working group for the improvement of the situation of the Roma community, under the auspices of the ILO and the European Commission.

The Employer members thanked the Government for its explanations and the written submissions that the Committee had received the previous day. Convention No. 111 was one of the fundamental Conventions of the ILO and, as such, warranted special attention and close monitoring. It was now the third time that the Conference Committee had been called upon to examine the case and the Committee of Experts had already formulated observations on the application of the Convention in the country on 14 occasions. The document submitted by the Government still contained no information on any legislative developments or on the manner in which the principles of the Convention were applied by the courts. The fact that there was no written report on the latest developments, in response to the 2010 conclusions of the Conference Committee and the 2013 observations of the Committee of Experts, was regrettable as it prevented the Conference Committee from holding an in-depth tripartite discussion on the subject. As for the legislation banning discrimination in labour relations, one of the grounds established for discrimination was "opinions", which was a very broad concept inasmuch as, according to the Government, it covered "world view". The new Labour Code and the 2004 Employment Act referred explicitly to

the general Anti-Discrimination Act and its list of ten prohibited grounds of discrimination, but no longer included a list of specific grounds in respect of labour relations. Moreover, Parliament had not taken advantage of the revision of the labour legislation in 2011 to explicitly include political opinion among the grounds of discrimination. With regard to the practical aspects of discrimination, the Employer members wished to know whether the courts of law in the country were consistent in their application of the principles of non-discrimination covered by the Convention, which was fundamental to any in-depth examination of the situation by the Committee. The steps that had been taken by the Government to combat discrimination, including the publication of leaflets to draw the attention of the population at large to the issue, should be encouraged, as prejudice was a complex, profound and tenacious individual and collective reaction to a situation that needed to be combated by society as a whole. That said, it was important for the leaflets to contain comprehensive information on all the grounds of discrimination that were prohibited under the Convention.

The Committee of Experts had continually criticized the Screening Act since its entry into force and had repeatedly expressed its profound concern regarding discrimination on the grounds of political opinion. While the original objective might have been to prohibit former Communist party members, who had held power between 1948 and 1989, from holding certain offices in the police and army so as to uphold democracy, the Employer members wondered whether this exclusion was still justified over 25 years after the establishment of a democratic regime in the country. They expressed concern that the information had been received late and supported the request by the Committee of Experts for precise data on the issue to be submitted in writing, including the number of certificates issued and appeals lodged. Finally, they welcomed the stated willingness of the Government to combat social exclusion at all levels, including the exclusion of vulnerable groups, and particularly the Roma community, within the education system. These efforts should be continued, especially in a period of economic recession or budgetary difficulties, and greater attention should be devoted to girls and women from the Roma community so as to assess the specific impact of the measures taken on the integration of these groups and obtain objective data on a regular basis, including statistics. The Employer members urged the Government to provide full and up-to-date information and invited it to request ILO technical assistance to bring the Screening Act into line with the fundamental principles of the ILO in the area of non-discrimination.

The Worker member of the Czech Republic regretted that, despite the promises made by the Government during the ILO mission in April 2011 to include in the Labour Code the list of all the prohibited grounds of discrimination existing in the Employment Act, nothing had so far been done. The 2011 amendment to the Employment Act had removed the list of prohibited grounds of discrimination from its provisions. The anti-discrimination legislation had therefore worsened. Neither the Labour Code nor the Employment Act now included anti-discrimination provisions. The only anti-discrimination statute, the Anti-Discrimination Act, omitted the very important grounds of political conviction and membership or activities in political parties,

trade unions or employers' organizations, which had previously been explicitly covered in the former Labour Code and the Employment Act. He deplored the lack of political will to eliminate these gaps and supported the request by the Committee of Experts for the Government to take the necessary measures to ensure the protection of workers against discrimination in employment and occupation on the basis of all the grounds previously covered by the labour legislation. He requested the Government to implement this recommendation by amending the Labour Code and suggested that it request the technical assistance of the ILO in this regard. On the issue of discrimination against the Roma in employment and occupation, many programmes had been implemented to promote their equal access to education, training and employment, but it was difficult to assess any real improvement in practice. Finally, with regard to the issue of discrimination on the basis of political opinion, taking into account the implementation of the new Act on the Civil Service, it was necessary to repeal the Screening Act.

The Worker member of France, also speaking on behalf of Slovak, Hungarian, Swiss and Polish workers, indicated that discrimination constituted a violation of the rights enunciated in the Universal Declaration of Human Rights, and that for this reason, Convention No. 111 was one of the fundamental Conventions of the ILO and one of its most important labour standards. Any discrimination in industrial relations based on race, skin colour, sex, sexual orientation, language, faith and religion, political or other opinion, membership or activities in political parties or political movements, trade unions or other associations, nationality, ethnic or social origin, property, gender, health status, age, marital and family status, should be prohibited. But this was not enough. The provisions of the Convention needed to be reflected in the national legislation, and the latter had to be properly implemented in practice and respected by all parties. The fact that employers respected the legislation in practice would enable every worker to have the same employment opportunities, thus making workplaces more decent and fair and improving industrial and personal relations. She hoped that the promises made by the Government during the ILO technical mission several years earlier would be fulfilled within a reasonable period of time and that the scope of grounds of discrimination set out in the legislation would be broadened so as to guarantee the protection of workers' rights. She expressed full support for the Czech-Moravian Confederation of Trade Unions and their demands.

The Government representative assured that the opinions expressed in the Committee would be brought to the attention of the relevant authorities. He wished to make a few short remarks in response to certain points raised. Concerning the anti-union discrimination, the Government had brought the opinions of the ILO supervisory bodies to the attention of the supreme national tripartite authority on two separate occasions in 2011 and 2013. However, no specific follow-up had been decided on those occasions. After the new Government had been formed in 2014 following the general elections, the intra-governmental discussion had been resumed with the resulting decision mentioned in the opening statement. The Government representative acknowledged that the outcome was neither an adopted law nor a bill in parliament, but emphasized that it was a first

formal step in the legislative process, made in direct connection with the comments of the Committee of Experts. As regards the suggestions on the relevance of the Screening Act, which dealt with those persons actively engaged with the Communist regime before 1989 as members of the upper echelons of the Communist party or its repressive apparatus, he informed the Committee that the last motion to abolish the Screening Act had been soundly rejected by the Chamber of Deputies in February 2014. Thus it was evident that the Parliament, which was the only body with the constitutional competence to abolish laws in the Czech Republic, considered the Screening Act to be still relevant, even 25 years after its adoption. Finally, as had been pointed out, the situation of the Roma was a multifaceted issue and the Government had strived and would still strive to continue its efforts in fighting their discrimination and social exclusion.

The Employer members thanked the Government for the written and verbal information it had supplied. Regarding the country's national anti-discrimination legislation and the statutory list of prohibited grounds of discrimination, they insisted that the Government submit information to the Committee of Experts on the application of the principles of the Convention in practice, in particular in national courts. Noting the information provided on the new 2014 Act on Civil Service, they advised the Government to consider repealing the Screening Act, following the example of the Slovak Government which had recently done so. In the meantime, the Government was invited to provide more detailed practical information in writing, indicating specifically the positions for which a screening certificate was requested and issued and the responsibilities that were directly concerned with formulating government policy. The Employer members thus echoed the Committee of Experts' conclusions on the subject while encouraging the Government to avail itself of ILO technical assistance to amend its legislation. Turning to the socio-economic integration of the Roma communities, which remained a complex issue, they noted with satisfaction the Government's presentation on the numerous projects it had devised to end discrimination against them. It was of course difficult to assess their tangible impact, but that was precisely why the Government needed to submit more information on the concrete results of such measures. Lastly, the Employer members emphasized the importance of providing the information requested in a timely manner and supplying specific and relevant data, so that the progress made both in law and in practice could be assessed.

The Worker members noted, at the end of the discussion, that the Government was seriously committed to reforming its national legislation in order to give effect to the Convention. However, a number of recommendations made by the Committee of Experts in previous years had not been followed. The Government should, in consultation with the social partners, reform its anti-discrimination legislation in order to restore the level of protection that had existed prior to the 2006 reform. In the 2012 General Survey on the fundamental Conventions (paragraph 808) the Committee of Experts had expressed its concern "that in some countries, upon the adoption of new labour legislation, previously available protection against discrimination based on additional grounds had been withdrawn". In such cases, the Committee had asked governments "to hold consultations

with the representative employers' and workers' organizations and other appropriate bodies concerning those additional grounds with a view to maintaining the previous level of protection". It was thus necessary to again explicitly restore protection against discrimination on the grounds of marital or family status, family responsibilities, political opinion and membership of a political party, trade union or employers' organization. In order to ensure clarity and legal certainty, the Labour Code should, in explicit terms, list all the prohibited grounds of discrimination and not simply refer to another piece of legislation. Once it had strengthened protection against discrimination, the Government should ensure that the principle of prohibition of discrimination was applied effectively. This could be achieved by establishing bodies to promote, examine and monitor the application of the non-discrimination principle in collaboration with the social partners. Victims of discrimination should also be able to assert their right not to be discriminated against and to obtain redress. In addition, the Screening Act should be repealed or brought into line with the Convention. If the Act was not repealed, the Government should provide the Committee of Experts with all relevant information, particularly as to the functions to which the Screening Act applied, so that the Committee could examine the legislation's compliance with the Convention. The Worker members concluded by encouraging the Government to continue its efforts to integrate the Roma population and to report to the Committee of Experts regularly on the results obtained in that regard. In order to achieve all of the stated objectives, the Government should accept ILO technical assistance.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee welcomed the Government's information on the programmes undertaken for integration of disadvantaged members of the Roma community and the statistics on the position of women in the labour market.

The Committee expressed disappointment that the Government had not provided a report in time for the Committee of Experts' review. It requested the Government to report in detail on the application in law and practice of Convention No. 111, so that the Committee of Experts can fully consider the Government's responses on all of the issues raised in this case.

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

- **Regarding the anti-discrimination legislation, inform in detail the Committee of Experts on the application in practice of the principles and prohibited grounds contained in Convention No. 111, including through the national case law.**
- **Inform the Committee of Experts on the application of the law that has recently reformed the public sector (2014) and how this law clarifies the kind of employment positions that are still subject to the Screening Act; Provide statistical information on the number of certificates issued under the Screening Act and the appeals lodged against a positive certificate; Repeal or amend the Screening Act, in consultation with the social partners and consider the possibility of ILO technical Assistance on this point.**

- **Ensure the effective application of the Anti-Discrimination Act by putting in place bodies charged with promoting, analysing and enforcing the law and provide effective remedies for victims of discrimination.**
- **Inform the Committee of Experts on the real impact of programmes of assistance for the integration in employment of the Roma population, including women of the Roma community.**

QATAR (ratification: 1976)

A Government representative said that the case had been examined in the context of a representation submitted in June 2014 and that Qatar had already expressed its willingness to implement the recommendations made by a tripartite committee and adopted by the Governing Body in June 2015. In addition, the Committee of Experts had considered that “the time elapsed between the adoption of the recommendations by the Governing Body (June 2015) and the deadline for submitting reports under article 22 of the ILO Constitution (1 September) might have been too short for the Government to report significant progress on the implementation of the recommendations ...”, and had recalled that the Government was due to submit its report in 2017. He also questioned the purpose and usefulness of discussing the case such a short period after the publication of the recommendations of the tripartite committee. With regard to the questions raised by the Committee of Experts concerning paragraphs 32, 35, 36, 40, 42, 46 and 48 of the report of the tripartite committee, he wished to clarify a number of points, namely that: (i) crew members in the national air carrier had new employment contracts which guaranteed ground staff posts for pregnant workers; (ii) regarding paragraph 36, the prohibition relating to women’s access to company premises was only limited to the administrative buildings, and did not apply to the staff accommodation buildings, and was binding on men and women alike; (iii) under the new contracts, crew members were free to marry and change marital status in general, without prior authorization. That was consistent with section 98 of the Labour Code, which prohibited an employer to terminate the contract of an employee because of marriage; (iv) the rules governing rest periods did not contain any discrimination against women; and (v) the Government had paid great attention to the tasks of the labour inspectorate to ensure the effectiveness of law enforcement and had increased the number of labour inspectors.

With regard to the request by the Committee of Experts to amend sections 93 and 98 of the Labour Law, articles 28 and 35 of the Constitution required the State to guarantee free entrepreneurship and to prohibit any form of discrimination based on sex, race, language or religion. In addition, Labour Law No. 14 of 2004 and Law No. 9 of 2009 on human resources made no distinction between men and women with respect to wages or careers. On the contrary, women had a number of privileges such as: (i) the right to bonuses and other allowances that were normally granted to married employees; (ii) paid leave in the case of a disabled child; and (iii) paid maternity leave. Regarding the adoption of legislation to improve women’s participation in the labour market, the “Qatar Vision 2030”, adopted in 2008, emphasized the effective role of women in society both economically and politically. Regarding the issue of migrant domestic workers, a draft law regulating their activities was being prepared. Although that category of

workers was not covered by the labour legislation, it was still covered by civil law. In addition, their contractual relationship with employers was governed by model contracts annexed to the bilateral agreements signed by the Government of Qatar with labour-supply countries. Protection under criminal law was guaranteed by section 322 of the Penal Code. The Committee of Experts had also requested the Government to take the necessary steps for the adoption of legal provisions prohibiting sexual harassment at work. Section 291 of the Penal Code expressly provided for such protection. As for Law No. 21 of 2015 regulating the entry and exit of expatriates and their residence, there was no doubt that it had abolished the sponsorship system. It was no longer possible to require a worker to remain under contract with only one employer. Regarding the activities of the Department of Labour Inspection, in 2016 a total of 110 women and men inspectors had been trained in cooperation with the Arab Labour Organization, the Institute of Management and the National Department of Rights. There were currently 397 labour inspectors for 4,000 workers, which exceeded the ratio envisaged by the ILO, namely, about one inspector for 10,000 workers. In conclusion, he said that, in its report due in 2017, the Government would not fail to include: (i) copies of bilateral agreements and employment contracts; (ii) copies of new employment contracts between private employment agencies and workers; and (iii) new statistics on women’s participation in the labour market.

The Worker members said that they continued to receive alarming reports from migrant workers about the abuse of their fundamental rights, including discrimination in employment. The Committee of Experts had made observations on several aspects relating to discrimination in occupation and employment in Qatar and a representation submitted by the International Transport Workers’ Federation (ITF) and the International Trade Union Confederation (ITUC) had resulted in a tripartite committee report, which had been adopted by the Governing Body in June 2015. The Government claimed that progress had been made in some areas. However, the flight crew of the national airline continued to face discrimination in practice, in violation of the Convention. The representation alleged that the existing employment contracts provided that employees were required to obtain prior permission from the company if they wished to change their marital status. Referring to the representation and its recommendations, the Worker members welcomed the introduction of new contracts, but noted that the changes appeared to be cosmetic. In practice, there appeared to be a continued requirement for government approval of marriage requests. Furthermore, the company was employing a new tactic, namely issuing cautionary letters to employees, ostensibly on the grounds of performance, and forcing them to resign, although the only possible reason for such action appeared to be a request for a change in marital status. In addition, under the new contract, women who became pregnant were offered temporary ground jobs. However, most unmarried women cabin crew resigned as soon as they knew that they were pregnant, out of fear that if they informed their management they would be terminated, as having a child outside marriage was illegal in Qatar (which in itself was a discriminatory measure). Informing management of the change in

marital status had led to retaliatory dismissal. The Government needed to provide statistics to show how many pregnant employees were in fact offered ground jobs, how many took alternative jobs, and how many resigned upon pregnancy. Moreover, it was still prohibited for women employees to be dropped off or picked up from the company premises accompanied by a man other than their father, brother or husband. This was gender-based discrimination. The Government continued to emphasize that this prohibition related specifically to compliance with a particular cultural norm in Qatar. In its report to the Committee of Experts, the Government had made the preposterous statement that it had not found any violations related to discrimination in employment and occupation. There was, however, no evidence, for example, that labour inspectors had ever visited the national airline premises. As noted with regard to the Labour Inspection Convention, 1947 (No. 81), the Government must conduct labour inspections proactively and provide statistical information to the Committee of Experts on the activities carried out by the labour inspectorate. The Worker members were particularly interested in information pertaining to the 75 women labour inspectors hired by the Government.

With reference to Labour Law No. 14 of 2004 and the 2009 Civil Service Law, which did not specifically prohibit discrimination on the grounds set forth in the Convention, the Worker members urged the Government to amend these laws, and specifically sections 93 and 98 of the Labour Law, to ensure that the legislation covered all recognized grounds of discrimination, in both its direct and indirect forms, and applied them to all aspects of employment and occupation. Domestic workers continued to be excluded from the scope of labour legislation, despite repeated promises to amend the legislation, consistent with the Domestic Workers Convention, 2011 (No. 189). As a result, domestic workers had no legal rights as workers under Qatari law. Some of those rights might be specified in employment contracts during the recruitment process but, without the force of a legal requirement, it was unclear how workers could enforce them. The Worker members were also concerned that the Government had not provided information on measures to address discrimination in the workplace, including measures to promote the employment of women. In 2011, the Qatar Statistics Authority had released a report indicating that men earned 25 to 50 per cent more than women. In the workforce, it had been documented that women accounted for a mere 14 per cent of leadership positions. Some companies also demanded letters from male relatives allowing women to work. Evidence showed that Qatar had much more to do to promote equality in the workplace. The Worker members supported the observations of the Committee of Experts in this regard and urged the Government to take immediate steps to ensure that women did not face gender-based discrimination in the workplace. In addition, the legislation did not adequately prohibit sexual harassment, nor were there effective means of redress, remedies or sanctions. The Government was therefore urged to follow the recommendations of the Committee of Experts in this regard. Finally, the Worker members noted the observations of the Committee of Experts regarding discrimination against migrant workers, in particular in the context of the sponsorship system

(*kafala*). This issue, raised initially under the Forced Labour Convention, 1930 (No. 29), had been taken up by the Governing Body. They emphasized the need for the Government to move expeditiously to abolish the *kafala* system, as well as the need to undertake the reforms recommended by the Committee of Experts and the Conference Committee with regard to Conventions Nos 29 and 81. Moreover, the determination of wage rates according to the country of origin was blatantly discriminatory, and immediate efforts needed to be made to ensure that workers were paid according to their work, and not according to their nationality.

The Employer members thanked the Government for the information provided. Recalling that the Convention required each ratifying member State to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment, in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof, they indicated that this case had been the subject of eight observations by the Committee of Experts since 2001 and that it had been already examined by the Conference Committee in 2002. They expressed deep concern at the fact that the observations of the Committee of Experts directly named an enterprise. In light of the fact that the observation under the Convention applied to government action, they recalled that the protocol of the Conference Committee did not permit the use of the names of enterprises in the discussion of a case. With regard to the observation of the Committee of Experts concerning the follow-up to the recommendations of the tripartite committee set up to examine a representation made under article 24 of the ILO Constitution by the ITUC and the ITF, and adopted by the Governing Body in June 2015, the Employer members urged the Government to follow up on the request made by the Committee of Experts to submit detailed information on the measures taken in the airline sector in its next article 22 report on the application of the Convention.

Recalling that the Committee of Experts had observed that no information had been provided by the Government on the practical measures taken to address discrimination in employment based on gender, political opinion, national extraction and social origin, and that no legislative framework was in place to address this issue, they urged the Government: (i) to adopt a clear legislative framework prohibiting discrimination based on Article 1(1)(a) of the Convention; (ii) to provide the Committee of Experts with a full report on the measures taken in practice to ensure that individuals were not subject to discrimination; (iii) to provide information on the practical measures taken to improve the participation of women in the labour market pursuant to the Qatari National Development Plan (2011–15); and (iv) to adopt measures to ensure real and meaningful equality in employment. With regard to the amendment of sections 93 and 98 of the Labour Law of 2004, they recalled that the Committee of Experts had made observations related to the incorporation of political opinion, national extraction and social origin in the prohibited grounds of discrimination. With respect to the principle of the prohibition of discrimination on the basis of gender, they noted that since 2006 the Committee of Experts had expressed concerns regarding the legislative framework to ensure the

prohibition of sexual harassment in the workplace. In this regard, they urged the Government to adopt a clear legislative framework addressing discrimination, including discrimination on the basis of gender, including the prohibition of sexual harassment in the workplace. They emphasized that the legislative framework should include a system for hearing and the determination of complaints, as well as remedies and sanctions. With respect to issues of discrimination against migrant workers, the Committee of Experts had observed with concern that the vast majority of economically active workers in the country were non-Qatari, and that the *kafala* system limited the possibility for migrant workers to change employer, even in cases where the workers had experienced discrimination. In this regard, they welcomed the information provided by the Government on the abolition of the *kafala* system and urged the Government to provide information on the legislative framework and measures taken in practice to protect workers from discrimination, including migrant workers.

The Employer member of Qatar emphasized that the case had already been examined by a tripartite committee, which had made recommendations that had been adopted by the Governing Body in June 2015. The Government had replied to these recommendations and the Committee of Experts had taken note of that reply in its report. He expressed concern at the comments made by the Committee of Experts, which clearly mentioned the name of a multinational enterprise. This constituted defamation and was harmful to the economic interests of the multinational enterprise in question. It was therefore important to remove any such reference from the report of the Committee of Experts. The Government had demonstrated its goodwill by adopting a legislative framework that granted adequate protection to all workers. Bank transfers of wages were operational and Law No. 21 of 27 October 2015 had been passed. In its report, the Committee of Experts had requested the adoption of legislation to increase the participation of women in the labour market. Equality of treatment between men and women was guaranteed by the Constitution, and women had obtained various high-level posts, including as ministers, heads of enterprises, prosecutors and ambassadors. The latest figure was some 6,500 businesswomen. He requested that his Government be given more time to apply Law No. 21 of 27 October 2015, as only once it had been implemented would it be possible to assess any potential gaps. Tripartite consultations could then be held to address them.

The Government member of Oman, also speaking on behalf of the United Arab Emirates, Bahrain, Saudi Arabia, Kuwait and Yemen, welcomed the Government's efforts to comply with international labour standards, especially the action taken to develop laws and regulations aimed at ensuring the rights of all workers. It was regrettable to notice that some cases were picked up regularly, particularly when such cases had been discussed in previous sessions, or were still under discussion by other ILO committees, and that sufficient time had not been given to the Government to implement earlier recommendations by ILO supervisory bodies. The case of Qatar, which was under discussion, was an example of a case in which insufficient time as been given for the implementation of previous recommendations. The Government had adopted laws to promote

gender equality. He said that statistics for women in the labour market were not necessarily an indicator of discrimination, as some women in Arab societies wanted to be full-time housewives to raise their children. However, the statistics provided were a good indicator of the great effort made by Qatar to promote the participation of women in the labour market. Moreover, the draft law on domestic workers was a clear indication that the Government was willing to provide protection for all workers on its territory. He emphasized the support of the Gulf Cooperation Council for the action taken by the Government, and particularly the development of laws and regulations in line with international labour standards, including the Convention. He hoped that Qatar would provide the information requested in its next report to the Committee of Experts.

The Government member of the United States said that, since the entry into force of the 2003 Constitution of Qatar and Labour Law No. 14 of 2004, the Committee of Experts had repeatedly observed that Qatar's laws fell short of effectively prohibiting discrimination with respect to employment and occupation on the grounds set out in the Convention, and particularly on those of political opinion, national extraction and social origin. The Committee of Experts had also observed that certain categories of workers, including domestic workers, were excluded from the coverage of the Labour Law. The Government had taken some measures to promote equality of opportunity in employment since the legal changes of 2003 and 2004. These measures included efforts targeting the workforce participation of women and strengthening the Government's capacity to receive complaints and enforce labour laws. She nevertheless called on the Government to renew its commitment and redouble its efforts to protect all workers in the country from discrimination and to promote equality in employment and occupation. She specifically urged the Government to: implement the recommendations of the tripartite committee (article 24 of the ILO Constitution) adopted by the Governing Body in June 2015 and provide the requested information on the implementation measures to the Committee of Experts at its 2016 session; amend Labour Law No. 14 of 2004 to incorporate provisions explicitly prohibiting discrimination in employment on the basis of political opinion, national extraction and social origin; adopt legislation on domestic workers in line with Convention No. 189; and, as requested on several occasions, remove restrictions that could prevent migrant workers from terminating their employment relationship. She finally encouraged the Government to strengthen its national policy on non-discrimination in employment by modifying Law No. 21 of 2015 accordingly, before its entry into force in 2016.

The Employer member of the United Arab Emirates welcomed the Government's efforts and the positive measures taken to continue the constructive dialogue and cooperation with the ILO and all relevant stakeholders, which emphasized its political will to increase the promotion and protection of workers' rights. In particular, the national legislation prohibited discrimination on the basis of political opinion, social or ethnic origin or religious belief, and also prohibited discrimination against women with regard to employment. The Government also made sure that the rights of domestic and foreign workers were respected, in-

cluding through stringent laws on sexual harassment. Emphasizing that the national legislation had abolished the sponsorship system (*kafala*), he called on the Committee to take due note of the progress made in this regard and to give more time to the Government to implement changes. While encouraging the Government to continue making progress, he also pointed out that employers needed to take measures, for example by reducing working hours during Ramadan. In conclusion, he recalled that companies should not be named in the observations of the Committee of Experts.

An observer representing the International Transport Workers' Federation (ITF) said that, having filed the representation against Qatar for non-observance of the Convention together with the ITUC, the ITF was familiar with the Government's failure to develop a legal framework to protect the rights of women workers and to enforce existing legal provisions. The Committee of Experts had observed that the Constitution and Labour Law of Qatar did not contain specific provisions to protect workers against direct and indirect discrimination, pursuant to Article 1(1)(a) of the Convention. The Constitution of Qatar unequivocally provided that all persons were equal before the law and that there would be no discrimination whatsoever on grounds of sex, race, language or religion. Sections 96 and 98 of the Labour Law also provided for equal pay for equal work and protection against dismissal on the grounds of marriage and maternity. However, this fell short of effectively prohibiting discrimination on all the grounds set out in the Convention. He encouraged the Government to follow the suggestion of the Committee of Experts and to amend the Labour Law to incorporate political opinion, national extraction and social origin as prohibited grounds of discrimination. He also hoped that the country's labour inspectorate would carry out gender-sensitive inspections in the national airline and in all workplaces to help eradicate the discriminatory practice of government approval for marriage, which had a direct impact on the reproductive rights of women workers, as having a child outside marriage was illegal. Recalling that the ratification of Convention No. 189 would constitute real progress in pursuing the objectives that it enshrined, he welcomed the Government's indication that it would shortly adopt legislation on domestic workers in line with that Convention.

The Government member of Switzerland urged the Government to adopt a clear legislative framework for the protection of workers against discrimination in employment and occupation, whether based on race, colour, gender, religion, political opinion, national extraction or social origin. She welcomed the Government's intention to adopt a law on domestic workers that was in conformity with Convention No. 189 and she encouraged it, along with the country's competent bodies, to take steps to adopt and implement such a law as soon as possible. On the other hand, she had learned with dismay of the shortcomings of Qatar's legislative framework for the protection of men and women workers against sexual harassment and she supported the request by the Committee of Experts for it to adopt appropriate provisions on the subject. At the 2015 meeting of the Conference Committee, the Government of Switzerland had welcomed the Government's decision to progressively abolish the sponsorship system. She trusted that the new legislation would respect fully the rights of all migrant

workers. She noted with regret that Law No. 21 of 27 October 2015, which was due to come into effect in October 2016, did not appear to be adequate to abolish the system in law and practice. Her Government therefore entirely agreed with the Committee of Experts when it urged the Government to take steps to amend the law before it came into effect, so as to eliminate the obstacles to freedom of movement and to the freedom to terminate a contract, both of which were essential, especially where workers faced discrimination, such as that covered by the Convention.

The Employer member of Jordan indicated that, when looking at the current situation of labour relations in Qatar and comparing it to the situation a few years ago, the Committee should welcome the progress that had been made. The Government had been taking positive measures to improve the situation in the labour market, especially with regard to the employment of women and their protection against discrimination. It was important not to pick and choose from the information provided by the Government, and the Conference Committee needed to take into account the whole picture. Considering that the Government had provided a full response on the matters raised, he requested the Conference Committee not to pursue its examination of this case.

The Worker member of Indonesia said that his country was one of the major countries of origin for domestic workers in Qatar where, due to their continued exclusion from the Labour Law, these workers faced extreme exploitation in the workplace, including harassment, severe physical abuse and rape. In 2014, the United Nations Committee on the Elimination of Discrimination against Women had expressed deep concern at the high prevalence of domestic and sexual violence against women and girls, including women migrant domestic workers. When domestic workers brought a case of harassment to the attention of the authorities, they were sometimes deported and no charges were filed. While in law domestic workers had the right to bring a case to court, in practice this was almost impossible. He urged the Government to take immediate steps to include domestic workers in the Labour Law, to adopt legislation on sexual harassment and to ensure the effective enforcement of this legislation, including the prosecution of those responsible and the imposition of dissuasive sanctions.

The Government member of Lebanon recalled that the situation of Qatar had been examined by the Conference Committee in 2014 in relation to Convention No. 81, as well as in 2015 with regard to Convention No. 29. The Committee was now discussing Convention No. 111. In 2015, the Government had adopted new labour legislation, thus bringing national law into line with international labour standards. Qatar was providing employment opportunities for foreign workers. He was of the view that there was no discrimination in Qatar. If discrimination was in fact occurring, workers were free to leave the country. He would have hoped that the issue of protecting Palestinian workers against discrimination would have been discussed, rather than the present case. The positive measures being taken, as well as the situation of employment in the country, should be examined after the 2022 World Cup.

The Employer member of Saudi Arabia welcomed the steps taken by the Government for the application of the Convention and indicated that Qatari legislation did not

contain any discriminatory provisions against women. He considered Qatari legislation to be fully consistent with international labour standards and referred to the National Development Plan (2011–15) in this regard. He added that there was a fierce campaign against sexual harassment at work in the country and that the Government was in compliance with its international obligations.

The Worker member of Norway, also speaking on behalf of the trade unions of the Nordic countries, said that the workforce in Qatar consisted of 1.7 million migrant workers, many of whom were exploited and deprived of their economic and social rights. Moreover, this workforce was mainly male-dominated, with women constituting barely 12 to 13 per cent of the economically active population. Despite the fact that Qatar's Constitution provided that there should be no discrimination on grounds of sex and that all citizens were equal in public rights and duties, discrimination was widespread in the country. She expressed concern at the persistence of discrimination against women in the labour market, the social stigma attached to working women and social norms, the persistent gender wage gap (25 to 50 per cent) and the under-representation of women in leadership positions. She also noted with concern the prevalence of prejudices and negative attitudes towards migrant domestic workers, including women, who were reported to be victims of various forms of exploitation and abuse, including forced labour, physical and sexual violence, inhumane or degrading treatment, unpaid wages, excessive working hours, confiscation of passports and restrictions on freedom of movement and communication, in particular under the sponsorship system (*kafala*). Emphasizing that women and men were both fully able to perform work to an excellent level, she urged the Government to ensure equal opportunities for women in the labour market by repealing discriminatory laws, regulations and practices that required a male guardian's consent or approval for women to obtain employment. She also urged the Government to protect migrant workers from violence, abuse and exploitation and to ratify and implement Convention No. 189.

The Employer member of Bangladesh welcomed the information provided by the Government, including the recent laws adopted and the legislative review process, as well as the law concerning domestic workers, which aimed to align national legislation with Convention No. 189 and its corresponding Recommendation. The employment of domestic workers was generally regulated by model contracts, based on agreements signed by the Government and labour-sending countries. He welcomed the fact that the sponsorship system (*kafala*) had been abolished and replaced by contracts of employment. Workers were now granted freedom of choice of employment and allowed to change employer. He welcomed the measures already taken and encouraged the Government to continue taking measures in line with international labour standards.

The Government member of Belgium, also speaking on behalf of Denmark, Finland, Iceland, Norway and Sweden, reaffirmed the importance of the Beijing Declaration and Platform for Action for women's empowerment, and of the Convention on the Elimination of All Forms of Discrimination against Women, which provided a legal framework and a comprehensive set of measures for the promotion of

gender equality in education and employment. She emphasized that compliance with fundamental ILO Conventions, including the Convention under discussion, was essential for social and economic stability in any country, as it contributed to creating an environment conducive for the fulfilment of everyone's potential, as well as a basis for solid and sustainable growth and inclusive societies. She emphasized the key importance of laws and regulations in combating discrimination. She welcomed the Government's aim to increase women's participation in the labour market, bringing legislation into line with Convention No. 189, and the plan to increase the number of nurseries and kindergartens. She noted however the assessment of the Committee of Experts that a clear legislative framework addressing protection against discrimination in employment and occupation was lacking. She encouraged the Government to make the necessary legislative amendments to bring the legislation into line with the Convention and to take further steps to promote equality.

An observer representing the World Federation of Trade Unions (WFTU) welcomed the steps taken by the Government for the abolition of the sponsorship system (*kafala*) and to allow workers to change jobs without the risk of suffering discrimination or punishment. With regard to gender equality, he indicated that the Qatari Constitution ensured that women could take care of their families based on local culture and traditions. He added that, despite legal provisions in place to prevent sexual harassment, a few cases were reported, like in other countries, and there was no way to prevent this. He emphasized that in general there were clear positive indications that the Government was moving forward in its compliance with the Convention and he expected similar positive responses by the Government in future.

The Government member of Bahrain welcomed the detailed information provided by the Government on the measures taken for the implementation of international labour standards, especially the Convention under review. The Government had made considerable efforts to comply with international labour standards in law and practice. It had taken serious steps to protect all workers, without any discrimination, reflecting its observance of international labour standards, including the provisions of the Labour Law, which prohibited discrimination on the grounds of political opinion or social origin. Moreover, it did not allow any type of discrimination to be practised against women, in relation to wages, career opportunities or other privileges. He added that a series of positive and encouraging measures had been taken, including a wage protection system and an increase in the efficiency of the labour inspectorate. Moreover, the Government imposed harsher sanctions on employers who violated the regulations, for example through the delayed payment of wages or the withholding of workers' passports. These were all positive measures which provided additional social protection to workers without discrimination. The Government was now preparing a new law on domestic workers with provisions on social protection. It was thus demonstrating its seriousness in meeting its international obligations. Finally, he endorsed the statement made by the Government and expressed the need to take into account all the positive developments that had occurred.

The Worker member of Switzerland, speaking on behalf of the Swiss Federation of Trade Unions, stated that one of its affiliates, UNIA, was actively working with Building and Wood Workers' International (BWI) to defend and promote the rights of migrant workers in Qatar, especially in construction sites for the 2022 World Cup. UNIA had participated in visits to the country, where it had been able to gather relevant information through meetings with migrant workers. The key issues of concern for migrant workers in construction sites were the sponsorship system (*kafala*), which had only been superficially replaced by Law No. 21 of 27 October 2015, the low level of wages and differences in remuneration based on nationality, which were in direct breach of the Convention. Even though workers did the same type of work, they were often paid differently based on their countries of origin. In addition, workers were paid far lower than the minimum wages set by their countries of origin to work in Qatar as low-skilled workers in the construction sector, and some workers, upon arrival, were forced to sign a new employment contract with much lower wages than the established minimum wage. UNIA therefore strongly advocated bringing an end to substitution contracts, unless the conditions were better than the original agreement and the worker was fully aware and accepted the changes. He called on the Government to implement minimum wage legislation and equal pay for equal work policies regardless of gender, nationality or religion in order to ensure the full implementation of the Convention in both law and practice. He also called on the Fédération Internationale de Football Association (FIFA) to finally integrate respect for ILO Conventions in host countries as an essential element when examining the assignment of its events.

The Government member of the Bolivarian Republic of Venezuela welcomed the information provided by the Government, which showed that it had responded to the recommendations, observations and comments by the Committee of Experts. Sections 93 and 98 of the Labour Law should be interpreted in the light of the Constitution, which prohibited discrimination on political or social grounds and on the basis of nationality. Law No. 8 of 2009 on human resource management made no distinction between men and women in terms of wages and occupational advantages. He welcomed the fact that a law on the protection of domestic workers was being drafted, that the Law establishing the sponsorship system (*kafala*) had been repealed and that the National Development Plan (2011–15), which covered aspects relating to education and training, covered gender equality. He called on the Committee to take into account the positive points of the Government's explanations and trusted that its conclusions would be objective and balanced, so that the Government would take them duly into consideration when applying the Convention.

The Worker member of Bahrain said that the Committee of Experts should not have cited the company name in its comments. He suggested that all those who had mentioned the existence of harassment in Qatar should actually visit the country. The matters raised against the Government should not be dealt with in this Committee. Instead, the Conference Committee should be discussing issues relating to Palestinian workers. The members of the Committee should support Qatar in its efforts to successfully organize

the 2022 World Cup, a major sporting event. The Government was the subject of complaints before other ILO supervisory bodies for a very few individual cases at the national level. The Conference Committee should give encouragement to the Government for the positive measures adopted and should welcome the contribution of a national airline as a major employer.

The Government member of Indonesia said that her Government noted the efforts of the Government of Qatar in implementing the Convention and welcomed in particular the abolition of the sponsorship system (*kafala*) to ensure the freedom of movement of workers, including domestic migrant workers. She also welcomed the preparation of legislation on domestic workers and expressed the hope that the Government would expedite the process of finalizing the legislation so that the provisions of the Convention were implemented in an effective manner.

The Employer member of Algeria observed with satisfaction that, according to the Government's explanations, the question of non-discrimination on grounds of political opinion, national extraction and social origin had been resolved by Article 35 of the Qatari Constitution. The national legislation contained no provisions discriminating against women in employment and sexual harassment at the workplace was a criminal offence. It was clear that the Government had made enormous progress and should be supported and accompanied in its efforts.

The Worker member of Kuwait welcomed the measures taken by the Government to address the issues raised by the Committee of Experts concerning the sponsorship system (*kafala*). This system had been replaced by model contracts. Migrant workers could now freely change their employers. The Government was committed to this new development and had shown its readiness to address the issue by taking measures in accordance with the requirements of the Convention. The Committee should take these efforts into consideration when preparing its conclusions.

The Government member of Mauritania considered that the Government had demonstrated its achievements in implementing the Convention. All discrimination based on opinion and social origin were criminalized and sanctioned. The Law on human resources prohibited discrimination between men and women in relation to wages and prohibited sexual harassment at the workplace. Furthermore, the system of sponsorship (*kafala*) had been abolished. He called on the Committee to take into consideration these positive developments when adopting its conclusions.

The Employer member of Sudan welcomed the information provided by the Government, and particularly the adoption of new legislation that was inclusive and covered non-discrimination, the promotion of equality in employment, as well as positive discrimination, allowing women to enter the labour market. Women could have access to managerial positions in the national economy. Inspectors were also receiving training to ensure a decent working environment. This also prevented sexual harassment in the workplace. Severe sanctions were taken when violations occurred. Moreover, the sponsorship system (*kafala*) was no longer applicable and workers could freely change their employers. Finally, the National Development Plan (2011–15) aimed at promoting international labour standards and national legislation.

The Worker member of the United Arab Emirates welcomed the efforts made by the Government of Qatar to improve the conditions of work, and particularly, the abrogation of the sponsorship system (*kafala*) and the possibility given to foreign workers to freely change employer. Women took an active part in the labour market. Furthermore, the Constitution of Qatar prohibited any discrimination and the Government had demonstrated its commitment to give full effect to the Convention. The Committee should take these achievements into consideration in its conclusions.

The Government member of Malaysia expressed the belief that the steps taken by the Government of Qatar to address the Convention constituted a way forward to eliminate the issues listed by the Committee of Experts. Noting in particular the establishment of a platform for workers to submit complaints and the abolition of the *kafala* system, she expressed support for the position of the Government and called on the Committee to consider the important efforts and progress made in addressing the issues raised under the Convention.

The Employer member of Iraq expressed concern that Qatar had been included in the short list of individual cases. The Government and employers of Qatar were committed to international labour standards and fundamental human rights. Qatari laws guaranteed the rights and freedom of all workers. Iraqi employers supported the statements made by the Qatari Government and employers. The conclusions of the Committee needed to be fair and equitable. Qatar was a major partner in receiving migrant workers at the international level and this should be encouraged, not hindered. Taking into account the Government's goodwill and openness to cooperation in addressing the issues raised, it would only be appropriate and fair to remove Qatar from the list of cases to be discussed by the Committee.

The Government member of Sudan noted the seriousness of the Government in promoting its legislation, which prohibited discrimination in employment and occupation. Article 35 of the Constitution of Qatar prohibited any discrimination whatsoever on grounds of political opinion, national extraction or social origin, and the labour legislation was interpreted in the light of this provision of the Constitution. Furthermore, Qatar was considering adopting a law on domestic workers in accordance with the provisions of Convention No. 189, but needed more time to implement its laws in an appropriate manner.

The Government member of Senegal thanked the Government for the information provided and welcomed the range of measures it had adopted, which demonstrated the country's political commitment to cooperate with the ILO. She hoped that the ILO would continue to support Qatar by providing technical assistance.

The Employer member of Oman recalled that, in the previous discussion by the Committee, the former Labour Minister of Qatar had expressed his readiness to cooperate with the ILO and had promised to update the national legislation on workers' rights. In this regard, the law on sponsorship (*kafala*) had been repealed by a new Decree, and this promulgation demonstrated the good cooperation of the Government of Qatar. The Committee should take into consideration these positive developments when preparing its conclusions.

The Government member of Cuba thanked the Government for the information it had provided and encouraged those present at the meeting to continue on the path of cooperation and dialogue by means of the exchange of information, the provision of assistance for capacity building, the promotion and implementation of good practices and mutual recognition of the progress made and the challenges that still lay ahead. She believed that that would be the best way to attain the objectives in an effective and sustainable manner.

The Government member of India thanked the Government for providing a detailed submission and expressed appreciation of the various measures initiated to give effect to the recommendations of the tripartite committee set up by the ILO Governing Body, as well as to the comments of the Committee of Experts. He noted the Government's submission that sections 93 and 98 of the Labour Law were interpreted in light of Article 35 of the Qatari Constitution, which prohibited any discrimination based on political opinion, national extraction or social origin. He further appreciated the comprehensive and integrated approach adopted in implementing the National Development Plan (2011–15), as well as its focus on promoting gender equality and inclusiveness in the education and vocational training systems. Positively noting the steps taken to protect the rights of domestic workers, including the drafting of legislation on domestic workers, he encouraged the Government to expedite the adoption of the legislation and to align it with the provisions of Convention No. 189 and its accompanying Recommendation. He also noted the clarifications provided that new Law No. 21 of 2015 completely abolished the sponsorship system (*kafala*) and replaced it with an employment contract system. Moreover, Qatar had extended full cooperation to the high-level tripartite delegation that had visited the country and had demonstrated its continued commitment to work with the social partners and to avail itself of appropriate technical assistance from the ILO to further improve labour rights and labour protection. He supported Qatar's efforts to further strengthen its compliance with the Convention and progressively increase the participation of women in the labour market, and he requested the Committee to fully take into account the detailed responses provided by the Government when making its recommendations.

The Government member of China noted the information provided by the Government on the steps taken to implement the measures recommended by the Committee of Experts, including the adoption of legal provisions expressly defining sexual harassment as a crime, the abolition of the sponsorship system, and the provision of vocational training and guidance. He encouraged the ILO to provide the necessary technical assistance, as requested by the Government.

The Government member of Canada expressed continuing concern at the situation of labour rights in Qatar. She strongly supported the call by the Committee of Experts for the Government to take the necessary measures to ensure the protection of all workers against discrimination on all prohibited grounds, in both law and practice, and recalled the request by the Committee of Experts for information on the measures taken or envisaged to protect migrant workers from such discrimination. She also urged the Government to adopt measures to curb any discrimination against

women in the workplace, encouraged it to increase women's participation in the labour market and recommended the adoption of draft legislation on domestic workers, a category of workers hitherto excluded from the Labour Law of 2004. Recalling the observations of the Committee of Experts on the insufficiency of the legislative framework to ensure the prohibition and effective protection against sexual harassment in the workplace, she strongly supported the requests for the Government to take the necessary steps to adopt legal provisions to prohibit quid pro quo and hostile sexual harassment at work, and to provide effective mechanisms of redress, remedies and sanctions. She also concurred with the Committee of Experts that the Government should provide further information on the steps taken by the Labour Inspection Department to detect cases of discrimination in the workplace, as well as on the measures being considered for the training of labour inspectors. She expressed appreciation of the information provided by the Government representative to the Committee and looked forward to the provision of further information in future, as requested by the Committee.

The Government member of Turkey noted the important improvements made in law and practice with regard to the application of the Convention, and particularly the annulment of the sponsorship system (*kafala*) by new legislation introducing a contract-based system and the preparation of draft legislation to regulate the work of domestic workers by increasing the capacity of the relevant inspection bodies of the Ministry and to provide guidance and counselling to workers with a view to informing them of their rights and obligations. Noting with interest that the National Development Plan (2011–15) included comprehensive and integrated strategies and projects to ensure equality and inclusiveness for each sex and each age group in employment and occupation, he urged the Government to continue working closely with the ILO.

The Government member of Algeria noted the information provided by the Government, especially the abolition of the sponsorship system (*kafala*), the introduction of a system of contracts, the adoption of a National Development Plan and the creation of a labour inspection service. He welcomed Qatar's cooperation with the ILO.

The Government member of Bangladesh welcomed the progress made in enforcing existing laws and the initiative for legislative reforms, particularly on wage payments to expatriate workers, employment contract systems, the employment of domestic workers and various other improvements. Encouraging the ILO to provide technical cooperation to Qatar to complete the ongoing reform process and further improve enforcement, he called on the Committee to take into account the significant efforts and progress made by the Government in addressing the issues raised.

The Government member of Morocco thanked the Government for the information and clarifications provided to the Committee, as well as its present and future efforts to address the comments of the Committee of Experts. The Government had adopted new legislation ensuring the protection of workers against all forms of discrimination in employment. It had also demonstrated its will to take all the necessary measures to resolve the issues raised by the Committee of Experts, including through the adoption of the National Development Plan (2011–15), which focused on equality and inclusiveness in education and training.

The plan should facilitate the adoption of new legislation to address the concerns raised by the Committee of Experts. Draft legislation on domestic workers had been prepared, based on the provisions of Convention No. 189. Law No. 21 of 2015 enabled migrant workers to change their employers freely. All of the measures taken by the Government should be welcomed and the Government should be encouraged to cooperate with the ILO to continue the legislative reform process.

The Worker member of Benin noted with satisfaction that the Government had taken steps to implement the Convention and hoped that the situation of men and women workers under the sponsorship system (*kafala*) would very soon change. Further noting with satisfaction that the country was in the process of drafting legislation on domestic workers, he requested the Conference Committee to take due note of the steps taken and to reflect them in its recommendations.

The Government representative noted with interest the observations made by the Employer and Worker members, as well as all the other interventions. The Government would take into consideration these observations and implement them in national law in order to promote and protect workers' rights regardless of their sex, origin or religion. With regard to inequality in wages, the law addressed this issue, as well as conditions of work. Wages were subject to demand and supply on the labour market, regardless of sex or origin. Qatar had repealed all limitations on freedom of movement. In this regard, the sponsorship system (*kafala*) had been replaced by an employment contract, the new law would enter into force in December 2016 and sanctions would be imposed in cases of violation. Positive steps had been taken by the airline company, in particular the amendment of the employment contract, which would cover all crew members. The new contracts had entered into force and could no longer be declared null for the reasons raised during the discussions. Inspections were organized by the Ministry of Labour and statistics were available on that subject. The Committee of Experts would be provided with inspection reports. In conclusion, the Government of Qatar was going forward in its efforts to maintain and protect the rights of workers by adopting new legislation encouraging and improving the participation of women in the labour market.

The Employer members thanked the Government for its submission and considered that a constructive debate had taken place in which the Government had described some of the measures taken to address a variety of issues raised in the recommendations made by the tripartite committee and adopted by the Governing Body, as well as in the observations of the Committee of Experts. They hoped that the Government would continue to engage in a positive manner to address these most important issues. They urged the Government to: adopt a clear legislative framework addressing discrimination, recalling the prohibited grounds of discrimination specified in Article 1(1)(a) of Convention No. 111, including protection against sexual harassment in the workplace; provide the Committee of Experts with a full report on the measures taken in practice to ensure that individuals were not subject to discrimination on the prohibited grounds in the context of employment and occupation; provide information on the practical measures taken to improve the participation of women in the labour market

pursuant to the National Development Plan (2011–15) and the commitment made by Qatar to the Committee; and continue its steps to ensure real and meaningful equality in employment and occupation. The Employer members hoped that the Government would take every measure to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment with a view to eliminating discrimination based on the prohibited grounds. They also urged the Government to continue its collaboration with the ILO and to avail itself of technical assistance to fully address the issues raised in both law and practice.

The Worker members indicated that it could be inferred from the statements made that discrimination in occupation and employment was deeply engrained in Qatari society. While that situation could not be expected to change overnight, it should change and change should start immediately. Laws prohibiting all forms of discrimination in occupation and employment should be adopted as soon as possible, in addition to proactive programmes to promote the employment of women on equal terms with men. Moreover, in order to ensure the full participation of women in the workforce, it would be necessary to ensure protection against sexual harassment at work through effective remedies and dissuasive penalties. In addition, discrimination against migrant workers should also be addressed as a matter of urgency. The Worker members were of the view that the 2015 reforms essentially amounted to *kafala* with a new name and were not in compliance with Convention No. 29. The protection granted under labour law should be extended to migrant domestic workers. The Worker members urged the Government to: (1) fully comply, in both law and practice, with the decision adopted by the Governing Body at its 324th Session (June 2015) with regard to the representation made under article 24 of the ILO Constitution by the ITUC and the ITF by January 2017; (2) abrogate Law No. 21 of 2015, by 2017, before it entered into force; (3) ensure that the legislation prohibited discrimination on all the grounds of the Convention; (4) ensure that domestic workers were granted protection under the Labour Code; (5) take proactive measures to address discrimination in the workplace, including by promoting the employment of women in managerial positions; and (6) take proactive measures to address sexual harassment and gender-based violence in the workplace. Finally, the Worker members fully agreed with the Employer members on the need for Qatar to request ILO technical assistance.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee expressed concern that discrimination in employment is not prohibited in law and in practice and that the Government has failed to take the necessary measures to guarantee non-discrimination consistent with Convention No. 111.

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

- comply, in both law and practice, by 2017, with the conclusions adopted by the ILO Governing Body in June 2015 in relation to the representation under article 24 of the ILO Constitution concerning Convention No. 111;

- ensure that legislation covers all recognized prohibited grounds of discrimination set out in Article 1(1)(a) of the Convention, in both direct and indirect forms, and undertake measures to ensure that discrimination in employment and occupation is prohibited in law and practice;
- ensure that domestic workers are included in the protection of anti-discrimination law;
- take proactive measures to promote the employment of women and participation of women at all levels in the labour market;
- take proactive measures to address sexual harassment in the workplace, including passing legislation that prohibits sexual harassment and provides effective means of redress, remedies and sanctions;
- amend Law No. 21 of 2015 before it comes into force, taking fully into account the observations in the 2016 report of the Committee of Experts and the conclusions of the Conference Committee in 2015;
- accept technical assistance of the ILO in order to comply with the above conclusions.

The Government representative thanked the Committee for its conclusions and assured it that his Government would take them into account when preparing its next report on the application of the Convention.

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(ratification: 1982)

A Government representative reaffirmed the Government's commitment to observance of the ratified ILO Conventions. He emphasized that it was the first time that the Government had been called before the Committee with regard to Convention No. 122. The Government had already provided the requested information relating to compliance with the Convention by means of the report submitted in 2015, which gave details of a sustained employment policy in favour of the Venezuelan people since 1999. There was no justification for the Government's inclusion in the list of cases to be examined by the Conference Committee, taking account of the fact that the Committee of Experts had made no reference to non-observance but had noted and recorded the information which had been duly supplied by the Government and, on certain aspects, had merely requested examples or additional information. The Conference Committee should not be occupying itself with examples and mere requests for information, especially when there had been no reference to non-observance on the part of the Government. The regular mechanism for providing additional information and examples relating to the application of the Convention would be through the next report, which would be presented in due course. He noted with regret that the justification for inclusion of his country had a political undercurrent and involved the satisfaction of particular interests, which was contrary to the objectivity, transparency and impartiality that should prevail in all ILO bodies. Those who had exerted pressure to have the Government appear before the Committee were not interested in what the Government had to say about the Convention; their aim was to challenge a Government that was promoting social integration and discarding systems that exploited labour. Even though some employers contin-

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ued to insist on the Government appearing before the Committee, adding complaints and cases and misusing the ILO supervisory mechanisms, they would not succeed in making the Government favour private, capitalist and individual interests to the detriment of the working class and the Venezuelan people. Moreover, the Committee of Experts' report contained allegations and information presented by some employers concerning a supposed lack of employment plans and figures were mentioned that the Government did not accept. In order to avoid distracting from its work, the Conference Committee and the Committee of Experts should ask those who were alleging non-compliance with the Convention to provide details, data and evidence, so that objectivity and transparency would be achieved and the right of defence of governments summoned to appear before the Committee would not be violated. Even so, the Government representative said that he would provide updated information on the country's employment policy. In 1999, when the Venezuelan Government took office, the unemployment rate in the Bolivarian Republic of Venezuela was 10.6 per cent. By the end of 2015, that rate had fallen to 6.7 per cent as a result of the employment policies. From 2003 onwards, after the coup d'état and the sabotage of the petroleum industry spearheaded by a group of employers in the country, the informal economy decreased from 52.4 per cent to 40.1 per cent by December 2015 as a result of the intense employment policy. Three out of every four jobs created had been in the formal sector of the economy. In 2000, there had been over 4 million workers in the formal sector; by 2015, the figure had risen to more than 7.8 million workers. In other words, between 1999 and 2015 the labour market had incorporated more than 3 million workers in the formal sector, which represented about 60 per cent of the employed population. With regard to youth employment, the Government was promoting integration not only in social and educational terms but also in employment and socio-productive terms. The youth unemployment rate fell from 23.7 per cent in 2002 to 9.1 per cent in 2015. Six out of every ten unemployed young people were studying; in other words, the majority of unemployed young people in the country were students and the Government had increased the number of young persons who were studying to 71.1 per cent. Furthermore, there were programmes that implemented a policy of occupational training for young persons. The National Institute of Socialist Training and Education (INCES) provided ongoing training throughout the country for young persons with a view to placing them in employment. In 2016, some 50,000 young people would be trained in various occupational fields. Moreover, under the "Knowledge and Work" mission, over 1 million citizens had been integrated into the economic and productive system of the nation. All these results and the reported figures were the result of the employment and social integration policies implemented in the country, reinforcing the national productive sector with increased levels of formal occupation and the creation of new jobs.

Furthermore, regarding the specific examples requested in the Committee of Experts' report concerning the participation of the social partners, it should be emphasized that, as the ILO had already been informed, in early 2016 the National Council for the Productive Economy (CNEP), a

forum for dialogue and consultation, had been established for the purpose of analysing, discussing and proposing guidelines for the development of the country's economy and the creation of new jobs to overcome the drop in oil prices and the current economic situation. Participants in the CNEP included representatives of the Government, workers and employers, in particular the representatives of public and private enterprises and chambers and federations, which had expressed satisfaction at the initiatives taken. The CNEP was concerned with developing strategic economic areas in the country. Through this important forum for dialogue and consultation, over 90 per cent of employers and representatives of the public and private sector in the country were maintaining an ongoing dialogue with the Government with a view to increasing the production of goods and services, boosting the economy and creating jobs. To quote some figures, in the context of the 15 strategic areas of the CNEP, over 300 working meetings had been held, and more than 3,800 economic and productive entities had participated; hundreds of proposals had been put forward, and work was being done to implement over 150 of those proposals connected with the country's economic and productive development. In conclusion, the Government representative observed that the sole purpose of the Government's appearance before the Conference Committee was to deal with matters relating to Convention No. 122. The discussion should be limited to the subjects covered by the Convention and the rules of procedure that applied to the Committee should be observed. If topics connected with other Conventions or separate matters pending before the ILO supervisory bodies were raised, that would be a breach of the rules of procedure.

The Worker members emphasized that this was a difficult period in the Bolivarian Republic of Venezuela's history. The Government was faced with major challenges, particularly with regard to economic recovery. It was important to underscore that, whatever their political convictions, workers and their families were facing a crisis for which they were not responsible. While it was true that the current political stalemate was to the advantage of certain groups, it nevertheless could not be denied that ordinary citizens were the most affected by a clear deterioration in their living standards. In these difficult times, the country's entire political class, comprising all parties, should rise to the occasion and resist the temptation to use this discontent to its own political advantage. It was therefore important that all parties sought solutions through dialogue and consensus rather than attempting to stir up social unrest and violence. For many years, the country had been aiming to establish constructive social dialogue as one of the pillars in efforts to reach consensus, and to place all diverse opinions at the centre of the debate. The ILO tripartite structure provided an excellent means of facilitating social dialogue and achieving consensus. With regard to the application of the Convention, according to information from the Government, the rate of unemployment fell from 10.6 per cent in 1999 to 5.5 per cent in 2015. The Government also highlighted that its employment policy was fully aligned with actions aimed at reducing poverty, and set out a strategy for the provision of public services relating to education and health care. However, from an economic viewpoint, hyperinflation, food shortages, and deindustrialization had

negative repercussions on standards of living and job quality. According to the Central Bank of Venezuela, annual inflation had risen to 141.5 per cent in 2015, a figure which largely reflected food prices. Overall, the latter had risen by 254.3 per cent in 2015, a rate which exceeded wage increases in every respect. The rise in the prices of basic foodstuffs particularly affected poor workers, who in general allocated a larger portion of their income to them. With regard to deindustrialization, in the long term, the resolution to the economic challenges would be found by diversifying the economy so that it was no longer based solely on oil production. The oil sector alone was considered to represent 96 per cent of the total export earnings of the country, a figure which further highlighted the need to incorporate macroeconomic planning into employment policies. It was still difficult to know, however, whether such an approach would be envisaged by the Government with a view to achieving the objectives of the Convention.

Turning to the issue of workers employed in the informal economy, according to official figures, 41.2 per cent of the active population worked in the informal sector in January 2015, which represented a fall of 10.4 per cent in comparison with the same period 11 years earlier; and between 2000 and 2014, a third of new jobs created were in the formal sector. This question was especially relevant in the context of the adoption of the Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204). One of the core elements of this Recommendation related to the implementation of a comprehensive employment policy framework aimed at helping low-income households to escape poverty, such as minimum wages, social protection schemes including cash transfers, public employment programmes, and enhanced outreach and delivery of employment services to those in the informal economy. While noting the reduction in the number of workers in the informal sector, the Worker members considered that much remained to be done and called on the Government to apply the provisions of this new labour standard. With respect to youth employment, the rate of unemployment published by the National Statistics Institute in the second half of 2013 was 12.8 per cent. However, according to figures provided by the ILO in 2012, the total number of young persons in a situation of difficulty owing to poverty rose to 500,000, 157,000 of whom lived in households receiving an income only just sufficient to cover the cost of a basic food basket. Furthermore, an imbalance had been noted in the proportion of young people within the active population in relation with incomes. Thus, in 2012, the active youth unemployment rate for those with middle and high incomes was 28.8 per cent, but it reached 50.7 per cent for those with a low income. In addition, even when they were lucky enough to have formal employment, young Venezuelan workers were generally employed in the service industry, mainly in the retail trade, a sector with low productivity and where employment was often precarious. Article 3 of the Convention clearly set forth that “representatives of employers and workers, shall be consulted concerning employment policies, with a view to taking fully into account their experience and views and securing their full cooperation in formulating and enlisting support for such policies”. The issue of the lack of social dialogue

had been brought to the attention of the Conference Committee on many occasions. It should be emphasized that the economic crisis currently faced by the country could only be overcome if the social partners were involved in decisions relating to employment policy. For this reason, the Worker members had welcomed the agreement concluded at the 326th Session of the Governing Body (March 2016), in which the Government had committed to keeping to a strict schedule of meetings with employer and worker representatives. Lastly, the Worker members expressed the hope that this process would result in tangible progress, in accordance with the objectives set in the agreed programme of work, to ensure that ILO standards were applied and monitored with the participation of employers and workers.

The Employer members welcomed the presence of the Minister representing the Bolivarian Republic of Venezuela and the information that the Conference Committee had received. It was the first time that the Government was responding to observations on the Convention that had been addressed to it on 14 occasions in the past. It was a governance Convention, and not a fundamental Convention, but it was one of the four major Conventions dealing with active employment policy that is conducive to economic and social well-being. Hence the exceptional importance of discussing the matter. Contrary to the Government’s assertion, the decision to include the case was not taken on a mere whim. The reason for doing so was all too clear. In view of the Bolivarian Republic of Venezuela’s social indicators, there is a need for the Committee to call on the Government to engage in social dialogue. When the Employer members considered a case, they did not do so with any private interests in mind but quite independently of the ideological or political line followed by the Government. It was the duty of the Conference Committee to assess outcomes irrespective of any such ideological or political viewpoint, and for that, it was important to understand exactly what the Convention was dealing with. The Convention took its inspiration from the ILO Constitution and the Declaration of Philadelphia, notably from the need to further, among the nations of the world programmes that could achieve full employment, the raising of standards of living and, for the workers, the guarantee of a decent wage. The Declaration of Philadelphia itself emphasized that it was incumbent on the ILO to examine and consider the effect of economic and social policies on the employment policy pursued by States. The Convention followed different approaches. Articles 1 and 2 referred to the need to establish employment policies that stimulated growth and development. The Convention also provided for raising living standards and resolving employment problems with a view to attaining full, productive and freely chosen employment. Article 2 referred to the importance of reviewing the measures adopted regularly so as to coordinate economic and social policies. Finally, the Convention made a particular point of social dialogue and, notably in the area of employment, called for worker and employer representatives to be fully consulted in an effort to reach consensus.

The country’s macroeconomic and labour statistics were cause for considerable concern. In 2014 the economy declined by 4.3 per cent; in 2015 by 5.6 per cent; in 2016 it was expected to drop by a further 8 per cent. To reverse the

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trend, counter-cyclical measures were needed – in terms of fiscal, credit and macroeconomic policies, for example. The Employer members wished to have access to more information on the counter-cyclical measures that the Government had adopted or was planning to adopt. Per capita income was currently around US\$202 a year, far below the international indicators measuring the poverty level. The fiscal deficit was 20 per cent and inflation was 337.4 per cent – the highest in the world. The inevitable outcome of inflation was reflected in the steady growth of poverty. According to an independent survey of living conditions (there being no official statistics), current trends pointed to an unusual increase in poverty. Such a situation discouraged investment and had a direct impact on employment generation. There was no incentive to counter the variations in the inflation rate. Recruitment was at a standstill and that, as had happened in recent years, tended to encourage informal activities. Without a sufficient influx of dollars for external trade, the resulting foreign currency shortage meant that the supply of basic goods in supermarkets ran out. Long queues for food had even led to an increase in violence. All those factors were indicative of a major crisis in the country that called for rapid adjustment and, naturally, a revival of social dialogue with the most representative organizations such as Federation of Chambers and Associations of Commerce and Production of Venezuela (FEDECAMARAS) and the Workers' Confederation of Venezuela (CTV), which were also concerned in the case under discussion. With those considerations in mind, the Employer members invited the Government to open the way to dialogue with representative workers' and employers' organizations. They accordingly called on it to reiterate the commitments it had entered into with the ILO in the past, most recently in March 2016, when it had been understood that the Government would be engaging in renewed dialogue with the most representative organizations on 4 April; so far, however, no such dialogue had come about.

A Worker member of the Bolivarian Republic of Venezuela expressed his surprise at the inclusion in the list, at the request of the Employers, of the case of his country for the alleged non-compliance with the Convention, given that the country had been engaged in an accelerated process to improve social indicators since the changes that had been introduced in 1999. This process had led to the rapid reduction of poverty and a decrease in unemployment to a steady rate of between 5 and 6 per cent. A section of Venezuelan employers who belonged to FEDECAMARAS had attempted an economic sabotage, the prime goal of which was to topple the power in the Bolivarian Republic of Venezuela. To achieve their aim, some employers had been reducing the production of basic goods and services for the population, on the grounds that the Government was not providing them with the foreign exchange for the import of primary supplies and materials necessary to maintain their production processes, despite the fact that these enterprises had received billions of dollars to that end. In response to the closures of enterprises by some employers represented by FEDECAMARAS, the Government had undertaken procedures with regard to the closed plants to reopen them, re-establish production and protect jobs. This group of employers was throwing thousands of workers onto the

streets, while at the same time addressing the Committee to denounce the Government for failing to safeguard employment. Furthermore, representatives of FEDECAMARAS had requested the repeal of the Basic Act on Labour and Men and Women Workers in force since 2012, which was known worldwide for its provisions fully safeguarding workers' rights. He wondered who would sanction employers who sabotaged the economy by reducing production and shamelessly aimed to evade application of the labour laws, and who could require employers to comply with the Conventions.

However, another significant section of the employers affiliated with FEDECAMARAS did indeed participate in the promotion and growth of the Bolivarian Republic of Venezuela's productive processes, increasing employment and strengthening production. In addition, a tripartite dialogue body, the CNEP, existed in which the Bolivarian Socialist Confederation of Workers (CBST), productive employers and the Government also participated and engaged in discussions on investment plans, new employment, and investment in foreign currency and facilities for the export of the private sector and state enterprises. He highlighted that, unlike the leaders of FEDECAMARAS, some employers affiliated to FEDECAMARAS maintained a cooperative relationship with workers, despite the ideological and political differences they might have, thereby enhancing social dialogue. The majority trade union, the CBST, had expressed to the Government its steadfast refusal to meet with the employer sector represented by the FEDECAMARAS leadership and its firm intention to maintain harmonious relations with those who were willing to produce in the country, in respect of workers' rights and the full application of ILO standards. He concluded by affirming that a clear policy for the generation and growth of productivity and stable employment existed, and worked closely with the CNEP, the tripartite body through which agreements on fundamental social and macroeconomic policies were reached. He rejected the attacks by employers against the Government, whose labour and social policies were in accordance with the Convention.

Another Worker member of the Bolivarian Republic of Venezuela expressed surprise that his country was again on the list of countries called before the Conference Committee. FEDECAMARAS and its allies had once more made it their political objective to continue creating instability and were attempting to get rid of a workers' government that had made significant social progress, particularly with regard to Convention No. 122. The Bolivarian Republic of Venezuela had set an example in terms of decent employment and work, youth employment and the improved quality of life of the population. The unemployment rate was currently 7.1 per cent, employment policies had been strengthened since the revolutionary Venezuelan Government had come to power, and all the social inclusion policies pursued by former President Hugo Chávez sought to improve social justice and the quality of life of the population, as could be seen from the Basic Act on Labour and Men and Women Workers, which was the most advanced piece of legislation in terms of social justice and the protection it afforded for the rights embodied in the ILO's Conventions. FEDECAMARAS had infringed the Act just as it disregarded all of the policies the Government had

pursued since the revolution, and it had attempted to blackmail the Government into repealing the Act in exchange for engaging in dialogue, which it had avoided since becoming actively engaged in economic warfare. President Nicolás Maduro had repeatedly appealed to all those who were willing to give him their support and cooperation in order to meet the challenges facing the country, but a section of the employer sector had unfortunately stayed away. FEDECAMARAS preferred to continue gambling with the fate of the nation. The country was going through difficult economic times, and the working class found itself in the middle of an economic war that had placed it in a fierce battle against major domestic and foreign private investors who had turned their backs on the Venezuelan people and were abetting foreign attempts to provoke domestic disorder. The Bolivarian Republic of Venezuela's working class was prepared to fight for the great achievements that the revolution had brought.

The Employer member of the Bolivarian Republic of Venezuela considered that the Government was failing to fulfil its obligation as laid down in the Convention to consult the representatives of the employers and workers in formulating its employment policy. Despite its unquestionable representativeness, FEDECAMARAS had not been consulted by the Government on any matter for 17 years. Moreover, the supposedly extensive consultation with all sectors, as claimed by the Government, had never been conducted formally or documented. The Government was failing to establish a coordinated employment policy that enabled jobseekers to be employed in accordance with their abilities, in productive activity that was freely chosen, and to derive income from it that enabled a decent standard of living. The country had experienced two successive years of economic recession, with a fall in gross domestic product (GDP) of nearly ten per cent. In 2015 the official inflation rate was 180 per cent, the highest in the country's history. The purchasing power of the Venezuelan people had been smashed to smithereens. At present, the minimum wage was about US\$27 dollars per month, which was the equivalent of 0.92 Venezuelan bolívar (VEF) per day. Almost 14 minimum wage equivalents were needed to pay for the basic basket of goods. This was far removed from a daily income of US\$1.25 per day, which was the usual indicator of extreme poverty. Moreover, 60 per cent of the statutory monthly minimum income did not derive from wages and did not generate any social protection benefits. Formal employment in the private sector had decreased sharply. As at March 2016, a total of 282,400 formal jobs had been lost. The number of employers had fallen by 110,000 in 2015. The lack of a coherent employment policy had caused an enormous increase in poverty. The poverty index had risen from 53 per cent in 2014 to 76 per cent in 2015, and extreme poverty had more than doubled, from 25 per cent in 2014 to 53 per cent in 2015. In the foodstuffs sector, production had dropped by 22 per cent from January to April 2016. Many food-producing plants were inoperative for lack of raw materials, with the risk that 200,000 additional direct jobs and 1 million indirect jobs could be lost in the food sector alone. In addition, the malfunctions in the public electricity and water utilities were affecting enterprises' operating capacity by interrupting their activities in the periods of rationing fixed by the Government. The private

sector was suffocating from price controls, it was being persecuted and criminalized, it was denied the foreign currency needed for purchasing raw materials for production, and it was obliged to sell at a loss. The situation had got even worse since January 2016, when the Government had declared a state of economic emergency with the suspension of constitutional guarantees in the economic sphere for 240 days, disregarding any formal consultation with the legitimately constituted public powers and the social partners.

All of the above showed that there was no sound policy to promote decent employment, nor any implementation of the dialogue required by the Convention. In March 2016, the Government had submitted a proposal to the ILO to establish a dialogue round table and a schedule of meetings. However, to date, the first meeting had not even taken place despite the insistence of FEDECAMARAS. On the contrary, the President of the Republic persisted in saying that there would be no dialogue with FEDECAMARAS. The CNEP, which had been established by the President in January 2016 and in which FEDECAMARAS had not been invited to participate, had not made any significant progress. In order to achieve a positive change for the future of the country, the speaker urged the Government, workers and employers to reach a basic consensus for the adoption of specific measures aimed at ensuring employment and economic growth for the country. The employers, with FEDECAMARAS as their chief representative, constantly demonstrated their commitment to participating in social dialogue. Conditions in the country were such as to justify assistance from the ILO and trigger its input and mechanisms to ensure that the Government complied with the Convention, especially in the area of social dialogue.

The Government member of Mexico, speaking on behalf of group of Latin American and Caribbean (GRULAC) countries, welcomed the information provided by the Government with respect to its compliance with the Convention and observed that the Committee of Experts' report merely requested further information without making a specific statement as to the country's alleged non-compliance with the Convention. In its report, the Committee of Experts mentioned the Government's information regarding its implementation of a new social strategy focusing on the key points: employment, the quality of employment, action on education, the provision of quality education free of charge and the total elimination of poverty. The Government reported that the youth employment rate was 87.2 per cent, which amounted to 31.6 per cent of total employment. As to the development of small and medium-sized enterprises, the Government reported that at round table meetings held with the employers agreements had been concluded on boosting productive employment by means of financial and institutional support for enterprise-creation projects. Regarding the participation of the social partners, the Committee of Experts merely requested specific examples. He trusted that the Government would continue to submit updated information on the application of the Convention.

The Government member of Nicaragua, endorsing the statement made by GRULAC and expressing support for the Government, recalled that the Committee of Experts had not observed any failure to apply the Convention but had simply requested additional information and examples.

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As such, the unjustified inclusion of the case, which was politically motivated, as it had been the previous year, was striking. The Government of Nicaragua considered that resolving such cases should fall to the parties, without external interference or international pressure, within a framework of mutual respect based on peace, dialogue and consensus. He invited the Committee on the Application of Standards not to continue examining this type of case and not to let itself be influenced by political manoeuvring that diverted the ILO from the noble objective for which it was founded.

The Government member of Cuba aligned herself with the statement made by the Government member of Mexico, on behalf of GRULAC. The Committee of Experts did not mention the non-compliance on the part of the Government in relation to the Convention, and there was therefore little technical substance to warrant its inclusion in the list of cases of serious failure to comply with Conventions. She considered a solution could be reached without the involvement of the Conference Committee since the Government had committed to identifying solutions by means of inclusive social dialogue. She was convinced that the Government would be able to present information that demonstrated its compliance with the Convention and urged the Conference Committee to close the case.

The Government member of Mauritania said that the information provided by the Government shed light on the significant progress made by the country in the areas of employment and action against unemployment. These achievements were the culmination of the implementation of a new social strategy based on the guidelines contained in the Economic and Social Development Plan, which gave priority to the creation of high-quality jobs and the provision of free high-quality education. A series of measures had been taken in the wake of tripartite discussions with a view to reviving productivity and the creation of employment. The Conference Committee's conclusions should take into account the major efforts made by the Government.

The Worker member of Cuba said that he was not in agreement with the continued discussion of this case before the Conference Committee since there were no technical grounds for it. He indicated that the observations of the Committee of Experts regarding Articles 1 and 2 of the Convention did not question the procedures or compliance with a Convention but rather the economic model applied in the country over recent years. He considered that the Conference Committee was not the proper forum to settle conflicts relating to the definitions of economic and political systems. Part of the employers' organization had generated chaos and crisis through the shortages of products and services in the country, and he questioned the possibility of pursuing an employment policy when a part of the employer sector was willing to give in to important financial losses to repudiate the economic model established in 1999. He requested the Committee to take these elements into account when adopting the conclusions on the case.

An observer representing the International Organisation of Employers (IOE) recalled that the Convention required ratifying Members to declare and pursue an active policy designed to promote full, productive and freely chosen em-

ployment and to take measures to apply the policy in consultation with workers' and employers' representatives. She stressed that productive and sustainable employment was the basis for decent work, wealth creation and social justice and that the encouragement of investments was a precondition for employment. She emphasized that the social and economic situation in the country was of the deepest concern, not only for employers, but for the society as a whole. There were multiple challenges for establishing sustainable enterprises as well as for creating and maintaining jobs, while there were no policies to boost investment, sustainable enterprises and employment. Price controls, along with the shortage of foreign exchange, led to acute shortages of basic goods. Inflation was very high, the GDP had shrunk dramatically in 2015 and extreme poverty had reached its worst levels in 15 years. Meanwhile, thousands of businesses had shut down, 256,000 jobs had been lost and informality had increased to 42.4 per cent. She invited the Government to comply without delay with the provisions of the Convention both in law and practice by pursuing an active policy designed to promote full, productive and freely chosen employment, in consultation with the most representative workers' organizations and with FEDECAMARAS, in line with the numerous and unattended recommendations of the ILO Governing Body, the ILO supervisory bodies and the report of the high-level tripartite mission that had visited the country in 2014.

The Worker member of Mexico said that the Convention, ratified by the Bolivarian Republic of Venezuela in 1982, had, like many others, become nothing but words, as legislation, on the one hand, and practice, on the other, were verging in opposite directions. Despite repeated calls from the Committee of Experts in that regard, the Government was still failing to abide by the conclusions of the high-level tripartite mission that had visited the country in 2014. However, applying an employment policy based on agreement among the social partners would doubtless contribute to building a climate of peace in the world of work, which the country urgently needed. He further stated that governments must ensure that all ratified ILO Conventions were applied, rather than focusing solely on the fundamental Conventions, and that democracy and freedom of association should be defended in all countries, whatever their form of Government.

The Employer member of Mexico recalled that the Convention was based on the ILO's mandate, established by the Declaration of Philadelphia. In addition, the Universal Declaration of Human Rights set out that all persons had the right to work, and to freely chosen employment in fair working conditions. He indicated that the Convention required an active employment policy, developed in consultation with employers' and workers' organizations. He stated that the economic and social situation of the country was serious and social dialogue was a management tool which would help to resolve serious problems in the country and create the conditions conducive to investment with a view to generating employment.

The Worker member of Brazil called on the Government to find an immediate solution to the serious humanitarian and social crisis dominated by lack of food, medicines and essential items. Although the situation was adversely affecting the whole of Venezuelan society, it was having a

particular impact on the most vulnerable people. In order to tackle the crisis, the Government needed to strengthen freedom of association, collective bargaining, social dialogue and democracy in the country and to comply with international labour standards. He asked the ILO to expand its action in the country aimed at ensuring observance of the Convention under discussion and of other standards, and to give its attention to the observations and complaints submitted by CTV, the National Union of Workers of Venezuela (UNETE), the General Confederation of Workers of Venezuela (CGT) and the Confederation of Autonomous Trade Unions (CODESA).

The Employer member of Spain said that employers in Spain were concerned about the application of the Convention by the Government and expressed their support for FEDECAMARAS. The economic and social situation of the country had worsened in recent months. He urged the Government to provide reliable statistical information on employment, particularly youth employment, and to implement active employment policies. Sustainable employment policies needed to be pursued in small and medium-sized enterprises (SMEs), and social dialogue should be launched with employers' organizations such as FEDECAMARAS.

The Government member of the Plurinational State of Bolivia supported the statement by GRULAC and emphasized the importance given by his Government to compliance with ILO standards. He regretted that the reasons obliging the Government to come before the Conference Committee were not related to the application of the Convention but rather to diffuse interests aimed at challenging a legitimate Government. He recalled that the responsibility of promoting decent work and generating employment also fell on the employers and he regretted the stigmatization of a democratic Government. He commended the Government's efforts in promoting progressive policies aimed at expanding workers' social rights, redistributing revenue, and promoting decent work. He concluded by inviting the Conference Committee to conduct a balanced and fair examination of each case.

The Worker member of Paraguay said that Articles 2 and 3 of the Convention did not prescribe an undefined employment policy but one on which consensus had been reached through tripartite dialogue and consultation. If the conclusions of the report of the ILO high-level tripartite mission that had visited the country in 2014 had been followed, many deaths, tragedies and desperate situations would have been avoided. Productive employment was still lacking, and this in turn added to the scarcity and lack of food for the whole population. She therefore asked the Conference Committee to include a special paragraph in its report that reflected the unprecedented crisis facing the country. She urged the Government to promote serious and respectful dialogue to enable the creation of decent jobs and decent work for all, while upholding freedom of association and collective bargaining, which were the cornerstones of progress.

The Employer member of Peru expressed her deep concern at the serious economic crisis affecting the country and said that hyperinflation constituted the most damaging tax for the poorest people. Emphasizing the violation of Article 3 of the Convention, she thought that if there was a

genuine dialogue between the Government, workers and most representative employers' organizations, such as FEDECAMARAS, the situation of the workers would be very different from what it was now. She therefore called on the ILO to use all the tools and mechanisms at its disposal to establish real social dialogue in the country.

The Worker member of Colombia emphasized that it was vital for the social partners to have an active role in dialogue leading to the formulation of employment policies that stimulated economic development. He considered that that was not the case in the country. He expressed regret that the Government had not heeded the conclusions of the high-level tripartite mission that had visited the country in 2014 and that, in spite of having submitted a draft plan of action on social dialogue to the Governing Body at its 326th Session (March 2016), none of the meetings agreed on that occasion had been held. There could be no effective policies to promote productive employment with social dialogue. Employment, decent work and the right to work were intended to meet the needs of the working class and the population in general. He said that the Government's announcements of supposed employment policies when workers were becoming ever more impoverished counted for nothing. In the Bolivarian Republic of Venezuela, the common denominator was precariousness and scarcity – an appalling situation bearing in mind that the country was the richest in the region.

The Employer member of Honduras recalled that the Convention imposed the obligation on governments to consult the most representative workers' and employers' organizations in formulating a policy designed to promote full, productive and freely chosen employment. FEDECAMARAS was the most representative employers' organization at the national level. Hence, by excluding FEDECAMARAS from the consultations, the Government was rejecting legitimate and effective social dialogue. There had been no consultation of the employment plans with the most representative employers' organization. Consequently, the Conference Committee should highlight the situation in a special paragraph of its report in view of the Government's failure to implement the roadmap which it had signed in March 2016.

The Government member of the Russian Federation, noting the observation of the Committee of Experts, welcomed the Government's readiness for a substantive and constructive cooperation with both the ILO and the social partners, including FEDECAMARAS. Referring to the Committee of Experts' report, he stated that there was no specific information concerning non-compliance with the obligations under the Convention. In this regard, it was not clear for what reason the issue was included in the list of cases discussed by the Conference Committee. With this in mind, he expressed concern over the regular attempts to politicize the work of the ILO by forcing a discussion on the compliance of international labour standards by the Government. In conclusion, he expressed satisfaction with the level of cooperation between the Government and the ILO to ensure the application of international labour standards and hoped that this cooperation would continue.

The Government member of Belarus noted the comprehensive approach concerning the implementation by the Government of the measures aimed at ensuring positive

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outcomes in relation to labour relations in the country. There seemed to be a lack of information concerning the alleged failure to comply with the Convention, and the Committee of Experts only requested information in its observation. He was of the view that the Government complied with the Convention. The Government was actively cooperating with the ILO, in particular through the implementation of the provisions of the Convention in the national legislation. He supported the work of the Government in relation to strengthening social dialogue under difficult economic conditions.

The Worker member of Honduras highlighted the youth employment programmes that the Government was developing within the framework of its social changes, and the significant progress made with respect to social protection and the defence of workers' rights. He expressed concern that the case of the Bolivarian Republic of Venezuela was once again being discussed by the Conference Committee, given that the Committee of Experts had not referred to any non-observance of the Convention by the Government and had merely requested the Government to provide information on its policies regarding youth employment, the development of SMEs, and the participation of the social partners. The country had the lowest rate of unemployment on the American continent and the highest rate of youth employment. He was therefore concerned that some employers affiliated with FEDECAMARAS had engaged in sabotaging the acquisition of goods and services, closing their enterprises and dismissing hundreds of workers, while other enterprises affiliated to the same organization maintained high rates of productivity, upheld workforce stability and participated with the Government and workers in the CNEP, a tripartite body.

The Government member of Egypt noted the measures taken by the Government in relation to the application of the Convention. The Government had adopted a national policy aimed at providing employment opportunities in the formal economy, reducing unemployment as well as reducing the number of workers in the informal economy. The speaker hoped that the ILO would provide the necessary technical assistance to the Government to help achieve the objectives enshrined in the Convention.

The Worker member of Peru said that the Government had spent 15 years in the dock before the Conference Committee, a fate it shared with other progressive Governments in the region such as Cuba. He expressed surprise at the fact that FEDECAMARAS and the IOE worried about the situation of workers in the Bolivarian Republic of Venezuela when, within the Conference Committee, they had steadfastly refused to recognize the right to strike and they never protested about repressions committed by governments with different political and economic orientations. As such, the case under examination was political in nature. If the IOE and FEDECAMARAS, which complained about the lack of consultation in this country, were really interested in the labour problems of workers, they would have denounced the mass dismissals and violation of the right to bargain collectively that prevailed in many countries and could also have demanded respect for prior consultation in the case of the draconian measures imposed in Greece. The speaker ended his statement by saying that this case was intended to topple a democratic Government.

The Government member of China, referring to the statements made by the Government and by GRULAC, noted that the Government had fulfilled its obligations under the Convention. The Government's efforts should therefore be recognized by the Conference Committee.

An observer representing the World Organization of Workers (WOW) indicated that for five years the Government had not been providing accreditation for the members of the Trade Union Action Unit of Venezuela and UNETE. In addition, he underscored that the Convention was fundamental for the country, particularly given the serious conditions of unemployment. The Government should have consulted the social partners with regard to the employment policy, as requested by the high-level tripartite mission that visited the country in 2014. UNETE had made recommendations on numerous occasions, particularly within the framework of the rescue plan for national production and employment. Industrial action had also been carried out demanding that dialogue be opened but there had been no response. National production was threatened, state enterprises were paralyzed and the private sector was facing countless limitations, as well as threats of intervention and expropriation. Enterprises that had been nationalized with the help of workers were bankrupt. Many workers had been dismissed or would be dismissed for political reasons. Furthermore, protests had been criminalized and trade union representatives and leaders had been detained. Productive employment as referred to in Article 1 of the Convention was a utopia as salaries had been significantly affected by devaluation. Over 55 per cent of a salary was paid in vouchers and bartering, a practice that had been abandoned for decades, had returned. All these measures had been implemented without consultation with the workers. On those grounds, he requested that this case be included in a special paragraph in the Conference Committee's report.

The Worker member of Benin said that the case did not really constitute a violation of the Convention, but was instead aimed at raising issues against governments that refused to support private, capitalist interests so as to justify coups d'état, as in Brazil. The speaker said that the efforts of progressive governments should be encouraged. The information sent by the Government demonstrated the efforts made by the Venezuelan workers in the fields of employment, the economy, the development of SMEs and in the participation with the social partners. In conclusion, the speaker said that the Committee should encourage the Government, which was faced with a difficult fight against capitalism, and should focus more on governments that were trying to deregulate labour legislation and undermine the acquired rights of workers.

The Government member of Algeria welcomed the information provided by the Government on the action taken to ensure the application of the Convention. An employment policy had been formulated as part of the Economic and Social Development Plan, with the aim of eradicating poverty and facilitating social integration. The Plan had resulted in the creation of a significant number of jobs and agreements had been concluded with the employers for boosting employment through the development of SMEs. Lastly, he welcomed the Government's cooperation with the ILO.

The Worker member of Argentina recalled that, according to the report of the Committee of Experts, the Government had not failed to apply the Convention: it had simply been requested to adopt a legislative framework and to provide further information. He maintained that a campaign of stigmatization was being waged against a democratically elected Government, with the aim of destabilization at national and international level. It was claimed that there was a crisis in the Bolivarian Republic of Venezuela, but the entire world was currently in crisis. The people making those claims were responsible for maintaining levels of employment and they did not hesitate to foment social discontent, closing off sources of employment and funding a campaign to destabilize the country. Social dialogue required the will of all parties and could not function in a conflict scenario. He emphasized that the Government had the will to create a space for social dialogue so as to strengthen the democracy.

The Government member of the Islamic Republic of Iran, thanking the Government for the information provided, emphasized that the measures taken deserved due consideration by the Conference Committee, as they demonstrated the willingness and commitment of the Government to comply with the Convention. Stressing that the Convention entailed a series of technical aspects for its implementation, he called on the Office to provide technical assistance to the Government.

The Worker member of Syria supported the statement made by the Government and considered that this case revealed a political dimension. The Government had regularly submitted reports on the application of the Convention and the Committee of Experts had not mentioned any violation concerning the application of the Convention in its last observation. In its comments, the Committee of Experts referred to the implementation of a strategy which focused on the following key elements: employment; employment quality; provision for education; the guarantee of free, high-quality education; and the definitive elimination of poverty. Moreover, between 2000 and 2014 one third of new jobs created were in the formal economy. Referring to the sections in the observation on SMEs, youth employment and the participation of the social partners, the speaker concluded by indicating that the Conference Committee was faced with a case that had been chosen for political reasons and which constituted an attack on the Government by FEDECAMARAS.

The Government member of Qatar thanked the Government for the information provided before the Conference Committee. He welcomed the measures taken by the Government in order to comply with the Convention and encouraged the Government to continue with its efforts in this regard.

The Worker member of Uruguay noted that, while all the members of the Conference Committee agreed that the country was experiencing a particularly challenging period, there were diverging opinions on the situation. The serious inflation affecting the country's workers should come as no surprise to anyone, in a context where certain economic actors were hiding commodities. He was astonished by the importance attributed by the employers to the ILO supervisory bodies in this case, a diametrically op-

posed position to the one they usually assumed. The interest in consultation demonstrated by employers should be followed up with a proposal for consultation on wealth distribution. Lastly, he affirmed that the workers of Uruguay remained entirely unconnected to the initiative to present a complaint under article 26 of the ILO Constitution in relation to the Bolivarian Republic of Venezuela.

The Employer member of Chile said that the Government was not respecting Article 3 of the Convention with regard to the adoption of an active policy aimed at encouraging full, productive and freely chosen employment because it was not holding consultations with FEDECAMARAS, the most representative employers' organization in the country. This had had negative effects on employment, as acknowledged by the President of the Republic, who had declared a state of emergency, with its attendant limitations on constitutional safeguards. The country was facing a shortage of decent work: workers were no longer earning wages that allowed them to meet their basic needs without recourse to state subsidies. Neither did they enjoy an adequate system of protection, because the rate of informal work was very high. Private enterprises were being progressively destroyed through poor governance, the absence of dialogue and the lack of a favourable legal and regulatory environment. These were the minimum conditions identified in 2007 at the ILO for enterprises to be sustainable. The ILO should intervene with all the tools at its disposal so as to contribute, together with the Government and the social partners, to the development of employment policies that were the result of genuine social dialogue.

The Government member of Brazil, speaking in right of reply, said that certain incorrect opinions expressed during the discussion made it necessary to provide some clarification with regard to the trial of the President of Brazil. The proceeding under way complied rigorously with Brazil's legal standards and procedures under the supervision of the Supreme Federal Court, which guaranteed respect for the Constitution and for due process. So far, the Chamber of Deputies and the Federal Senate had ruled on the admissibility of the case and had established that there was evidence of possible crimes entailing liability. The votes had been preceded by full and detailed debates and the entire process was characterized by full respect for the right to defence.

The Government representative said that the Committee of Experts, in its report, had not mentioned any failure to apply the Convention by the Government, but had only requested examples or further information in that respect. Despite that, the country had been included in the list of individual cases, without waiting for such information and examples to be provided in its next report on the Convention. This proved that the fundamental policies of employers, specifically FEDECAMARAS, an organization that used the ILO as an institution to further its own interests, had prevailed over technical considerations. He maintained that FEDECAMARAS often acted more as a political party than an employers' association and he recalled that the organization's leadership had supported the economic and productive sabotage of the largest food production enterprise in the country. Contrary to what the Employer members said, social dialogue did exist in the country. Every week, meetings of the most prominent entrepreneurs were

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held, including many representatives of enterprises, chambers and federations affiliated to FEDECAMARAS, and they discussed policies of national interest together with the Government and the main workers' organization. He said that the Government had repeatedly stated its willingness to engage in dialogue, but within a framework that respected the law, although it considered that such dialogue would be very difficult when a part of the aforementioned employers' organization continued to shield enterprises that sabotaged and destabilized the country's economy, to the detriment of the Venezuelan people.

The speaker said that the employers had presented figures and estimates from unofficial and biased sources which was why his Government did not recognize them. The fall in petrol prices had had a negative impact on the country, as had the sabotage of production and the economy carried out by some employers, including a section of FEDECAMARAS. Within the National Council on Productive Economy, a tripartite social dialogue body to develop policies and stimulate the Venezuelan economy in consultation with employers' and workers' representatives, proposals had been submitted by employers relating, for instance, to the currency exchange system, simplifying export procedures, repatriating capital and flexibility in taxation, among other things. In this manner, the entrepreneurs with the greatest economic influence in the country, who wanted to strengthen the Venezuelan economy, the main workers' organization and the Government were committed to transforming the national production apparatus to make it more diversified and less dependent on petrol income. The speaker expressed the hope that the conclusions on the case, as the fruit of a broad debate, would be objective and balanced, with no negative statements against the Government, which would allow them to be analysed more effectively within the framework of applying the Convention. He trusted that there would be no need for the Conference Committee to consider the case again, as it was for the Committee of Experts to follow it up through the Government's reports. He restated his Government's commitment to applying the Convention and other ILO Conventions his country had ratified and reaffirmed that the Government would not favour private interests over those of the working class and the Venezuelan people.

The Worker members, thanking the Government for the detailed information provided to the Conference Committee, welcomed the achievements of the Government in reducing poverty and inequality, and in increasing citizen participation and self-governance, particularly all efforts made in order to promote decent work as a means to achieve social justice. However, the economic and political crisis could jeopardize such important achievements, as workers and their families were paying the price of the crisis. Noting with interest the commitments made by the Government concerning informal and precarious work, they indicated that the reduction of the share of informal work from 51.6 per cent in 2004 to 41.2 per cent in 2015 was an important development to be welcomed by the Conference Committee. They invited the Government to continue to provide information in this regard and to follow the provisions of Recommendation No. 204. As unemployment was more severe among young people, they recalled

that the Committee of Experts had requested the Government to implement policies aimed at minimizing the impact of unemployment on young workers and facilitating their integration in the workforce with respect to fundamental rights at work and social protection. Recalling that the Government had agreed in the 326th Session of the Governing Body (March 2016) to a detailed timetable in order to re-establish tripartite dialogue and to deal with matters relating to industrial relations including economic policy, they took note with concern that no tangible progress had been made in that regard. Taking into full consideration the observations of the Committee of Experts, the Worker members urged the Government to: (i) establish a structured body for tripartite social dialogue in the country and take immediate action to build a climate of trust based on respect for employers' and trade union organizations with a view to promoting solid and stable industrial relations; and (ii) urgently implement all commitments made in the past Governing Body session so as to follow the plan of action for consultation with the social partners, including stages and specific time frames for its implementation.

The Employer members highlighted the considerable interest generated by the case and drew attention to three factors relating to the failure to apply the Convention. Although, by virtue of Article 1 of the Convention, governments must stimulate economic growth and development, quite the opposite was being seen in the Bolivarian Republic of Venezuela. Under Article 2 of the Convention, economic and social measures must be reviewed to ensure that they were coordinated. However, undertaking such a review required genuine social dialogue, which could not take place in the National Council on Productive Economy, where groups whose voice was not in tune with the Government could not take part. Article 3 of the Convention, lastly, provided that the social partners should be consulted on employment policy. In that respect, the commitment expressed by the Government in March 2016 had not materialized, which was a clear violation of the Convention. The speaker said that the Conference Committee's conclusions in the case should include: (i) the observation, shared by the Worker spokesperson, that the deterioration in economic indicators affected the majority of the country's population and the development of trade; (ii) the need to take urgent steps to stimulate economic growth and development; (iii) the need to periodically review measures taken in the area of economic and social policy in consultation with the social partners, including the CTV, UNETE and FEDECAMARAS; (iv) the request for an employment policy to be formulated in full consultation with the social partners, including the CTV, UNETE and FEDECAMARAS; (v) the invitation to the Government to accept a high-level mission to observe the measures taken to give effect to the Convention; and (vi) mentioning the case in a special paragraph of the Committee's report.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee took note with deep concern of the social and economic crisis affecting the country and the absence of an active employment policy designed to promote full, pro-

ductive and freely chosen employment. The Committee deplored the absence of social dialogue with the most representative workers' and employers' organizations with a view to taking measures to apply an active employment policy.

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

- with the assistance of the ILO, develop, without delay, in consultations with the most representative workers and employers organizations, an employment policy designed to promote full, productive and freely chosen employment;
- implement, without delay, concrete measures to put in practice an employment policy with a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment;
- establish without delay a structured body for tripartite social dialogue in the country and take immediate action to build a climate of trust based on respect for employers and workers organisations with a view to promoting solid and stable industrial relations;
- implement all commitments made in the last session of the Governing Body to follow the plan of action for consultation with social partners that includes stages and specific time frames for its implementation; and
- report in detail to the Committee of Experts before September 2016 on the application in law and practice of Convention No. 122.

The Government should accept an ILO tripartite high-level mission before the next International Labour Conference in order to assess progress towards compliance with these conclusions.

The Government representative rejected the conclusions adopted by the Committee. Inaccurate information with no bearing on the Convention had been taken as truth. Moreover, the conclusions had not taken into account the statements of the Government, the Worker members and other Government members.

Minimum Age Convention, 1973 (No. 138)

NIGERIA (ratification: 2002)

A Government representative appreciated the constructive observations and requests made by the Committee of Experts with regard to the domestication of the provisions of the Convention. She stated that the Government had commenced the process of withdrawing the Labour Standards Bill, which was pending before the National Assembly, for further revision in line with the observations made by the Committee of Experts. This revision, which would be done in consultation with the social partners, would take into consideration the issues relating to ensuring protection for all working children, including self-employed children and children working in the informal economy, as well as provisions to strengthen the capacity and expand the reach of the labour inspectorate to the informal economy. The review of the Labour Standards Bill would define a minimum age of 15 years for employment or work; a minimum age of 14 years for apprenticeship programmes; a lower minimum age of 13 years for admission to light work, and would regulate hours of work in light work. With the aim of protecting the rights of the child, several measures had been taken, including the adoption and implementation of the National Policy on Child Labour and the National Hazardous Child Labour List, which provided maximum protection for children from extremely hazardous working

conditions. Efforts were also being made to provide statistical data on the employment of children and young persons, especially in the informal economy, in collaboration with the relevant ministries and agencies in Nigeria. The labour inspectorate of the country had been strengthened to eliminate child labour, both in the formal and informal economies. While hoping that the Government would be able to provide a progressive report in 2017, she reiterated the Government's willingness to accept the technical assistance offered by the ILO.

The Worker members emphasized that child labour was pervasive in Nigeria and that the laws and policies remained inadequate to address the widespread nature of the problem. The legislation failed to comply with the Convention, including sections 59(1) and 91 of the Labour Act of 1990, which permitted the employment of children under 12 years of age by family members to perform light work in agriculture and domestic service, and section 49(1), which permitted children between the ages of 12 and 16 to perform apprenticeships. The Labour Act also failed to provide for a minimum age for admission to light work and for the conditions in which such work could be undertaken. The Worker members, noting the statement by the Government concerning the existence of the list of types of hazardous work to be prohibited for children under the age of 18, indicated that this list had not been provided to the Committee of Experts. The Labour Act did not cover children employed in domestic work or children working on their own account or in the informal economy. The Committee of Experts had referred to the recognition, in the Government's 2013 National Policy on Child Labour, that child labour was particularly prevalent in the semi-formal and informal economies. These children were exposed to abuse and their vulnerability was exacerbated by the lack of legal protection, which meant that labour inspectors were unable to reach them. The proposed Labour Standards Bill, which the Government explained had been withdrawn and would be revised, provided for a minimum age for employment of 15, but did not address many of the issues raised. The Worker members also pointed out that the lack of access to education and mass unemployment in the country had caused many children to be displaced or involved in armed conflict. The high prevalence of early marriages among girls in the northern part of the country also had a serious negative impact on their right to education. Children with no access to education had little alternative than to enter the labour market, often working in dangerous and exploitative conditions. Access to free and compulsory education was crucial to reducing child labour. Despite the Compulsory, Free Universal Basic Education Act of 2004, universal access to compulsory education did not fully exist in the country, with geographical disparities between states. The number of factory inspectors and labour officers was totally inadequate to deal with the wide-scale problem of child labour, and the Government had not published statistical information on child labour-related procedures. The special rapporteur on child rights of the Nigerian Human Rights Commission did not have the necessary human and financial resources to fulfil the mandate to monitor and collect data on the violation of children's rights. The Worker members urged the Government and the social partners to identify more effective and timely measures to bring the country's practices in line with the Convention.

Minimum Age Convention, 1973 (No. 138)

Nigeria (ratification: 2002)

The Employer members noted the indication by the Government that the Labour Standards Bill of 2008 had been withdrawn and that it would be revised, in consultation with the social partners, to ensure conformity with the Convention. However, national laws and practice were not currently in conformity with the Convention. The Committee of Experts had identified a number of weaknesses in the national legislation, including: (i) the absence of coverage of children in self-employment or informal employment; (ii) the existence of several minimum ages in the legislation, some of which were too low; (iii) the absence of a minimum age to enter into an apprenticeship contract; (iv) the absence of a minimum age for admission to light work; and (v) the lack of regulation of the conditions under which light work could be performed. The Government had indicated that these legislative issues would be addressed while reviewing the Labour Standards Bill. It was strongly encouraged to prioritize finalization of the new national legislation and to avail itself of technical assistance from the ILO as soon as possible. Concerning the need to adopt a list of types of hazardous work to be prohibited for children under 18, the Government had indicated that the list had been finalized and was operative in the country. The consequence of the Government's failure to bring its labour laws into line with the Convention was that children continued to be exploited. While fixing the law was important, ensuring its implementation was also essential, and it was imperative for the Government to improve its labour inspectorate system and provide it with adequate resources and technical knowledge of the national legislation which protected children. The situation could also be improved through the intensification of sensitization campaigns, which were already being undertaken within the ECOWAS II Project and were aimed at encouraging the education of children rather than work, regardless of whether it was in the formal or informal economy.

The Worker member of Nigeria emphasized that no child should be at work, but in classrooms and playgrounds. The Committee of Experts had noted the serious gaps in the legislation with regard to minimum age; the non-finalization of the list of types of hazardous work prohibited for children under 18 years; the alarming rate of children employed in the semi-formal and informal economies; and the intensification of child labour. Free and high quality education was one of the essential means of combating child labour. At the same time, it was important to note the measures taken by the Government at the federal and state levels to eliminate child labour and keep children in school, such as increasing the budget for education and implementing a compulsory school feeding programme. He also recalled the criminal activities of armed groups which, in addition to causing the death of thousands of people, included kidnapping hundreds of children in schools and destroying schools. A large number of teachers had been killed by these groups and most of the surviving teachers in north-eastern Nigeria had been forced to relocate or to quit teaching. Global support was therefore needed for the efforts of Nigeria and its neighbours to bring an end to the activities of such groups. The social partners should also be associated in the technical assistance provided to the country. Noting the withdrawal of the Labour Standards Bill of 2008, he recommended that a new timeframe be provided

to the Government to effectively conclude the review process of the legislation, in coordination with the relevant stakeholders. He hoped that such a legislative reform would take into account the reality of the situation of child labour in Nigeria.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well as the former Yugoslav Republic of Macedonia, Norway and the Republic of Moldova, recalled the commitment made by Nigeria under the Cotonou Agreement to respect democracy, the rule of law and human rights principles, which included the abolition of child labour. He urged the Government to make every effort to strengthen the labour inspection mechanisms in the country, which were essential to address child labour in the informal economy. The Government was strongly encouraged to adopt the list of types of hazardous work prohibited for children under 18 years of age in the near future, and to put in place a comprehensive legal framework establishing the minimum age for apprenticeship and light work, in conformity with the Convention. He noted with deep concern the number of children in child labour in the country. The twin challenges of child labour and educational marginalization seriously undermined the future prospects of individuals and societies. He encouraged the Government to avail itself of technical assistance from the ILO in order to adopt the revised Labour Standards Bill on an urgent basis.

The Government member of Switzerland called on the Government to take the necessary legislative action as soon as possible to fix the minimum working age at 15 years as a general rule, at 14 years for apprenticeships and at 13 years for light work; the terms under which such light work is carried out must be defined. Legislation must also be introduced on the various forms of hazardous work and a list of types of hazardous work prohibited for children should be adopted.

The Worker member of New Zealand emphasized the pressing need for the Government to adopt effective laws to prevent child labour. Although the Government had addressed these issues through the introduction of the Labour Standards Bill eight years ago, the Bill had not yet been adopted. He urged the Government to prioritize the adoption of the Labour Standards Bill after addressing the following major gaps: the exclusion of children outside formal labour relationships; the absence of a lower minimum age for light work, and specification of what constituted light work in domestic, agricultural and horticultural work, as well as restrictions regarding working hours and conditions for light work; and the establishment of a minimum age of 14 years for apprenticeship programmes. He noted that the Government had already adopted a list of types of hazardous work prohibited for children under 18 years of age. Finally, while welcoming the Government's intention to address these issues in the Labour Standards Bill, he urged it to do so as soon as possible.

The Government member of Cuba recalled that the Government had indicated its intention to meet its commitments vis-à-vis the ILO and was currently taking steps to adopt measures for the application of the Convention. She called on the ILO to provide appropriate technical cooperation.

The Worker member of the United States noted that, despite the steps taken by the Government to eliminate child

labour, the situation in the country had not substantially changed and there remained an alarmingly large number of underage workers. The inconsistent legislation, namely the federal Child's Right Act of 2003 and the Labour Act of 1990, resulted in the minimum age for employment being below international standards, and the conflicting language in the legislation made it unclear as to what minimum age applied for specific types of work. The Labour Act did not cover children employed in domestic service and, due to legislative shortcomings and difficulties of enforcement, children were vulnerable to dangerous working conditions. She hoped that the withdrawal of the Labour Standards Bill, announced by the Government, would be done swiftly, as children in the country were engaged in the worst forms of child labour, including their recruitment by armed groups. Such a situation, if not urgently addressed, would lead to serious and grave implications for the children affected, their families and communities, and the national economy. As a beneficiary of the United States African Growth and Opportunity Act, Nigeria was required to enforce an acceptable minimum age for the employment of children and to prohibit forced labour, and the Government had to work towards meeting its obligations under the Convention.

The Worker member of Australia noted that education, as a tool against child labour, was in dire straits in the country, especially in north-eastern Nigeria. The problems associated with the ongoing non-compliance with the Convention were compounded by the context of violence and intense regional insecurity that confronted young people in the north-eastern states of the country. Since the beginning of 2012, thousands of children had been forced out of schools in the region and school enrolment was estimated to be 28 per cent lower than in any other region of the country. These young people were pushed to work to survive. There were Government initiatives aimed at securing the area, re-establishing schools and allowing teachers to return to work. The most effective measure complementing the laws on minimum age for the eradication of child labour, was to ensure that the integrity of the education system was maintained for young people. Despite some assistance from surrounding nations, much more needed to be done and the Government had to redouble its efforts. Greater focus, better coordination and further resources were urgently needed for the north-eastern region. National and regional measures had to be supported by global initiatives aimed at ensuring that all children had access to education in an environment that was free from fear and violence.

An observer representing Education International emphasized that the issue of child labour was clearly connected with the provision of quality public education for all children in all parts of the world. Nigeria was one of the ten countries accounting for the majority of children deprived of access to education. The situation had worsened since 2009. Indeed, as a result of the criminal activities of armed groups, many schools had been destroyed and others had been forced to close; hundreds of teachers had been killed and thousands of students and teachers injured. Thousands of civilians, many of them women and girls, had been abducted, including large groups of students. Children were forcibly recruited into armed forces, and female students were abducted for sexual slavery. The situation had left

whole communities without any opportunity to become literate and have decent work opportunities. In addition, millions of children had no future other than to work from an early age. Steps therefore needed to be taken by the Government, with regional cooperation and the support from United Nations agencies and the international community, to make education for all a reality in all parts of Nigeria as a way of eradicating child labour.

The Government member of Algeria noted the initiatives taken by the Government to update its legislation in the light of the country's economic and social circumstances and the observations of the Committee of Experts. In particular, the Government had started the process of withdrawing the Labour Standards Bill, which would be amended in consultation with the social partners. The amendments would include the introduction of new measures to protect children in the informal economy, to strengthen the capacity and expand the scope of the labour inspectorate to the informal economy, and to fix the minimum age in line with the Convention. He welcomed the Government's initiatives and encouraged it to apply the legislation effectively.

The Government member of Ghana noted that the Government had taken pragmatic measures to bring its national law and practice into conformity with the Convention. The Government had withdrawn the Labour Standards Bill and had taken into account the views of the tripartite national constituents. There was no doubt that, with the technical assistance of the ILO, Nigeria would work assiduously to review and update the Labour Standards Bill and to address the issues raised by the Committee of Experts.

The Government member of Kenya noted the efforts made by the Government to review its labour statutes in order to be in compliance with the provisions of the Convention and appreciated its commitment and willingness to conform to the recommendations of the Committee of Experts. There was a need for sustained technical cooperation to enable the Government to implement those recommendations. The Government should pursue its efforts to promote the principles of the Convention, taking into account the plight of children in the country, and to find solutions to bring an end to the threat of terrorism in the country.

The Government member of Zimbabwe supported the Government in its efforts to put in place legislative provisions to address issues concerning child labour. The provision of labour inspection, especially in the informal economy, was particularly significant since it provided a livelihood for a large proportion of the population and most of the exploitation of children took place in this economy. He expected that the Government would live up to its promises and endeavour to strengthen labour inspection. He expressed confidence that the information shared with the Committee provided a credible and viable basis to bring about a turnaround in the ongoing situation and supported conclusions that gave the Government some time to implement the actions planned and to engage all of the concerned stakeholders, particularly workers and employers.

The Government representative said that the Labour Act 1990 was no longer in force, but that the Labour Act 2004, as amended, was in force. Most of the issues raised on minimum age referred to child work that was not harmful to children, as opposed to child labour. She presented the National Child Labour Policy and the list of types of

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hazardous work prohibited for children under 18 years of age, which had been adopted in 2013 and were being implemented. Moreover, the National Action Plan for the Elimination of Child Labour 2013–17, which contained seven thematic areas and strategies to work upon a roadmap to eliminate child labour, had been adopted and was being implemented. She denied that child labour in Nigeria was due to the political situation in the country. The only problem the country was facing was terrorism, which was a global issue and not particular to Nigeria. The issue of armed groups fell under the Worst Forms of Child Labour Convention, 1999 (No. 182), and the Government had been addressing these issues separately. With respect to the Child Rights Act, Nigeria was a federation and the laws adopted by the states needed to comply with federal laws. Laws protecting children would be implemented when they had been adopted.

The Worker members emphasized that the exploitation and abuse of children in Nigeria were appalling and were depriving an entire generation from their right to education and from achieving their full potential. The large number of children working under the minimum age, often in dangerous and hazardous conditions, made it urgent for the Government to bring its law and practice into line with the Convention, in consultation with the social partners. In particular, the minimum age for admission to employment should be set at 15 years, light work should only be allowed for children aged at least 13 years and under conditions enabling them to benefit from their right to education and healthy development, and children employed in the informal economy should be covered by labour legislation so that child labour could be monitored and prevented in the informal economy. The Worker members urged the Government to communicate the list of types of hazardous work prohibited for children which had been adopted to the Committee of Experts before its next session. The Government should ensure the enforcement throughout the country of the Compulsory, Free Universal Basic Education Act of 2004 to prevent children entering the labour market due to lack of access to education. Effective enforcement would only be possible with a well-resourced labour inspectorate. There was a need to increase the number of inspectors and to ensure the provision of the necessary resources to carry out independent and effective inspections. The Worker members maintained that failure by Nigeria to act on this issue would cripple its economic development and would result in children without prospects for the future being drawn to armed groups. They expressed their appreciation of the Government's statements and urged it to intensify the efforts undertaken in order to completely abolish child labour in consultation with the social partners.

The Employer members commended the Government for its willingness and commitment to receive technical assistance from the ILO in order to finalize the revision of the legislation. The Government was strongly urged to: strengthen its efforts to ensure the protection of children and the elimination of child labour, in both the formal and informal economies; urgently seek technical assistance from the ILO to address the identified gaps in the Labour Standards Bill; prioritize finalization of the revised Labour Standards Bill and any accompanying regulations; and take

measures to improve the capacity of its labour inspectorate, including by providing it with adequate resources.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee expressed concern with the insufficient steps taken by the Government to apply the Convention in law and practice and encouraged the Government to adopt a constructive attitude.

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

- strengthen its efforts to ensure the elimination of child labour both in the formal and informal sector of the economy;
- revise and adopt the Labour Standards Bill in consultation with the social partners in order to ensure that the minimum age for employment is set at the age of 15; light work is defined in line with Convention No. 138 and does not inhibit children's access to education; children below the age of 13 are prohibited from engaging in any type of work; and that children in the informal economy are explicitly covered by the labour laws;
- communicate the list of the types of hazardous work to the Committee of Experts in time for their next report;
- increase the number and resources of labour inspectors;
- ban soldiers from using schools for military purposes to avoid such schools being targeted for attacks and destruction;
- bring those who perpetrate child labour to justice, including militias;
- work with traditional leaders and state-level administration in order to eliminate the harmful impact of traditional practices on children.

The Committee called on the Government to avail itself of ILO technical assistance to achieve these recommendations.

The Worker members regretted that the Government of Nigeria had not been present during the reading and adoption of the conclusions proposed for its case.

The Employer members joined the Worker members in expressing deep disappointment with the Government of Nigeria's failure to appear before the Committee for the reading of the conclusions.

Indigenous and Tribal Peoples Convention, 1989 (No. 169)

HONDURAS (ratification: 1995)

The Government provided the following written information:

The Government of Honduras hereby informs the Committee on the Application of Standards of the action taken in compliance with Convention No. 169, based on the observations made by the Honduran National Business Council (COHEP) received on 28 August 2015 and supported by the International Organisation of Employers (IOE).

Existing initiatives for the establishment of appropriate procedures for the consultation and participation required by the Convention. Articles 6 and 7 of the Convention. Work is under way with the Inter-Institutional Technical Group on Convention No. 169, which brings together 19 Government institutions, to prepare, implement and monitor a legal instrument on consultation. An initial draft framework Bill on prior, free and informed consultation of indigenous and Afro-Honduran peoples has been prepared,

and since 27 May the process has entered the phase of dialogue with indigenous peoples, so that it can then be the subject of dialogue with private enterprise and workers' associations.

Progress made in the process of regularizing and issuing land title and the surface covered by the land titles issued. Article 14. Lands: Process of regularization in two cases: (a) in the case of Auka, an Intersectoral Committee has been established. It has requested the National Agrarian Institute (INA) to conduct an evaluation of the useful improvements made by non-Misquito peoples for an amount of 1,251,357 lempiras; and (b) in the case of Triunfo de la Cruz, the ruling is final. The INA must demarcate the title areas, and there must be a process of integration between the Garifunas and the peoples within the area. A time frame of two years is set for this work.

Summary of land titles granted during 2015–16: (a) areas for which title has been granted in one indigenous community in Guachipilin, with a total of 1,445.74 hectares covered by land title; (b) areas bought for three communities – Chortí, Plan de Perico, Carrizalon and Chonco: total of 123.55 hectares bought; and (c) areas for which titles are being processed in 2016 in three indigenous communities: total of 93,852.12 hectares to be covered by titles.

Manner in which consultations have been held with the peoples concerned prior to undertaking or authorizing any programme for the exploration or exploitation of the resources pertaining to their lands. Article 15. Natural resources: In the Mosquitia maritime area, with a view to undertaking hydrocarbon exploration, a consultation process was initiated during the period from September to November 2013; ten consultation assemblies were held with the Mosquitia territorial councils. The practice of prior, free and informed consultation has been in place since 2011. Initially it applied to hydroelectric projects located in the Lenca indigenous area (Intibucá and La Paz), covering the Gracias a Dios department and the Awuás, Tikiuraya, Morcorón, Auka, Tipi Lalma, Kukuta, Yahurabila, Raya, Wampusirpe, Barra Patuca, Belén, Brus Laguna and Puerto Lempira communities.

Application of the General Mining Act and procedures established to ensure the right to consultation where the interests of indigenous peoples are likely to be prejudiced. Mining: With respect to mining, the General Mining Act entered into force on 23 April 2013, and concessions granted since that date are still in the exploration phase. None of them is in areas where indigenous peoples or Afro-descendants would be affected. The Act sets out, in Chapter II, Exclusion Zones for Mining Rights, section 48(d), those zones declared to be national heritage sites and zones that UNESCO has declared to be world heritage sites, and in section 50 it establishes the tenure system for land ownership, where it provides that property pertaining to or covered by an international convention or treaty on the rights of indigenous peoples and Afro-descendants must not be affected. Section 67 of the General Mining Act provides that, prior to any decision to grant a concession for exploitation, the mining authority shall make a request to the relevant municipal corporation and the population and must hold a public consultation within no more than six days. The decision taken in the consultation is binding for the granting of an exploitation concession.

Protection in relation to conditions of employment and contracts, and adequate labour inspection of dive-fishing. Articles 20, 24 and 25. Protecting the rights of the Misquito people: Vulnerable groups of disabled Misquito divers who have suffered decompression accidents are dealt with by the Inter-institutional Commission to Address and Prevent the Problems relating to Dive-fishing. Work is under way on the following activities, among others: Preparing the document “Care protocol for decompression patients”, which is at the stage of being signed; on labour matters, dialogue has been held on reforms to the health and occupational regulations on underwater fishing, which is at the stage of the implementation of the Ministerial Order issued by the Department of Labour; A programme of grants for the children of divers with disabilities, covering 33 beneficiaries, is currently being implemented; a project to build 98 homes for divers with disabilities is under way: the overall investment is currently being approved through Convivienda; establishing a trust and identifying productive projects that are generating moderate levels of employment: the Kaukira and Kauma fishers' union multiple services enterprise, which directly benefits 53 families.

Report in response to the observations of the Single Confederation of Workers of Honduras (CUTH): “The case of the Tolupan people”. Special report by the inter-institutional technical group on Convention No. 169 and free, prior and informed consultation. There is a Government version of the initial draft Bill on prior, free and informed consultation, which has been revised and approved by the Ministry of Labour. It will be submitted for consultation to all indigenous and Afro-Honduran peoples and their organizations, with support from the ILO as an observer, and technical and financial assistance from the UNDP ProDerecho project. The first part of the timetable is:

Date	Place	Indigenous or Afro-Honduran people
27 and 28 May	Catacamas	Pech
30 and 31 May	Juticalpa	Nahua
6 and 7 June	Santa Rosa de Copan	Maya, Chortí

Urgent review of concessions granted without free, prior and informed consultation. In March 1994, the First Regulations of the National System of Environmental Impact Assessment (SINEIA) were issued. These have been supplemented several times. SINEIA 2009 (Decision No.189-2009) officially establishes the consultation mechanism for environmental licensing processes, in which there was no opposition to the establishment of the requirement from the beginning of publication, both in writing and over the radio, with a view to making the development of a project public knowledge. In summary, consultations have been held in accordance with environmental law and the specifics of each project that may be granted a concession as part of these processes.

Urgent revision of concessions granted following free informed prior consultation which are causing damage. In this regard, every registered project file concludes with a decision of acceptance or rejection. If it is viable, the environmental control measures are determined, which have to be implemented by the project proposers or concession holders. In the event of non-compliance, financial admin-

istrative penalties exist, ranging from loss of the concession to temporary or permanent closure, depending on the degree of non-compliance.

Compensation for environmental damage, and investigation and penalization of those responsible. MIAMBIENTE has various mechanisms, such as the environmental complaint procedure, the “secure complaints mailbox”, the Line 130 “Your voice counts”, the Inter-institutional Environmental Task Force (FTIA), the Transparency Office, the Complaints System of the Prosecutor’s Office, and the online file consultation procedure (SICU), through which any individuals who feel that they have been affected can have access to the institution to assert their constitutional right of petition and report the relevant facts.

Information on the 18 Tolupan members of San Francisco de Locomapa and their families. On 19 December 2013, by Decision No. 12/2013, the Inter-American Court of Human Rights (IACHR) ordered precautionary measures MC 416-13 for 18 members of the “Dignity and Justice” Movement of the Locomapa Indigenous Community and their families, a total of 38 persons, who were victims of threats to their lives in relation to the murder of Ricardo Soto Medina, Armando Funes Medina and María Enriqueta Medina, members of the Tolupan indigenous community on 25 August 2013 in San Francisco de Locomapa. On 30 August 2013, the court of the city of Yoro, in case 90-2013-7D, issued a warrant for the arrest of Selin Eliazar Fúnez Bonilla and Carlos Roberto Varela Luque for the murder of these indigenous persons. On 22 February 2014, the precautionary measures ordered by the IACHR were implemented with a view to ensuring the return to their communities of the persons who had left their homes on account of the alleged threats. In this connection, a committee was formed composed of a number of state bodies, including the Office of the Attorney General of the Republic, the Office of the Public Prosecutor and of the Special Prosecutor for Ethnic Issues, the Secretariat of Human Rights, Justice, Internal Affairs and Decentralization, and the Secretariat of Security through the Department of Human Rights.

General report on the death of environmental leader Berta Cáceres. Background. Prior to this deplorable act, in February 2014, a request was submitted to open a Permanent Office of the United Nations High Commissioner of Human Rights in Honduras, with a view to contributing to improving the human rights situation in the country. The agreement regarding the opening was formalized on 4 May 2015, as a result of which the appointment of the country representative is now pending. Berta Cáceres Flores was a leader of the Lenca indigenous community, one of the largest ethnic groups in the country. In 1993, she co-founded the Civic Council of Peoples’ and Indigenous Organizations of Honduras (COPINH) to combat the privatization of rivers and the hydro-electric dam projects with foreign investment. In 2015, she was the winner of the prestigious Goldman Environmental Prize. On 3 March, she was murdered in her home, having previously received various threats.

Murder of the environmental leader. This appalling murder was committed at the leader’s home in the El Libano residential area, which has its own security system. However, according to the Secretariat of Security, this was a

different address from that agreed as the location for Cáceres to receive protection, which was originally in the El Calvario district. The investigation found that in the early hours of the morning a vehicle had parked opposite the residence where the crime was committed and sped away several minutes later.

Investigation. The President of the Republic, Juan Orlando Hernández, has stated emphatically that the murder of Berta Cáceres, a leader who had distinguished herself at the national and international levels and had fought courageously for Honduras, constituted a direct crime against Honduras and a major blow to the Honduran people. All of the Honduran security forces took action as soon as the murder became known. The national police, the teams of the Director of Intelligence and Investigations, the Public Prosecutor’s Office, the Technical Agency for Criminal Investigation and the Director of Police Investigations are all engaged in identifying the perpetrators and bringing them to justice. The investigation is under way and will be reinforced as much as necessary. The President of the Republic has instructed the Secretariat for Security to put the Violent Crimes Unit onto the case and to work in coordination with it, possibly with the support of other countries that wish to help it identify the perpetrators and bring them to justice. The Special Investigator for Ethnic Affairs is leading the process of taking statements and conducting its own investigation. A team of experts from the United States has joined the investigation. On 6 March, on behalf of the State of Honduras, the President of the Republic requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to support the entire investigation into Berta Cáceres death. An affirmative reply was received from the OHCHR on 11 March, with an undertaking to provide technical advice in accordance with its methodology and mandate.

Results. On 2 May, the Public Prosecutor’s Office apprehended five suspects in this abominable crime, including its intellectual and material instigators, who by court ruling have been placed in preventive custody in the National Penitentiary. Judging from the scientific evidence compiled so far, it is likely that the remaining suspects and instigators will be definitively identified and detained and that the circumstances surrounding this horrendous crime will be clarified.

Conclusions. In addition to opening a Permanent Office of the OHCHR in Honduras, the Government has demonstrated its commitment to human rights through its promotion of the National Human Rights Policy and Plan of Action, which in recent years it has pursued with dedication as a matter of priority. In addition, it has opened its doors to systematic monitoring of human rights in the country by inter-American and universal bodies. The Universal Periodic Review (UPR) second cycle in 2015 and the adoption of its recommendations is further evidence of the commitment of Honduras in this area. The ILO and both national and international public opinion are being kept informed of developments in the investigation, which the competent courts have declared to be of a confidential nature.

In addition, before the Committee, a **Government representative** drew the attention of the Committee to the information provided in the written statement.

The Employer members emphasized that the Committee was examining for the first time the application by Honduras of this Convention, which it had ratified in 1995. Moreover, there had not been to date, registered any representations under article 24 of the ILO Constitution. They said that over the 20 years that the Convention had been in force, the Government had not been able to implement the necessary regulations on prior consultation, which was at the heart of the Convention. They noted with concern that certain government officials and indigenous leaders considered that prior consultation had a binding effect and that it bestowed a right of veto. This interpretation had led to the use in elections of community decision-making mechanisms contained in municipal laws allowing for decisions to be taken at this level. They affirmed that the concepts and mechanisms previously referred to were diametrically opposed to the spirit and letter of consultation within the meaning of Article 6 of the Convention, namely through appropriate procedures, and in particular through the representative institutions of the indigenous peoples, in good faith and in a form appropriate to the circumstances. Prior consultation therefore consisted of an exercise of dialogue carried out with the aim of reaching agreements on those issues which were likely to directly affect indigenous peoples. They said that the absence of legislation which adequately set out the form of the consultation process on the basis of the above points, resulted in errors, as previously indicated, generated a lack of certainty, acted as a disincentive to productive investments, and caused the arbitrary failure to grant mining permits across the country. National legislation should place particular importance on implementing Article 15 of the Convention, which regulated the right of indigenous peoples to the existing natural resources and their participation in their use, management and conservation. In Honduras, both the subsoil and the water, and to a certain extent the forest resources, were by law the property of the State. Thus, and in conformity with the above provision, indigenous peoples should receive fair compensation for any damages which they might sustain as a result of such activities. On that basis, the Employer members considered it imperative that the Government, in consultation with the social partners, should in good faith regulate consultations to be held in conformity with the Convention.

The Employer members said that they had been informed by the employers' organization of Honduras of the hiring of a greater number of labour inspectors in the coffee growing and Misquito regions in the country with a view to ensuring better working conditions for workers covered by the Convention. With regard to Misquito divers, who worked in the informal economy and lacked minimum occupational safety conditions, the Employer members emphasized the need to develop vocational training programmes and occupational safety and health programmes, and to consider establishing health centres in the region. They also indicated that they had been informed of recent reforms to the social security system, the first level of which was being made universal, which would enable coverage of the entire Honduran population, including indigenous peoples. They commended the granting of titles to lands between 2012 and 2015 for the benefit of the Lenca, Chortí, Misquito and Garífuna peoples, as well as the inter-community land title process for the Misquito people.

Finally, they raised questions concerning the request by the Committee of Experts to the Government in relation to Article 15 of the Convention. Referring to the difficulties caused by similar statements in the 2009 report of the Committee of Experts, they were of the view that it was not within the mandate of the Committee of Experts to request information on the manner in which consultations were held prior to undertaking or authorizing any programme for the exploration or exploitation of existing resources.

The Worker members emphasized that, since the 2009 military coup d'état in Honduras, death threats, murders and the systematic persecution of human rights defenders and trade unions had become widespread. After her visit to the country in November 2015, the United Nations Special Rapporteur on the rights of indigenous peoples had expressed her deep concern "about the general environment of violence and impunity affecting many indigenous communities". Observing that a fundamental problem faced by indigenous peoples was the lack of full recognition, protection and enjoyment of their rights to their ancestral lands, territories and natural resources, the Special Rapporteur had stated that "[e]ven in cases when indigenous peoples have titled lands, these are threatened by competing and overlapping titles to third parties, natural resource development projects in the extractive and the energy sectors, charter cities, tourism projects and protected areas". The Worker members expressed regret at the murder of Berta Cáceres, an environmental activist and indigenous leader of international renown, recognized for her struggle to defend the Lenca people against the Agua Zarca hydroelectric dam project, funded by the Council of Indigenous and Popular Organizations of Honduras (COPINH). Noting that three other COPINH activists had also been murdered, they recalled that the Inter-American Commission on Human Rights had asked the Honduran State to guarantee protection for Berta Cáceres, as well as the safety of other members of COPINH who had received numerous documented threats. Similarly, they reaffirmed that the attacks on the Lenca people were part of a pattern of generalized violence directed against many other indigenous peoples in the country. In recent decades, the accelerated process of expanding palm oil plantations had had profound social and environmental repercussions for the rural Afro-Honduran population, as well as for the indigenous Garífuna people, who represented the largest ethnic minority in Honduras, with many disputes arising as a result. They recalled, for example, that in August 2015 a police contingent had invaded the territory of the Garífuna community in Nueva Armenia, arresting 40 people and bringing legal action against some 80 members of the indigenous community for "land seizure". According to witnesses present, palm oil producers had burned down 11 homes. Some months later, a group from the same community had been the victim of an armed attack by unknown perpetrators. In addition, in May 2015, Garífuna leader Jessica García had been the victim of an attempted kidnap. In December 2015, the Inter-American Court of Human Rights had found Honduras responsible for violations of the right to consultation in respect of Garífuna communities in two cases. The Worker members regretted that large-scale mining projects had become a considerable threat to the full exercise of the rights enshrined in the Convention. In 2003, the entry into force of the General Mining Act had lifted a moratorium of seven

years on any new mining projects in response to the pressure of public opinion, completely marginalizing indigenous peoples. More than 20 sections of the General Mining Act violated the laws and Constitution of Honduras, as well as various treaties ratified by the Honduran State, including the Convention. For example, only the communities affected needed to be consulted before an extraction licence could be granted, which ran counter to the constitutional principles of popular sovereignty, self-determination of peoples and participatory democracy. This also undermined the indigenous rights enshrined in the Convention and in the United Nations Declaration on the Rights of Indigenous Peoples, including the right to free, prior and informed consultation, the right to oppose unwanted projects and the right to organize through their own representative bodies. Moreover, under the Mining Act, prior consultation of all communities concerned within the entire area affected by a project was not required. Furthermore, the Act imposed restrictions on public participation and contradicted provisions on environmental conservation by prohibiting the creation of zones free of mining exploitation for a specific period. They expressed profound regret that, despite repeated calls, recommendations and rulings from the Inter-American system and United Nations bodies, including the ILO, the Government had not demonstrated its commitment to dealing with issues affecting the country's indigenous peoples. They supported the request by the Committee of Experts for information to be provided concerning a range of pertinent issues and urged the Conference Committee to make specific recommendations regarding the application of the Convention, including specific protection mechanisms for those defending the rights of indigenous peoples and the peoples themselves.

The Employer member of Honduras recalled that the COHEP had indicated in its observations accompanying the report on the application of the Convention that, for the National Congress of Honduras to adopt any legal instrument, the participation of the social partners, and particularly that of employers, would be necessary. Furthermore, the concept of "free and informed prior consultation" had been misinterpreted in cases where it had been considered to include the right of veto or to be binding on the administrative or judicial authorities in their decision-making. On the other hand, he recalled that, in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), employers had to be included in the legislative consultation process and that it was necessary to ensure that procedures were appropriate, public, transparent and initiated by the State, and that all the relevant actors participated. Dialogue and public consultation processes currently took the form of open consultations in the municipalities, but there was no law governing the procedure across the whole country, which created legal uncertainty and insecurity concerning state and municipal property, on the one hand, and private property, on the other. He welcomed and praised the Government for the land titles it had issued to indigenous, Afro-Honduran and Ladino peoples, as well as to other people across the country, through the Property Institute and the National Agrarian Institute.

Concerning the observation of the Committee of Experts on the application of Article 15 of the Convention, he recognized the need to define in advance the procedure in law.

As few mining companies had arrived in the country, small-scale mines had proliferated. The application of the General Mining Act currently in force was rigorous and costly. Licences were not always granted, and even with a licence some uncertainty remained because public officials did not always respect deadlines and conditions once contracts had been signed. Emphasizing that the consultations held on the Convention were not pro forma, he reiterated that they did not imply a right to veto and that the obligation to guarantee adequate consultations lay clearly and explicitly with governments, and not with individuals or private enterprises. With respect to the application of Articles 20, 24 and 25 of the Convention, the Government had approved and brought into force on 4 September 2015 a social protection framework law which provided for universal coverage for all citizens. This would be reflected in the new Social Security Act and the National Health System Act, both of which were currently being examined by the Economic and Social Council (CES), a tripartite dialogue body. Recognizing the need for the Convention to be applied correctly and for ILO technical cooperation for this purpose, he called for the adoption of a law on prior consultation which set out clear and transparent procedures, to be followed in good faith, taking into account the specific conditions of the country.

The Worker member of Honduras said that no proper measures had been adopted since 1995 to ensure the effective application of the Convention. He denounced the fact that lack of protection and respect for the rights of indigenous peoples had given rise to countless socio-environmental disputes, many evictions from land and the persecution and murder of indigenous leaders. The development policy of the State of Honduras prioritized investment in the extractive and hydroelectric industries at the expense of violations of the rights of indigenous peoples, the destruction of the environment, the violation of human rights and the persecution and criminalization of indigenous leaders. There were many cases that demonstrated the systematic violation of the rights of indigenous peoples and the lack of application of the Convention. He referred to the process that led to the adoption of the Property Act in 2004, in the absence of appropriate consultation of the indigenous and Afro-Honduran peoples. That Act allowed the cancellation of community titles issued by the State of Honduras and had been used to split up community territories. He referred to the rulings of the Inter-American Court of Human Rights in the cases *Garífuna community of Triunfo de la Cruz and its members v. Honduras* and *Punta Piedra Garífuna community and its members v. Honduras*, in which the State had been found guilty. Furthermore, the report of the United Nations Special Rapporteur on the rights of indigenous peoples highlighted the critical situation of the indigenous peoples of Honduras in unequivocal terms. He observed that some cases had not even been of public knowledge, such as the approval of the Masca hydroelectric dam without consultation, the disregard of the consultation held with the Garífuna community concerning the Property Act, the declaration of the Cayos Cochinos as a protected area without consultation, the construction of the Patuca III hydroelectric dam without consultation and the preliminary draft of the law on consultation which had deliberately excluded representative indigenous organizations.

Regarding the alarming and generalized situation of persecution and criminalization of defenders of the indigenous peoples, he said that the murder of Ms Berta Cáceres was a landmark case. Ms Cáceres had been persecuted and prosecuted, and had received death threats on many occasions. At the time of her death, she benefited from protective measures which had been requested by the Inter-American Commission on Human Rights. The situation of Ms Cáceres, as well as the violations of the human rights of 13 Tolupan tribes and other Garífuna and Lenca communities, had already been brought to the attention of the ILO in 2015. He profoundly regretted the deaths of María Enriqueta Matute and of Nelson García, Armando Fúnez Medina, Ricardo Soto Fúnez, Luis Reyes Marcía and Erasmo Vieda Ponce, leaders and members of indigenous communities. He observed that over the past ten years at least 111 environmental activists had been murdered for defending indigenous and Garífuna communities. In his view, the level of corruption and ineffectiveness of the justice system made it impossible to guarantee the protection of human rights activists. He expressed the hope that the Conference Committee would reach conclusions that would enable the Government to adopt measures urgently to put an end to the grave situation of widespread violation and impunity (including the establishment of specific protection mechanisms for the defenders of indigenous peoples' rights) and to ensure complete observance of the Convention, with the full participation of the most representative employers' and workers' organizations. In conclusion, he called for an ILO mission to visit Honduras with a view to monitoring and verifying compliance with the relevant agreements.

The Government member of Mexico, speaking on behalf of the group of Latin American and Caribbean (GRULAC) countries, thanked the Government for its report on Convention No. 169. He regretted the violent death of the environmentalist leader Berta Cáceres and urged the Government to continue its efforts to solve the crime. He also noted with interest the report on the investigation into the facts and recognized the progress made, which had not been reflected in the report of the Committee of Experts. He noted with interest the efforts made to adopt a consultation procedure rapidly, as well as the Bill on which consensus was already being sought with organizations of indigenous peoples, private enterprises and workers. He recognized the Government's efforts for the distribution of land ownership, the application of the Mining Act, the protection of the Misquito people and social security for indigenous peoples.

The Government member of Panama said that his country endorsed the statement made by GRULAC and the report submitted by the Government of Honduras. He noted the efforts made and commended the drafting of a bill, which was in the process of being agreed to with indigenous organizations, employers and workers. He congratulated the Government on granting title for over 1 million hectares of land, benefiting 9,459 families and 175 communities. He also congratulated the Government on keeping the channels of consultation open, including the Inter-institutional Commission to Address and Prevent the Problem of Diverging (CIAPEB). As pro tempore chair of the Council of Ministers for Central America and the Dominican Republic, he reiterated his Government's concern at the inclusion

of Honduras, Guatemala and El Salvador in the list of individual cases. He considered that objective and transparent selection criteria were lacking that would allow the reasons for their inclusion to be identified, especially when the regional distribution revealed an imbalance in comparison with individual cases from other regions.

The Worker member of Colombia noted that the obligation of prior consultation was not effectively applied in Honduras, and that there was no direct connection between environmental licences issued and the prior consultations held. In Latin America, disputes concerning the exploitation of natural resources on indigenous land were becoming ever more frequent. States granted extraction companies concessions to operate on land belonging to indigenous peoples without taking into consideration the manner in which such activities affected those peoples' way of life. Countries such as Honduras claimed that investments in mining and oil, for instance, contributed to national development, yet indigenous peoples rarely saw the benefits. In the case of Honduras, there were at least three characteristics that the Committee should not overlook: (i) the binding nature of Convention No. 169 was being challenged; (ii) laws on prior consultation were being drafted without true participation by indigenous communities; and (iii) the human rights of environmental leaders were constantly being violated. He expressed deep concern regarding the death of indigenous leader Berta Cáceres and the constant persecution and deaths of human rights leaders in Honduras. He urged the Government to comply with the Convention and protect the lives and physical integrity of indigenous leaders.

The Worker member of Uruguay expressed solidarity with the Honduran people in the light of the grave accusations made. He condemned the murder of Berta Cáceres and recalled that one of her great struggles had been defending Lenca territory through respect for the consultations envisaged in Convention No. 169 and the application of the Convention. He emphasized that prior consultation meant taking the opinions of civil society organizations into account. He added that extraction policies and so-called "charter cities" had been imposed in Honduras without consultation and in the most deregulated manner. He referred to reports of corruption in the police and armed forces, the murder of more than 100 social campaigners in recent years, the fact that some neighbourhoods and towns were in a state of utter abandon and the constant criminalization and persecution of union leaders.

The Government member of Norway noted that there seemed to be uncertainty concerning appropriate procedures for the consultation and participation required by the Convention. Therefore, recalling that Norway had been the first country to ratify Convention No. 169, he shared some of the experiences of his country, in particular the establishment in 1989 of the Sami Parliament as the representative political body of the Sami people, the indigenous people of Norway. He said that the Government and the Sami Parliament had agreed on procedures on how to carry out consultations in accordance with the Convention and that the Government had issued procedures for consultations by state authorities with the Sami Parliament, which were framed within the context of Norway's obligations under the Convention and respected indigenous peoples' substan-

tial rights, including the right to land. Explaining that consultation was conceptualized as a continuous process through the establishment of regular and institutionalized dialogue mechanisms between the State and the Sami Parliament on various issues that might affect Sami interests, including competing use of land and land rights, he said that such an approach gradually built up trust and fostered collaborative relations. While acknowledging that agreement between the Sami Parliament and the Government was not always reached, he emphasized that the consultation mechanism enabled the Sami Parliament to strengthen its position as a representative and competent voice of the Sami people and ensured that decision-makers were well acquainted with the views of the Sami Parliament. He expressed the hope that the experience of Norway would inspire other countries to ratify and implement Convention No. 169.

The Worker member of the Bolivarian Republic of Venezuela considered that the application of the Convention should not be limited to certain articles that suited the convenience of national and transnational private enterprises with the support of the Honduran Government. Consultation could not be ignored as a mechanism to enable indigenous peoples to take decisions concerning the land pertaining to them, and their use. The COHEP was endeavouring, with the support of the Government, to establish a law that flew in the face of the Universal Declaration on the Rights of Indigenous and Tribal Peoples and dismissed Convention No. 169, with the objective being to take ownership of appropriating the resources in the 1,032,793.18 hectares belonging to the Lenca, Chortí, Misquito and Garífuna people. In addition, he condemned the persecution, torture, disappearance and murder of indigenous and social leaders, such as Berta Cáceres. He requested the Committee to send an ILO mission to monitor the implementation of the Convention.

The Worker member of the United States explained that, as part of a delegation of the Trade Union Confederation of the Americas visiting Honduras shortly after the assassination of Berta Cáceres, he had witnessed the lack of will on the part of the Government to build trust and dialogue with indigenous communities. In violation of Honduran law, the Office of the Public Prosecutor had even ignored over a dozen legal filings by victims and their families. Since the 2009 coup d'état, the level of violence, corruption and distrust had prevented the consultation and consensus-building required by the Convention, which should include participation in the formulation, implementation and evaluation of plans and programmes affecting the communities. There was however consensus on the urgent need for a law to apply the Convention, and two bills were currently before Congress. They provided an opportunity for the Government to begin constructing peace and reducing conflict. The ILO could assist in the process to ensure that it was in conformity with their requirement for consensus and respect for indigenous communities, in accordance with the Convention.

The Employer member of Chile reiterated the call made by the COHEP for the Honduran Government to introduce prior consultation with indigenous peoples and social actors and establish a legal framework to govern consultation with indigenous peoples, as provided for in the Conven-

tion. He believed that this would contribute to the recognition of the rights and obligations of all the parties involved in the application of the Convention, which would have positive consequences for the sustainability and legal security of investment projects. He recalled that any regulations must categorically establish that the obligation to hold consultations with indigenous peoples lay with the State, clearly providing that consultations must be held in good faith, with proper information and with the objective of reaching agreement, but without the result of the consultations being binding. He observed that the Convention should be a tool for social dialogue with indigenous peoples, and it was necessary to reset the temptation to use it for purposes other than those for which it was intended. He expressed concern at the request by the Committee of Experts for information on consultations held prior to the implementation or authorization of programmes involving the exploration or exploitation of resources pertaining to the lands of indigenous peoples, which exceeded its mandate. He recalled the difficulties that had arisen when the 2009 report of the Committee of Experts had been published. Lastly, he recalled that it was necessary to advance through dialogue towards giving effect to the Convention, which would constitute the best guarantee of its provisions being interpreted and applied in a balanced manner.

The Worker member of Spain said that the Government was seriously and systematically failing to comply with the Convention. Indigenous communities were regularly subjected to exploitation, repression, lack of access to justice and the occupation of their land without their free consent. Their representatives were victims of threats, violence, criminalization and murder. Since the military coup in 2009, the situation had become more widespread and had only deteriorated. At the same time, greater protection was being given to the interests of transnational enterprises that promoted hydroelectric, mining, forestry and agricultural projects, despite the fact that they did not respect the legitimate interests of indigenous peoples. The case of the murder of Berta Cáceres, an internationally recognized defender of human rights and the environment and an indigenous leader, was symptomatic. She had been murdered in March 2016 after fighting for many years against the construction of the Agua Zarca dam in the Gualcarque River. Those responsible for her murder remained unpunished, as did those responsible for the murders of other indigenous leaders. The case of the Agua Zarca dam was a clear example of the persecution and criminalization of pro-indigenous activism and the manner in which indigenous peoples were not consulted on projects that affected their land. It was necessary to eliminate privilege, favourable treatment, non-transparency and restrictions on democracy in order to prevent, investigate, prosecute and punish those responsible for human rights violations. She urged the Committee to help ensure that Honduras gave immediate effect to the Convention.

The Government member of the Dominican Republic endorsed the statements of GRULAC, the Council of Ministers of Central America and the Dominican Republic. She expressed support for the report provided by the Government on the Convention. She recognized the efforts that the Government was making to guarantee protection for fundamental rights at work and social security for indigenous peoples. She expressed regret at the death of environmental

leader Berta Cáceres and urged the Government to continue its efforts to guarantee respect for international labour standards. She called on the Government, workers, employers and indigenous peoples to join forces for this purpose.

The Government member of El Salvador supported the statement of GRULAC and expressed appreciation of the report presented by the Government on the Convention. She welcomed the information provided, which demonstrated the Government's will to establish in the near future an appropriate consultation procedure, as shown by the Bill, on which a process of consultation had commenced with indigenous peoples organizations, private enterprise and workers. She noted with appreciation the indication by the Government that it would continue its efforts towards compliance for the clarification and granting of land title, the application of the Mining Act, the protection of the Misquito people and the provision of social security for indigenous peoples.

The Government representative referred to the progress that had been reported to the Committee of Experts. He also referred to the creation of a trust for productive projects, the development of a protocol for the treatment of divers suffering from the effects of decompression and the dialogue on reforms to the regulations on occupational safety and health in dive-fishing. He recalled that a Bill on free informed prior consultation was before each of the indigenous and Afro-Honduran peoples for consultation, and that employers and workers would then be consulted. He requested ILO technical assistance for that purpose. He reiterated that his Government condemned the murder of Berta Cáceres and he expressed condolences to her family and the Honduran people. He emphasized that acts of violence were not and would not be tolerated, in particular against human rights defenders. He recalled that judicial officials had reacted swiftly and decisively in the case of Berta Cáceres, instigating the detention and prosecution of the alleged perpetrators. He noted that the State of Honduras had demonstrated its commitment to human rights protection by adopting the national human rights policy and action plan and requesting the Office of the United Nations High Commissioner for Human Rights to open a country office. He also noted the successful social dialogue on, for example, the Labour Inspection Convention, 1947 (No. 81), and he invited employers' and workers' organizations to discuss an action plan for the application of the Convention in the Economic and Social Council.

The Worker members said that Honduras was living under the constant threat of death. Social and union leaders were murdered and persecuted, and the situation was worse for indigenous peoples. There was a situation of violence perpetrated by the State and by individuals protected by the police, with no guarantees for the rights or the lives of victims, or their families. Private enterprises threatened the lands of indigenous peoples, and their very survival through exclusion and isolation. The Government was also complicit in seizure processes, in which indigenous peoples were denounced as seizing their own lands. Various sectors, including the palm oil industry, infrastructure construction, mining projects and individual producers, enjoyed impunity in Honduras when trampling underfoot the rights of indigenous communities. In their view, the Committee should urge the Government to take the following

measures: (i) with respect to violence against indigenous peoples, guarantee the immediate launch of independent judicial investigations to identify and punish those responsible, including an independent investigation into the murder of Berta Cáceres by a group of experts under the authority of the Inter-American Commission on Human Rights; (ii) effectively apply the right to consultation, ensuring full and effective participation by all indigenous peoples, taking into account the indication by ILO bodies that a mere information meeting in which indigenous peoples were heard, without the opportunity to influence decision-making, did not comply with the provisions of the Convention; (iii) review all the concessions granted on indigenous territory without the prior consent of the communities affected, including for hydroelectric dams, mining operations, agribusiness and forestry megaprojects; and (iv) with technical assistance from the ILO, carry out a review of the General Mining Act with a view to making the necessary amendments to bring it into line with the Convention. Finally, they called on the Committee to consider the possibility of sending a direct contacts mission to the country.

The Employer members thanked the Government for the information provided. They considered it necessary to require the Government to take the following steps as a matter of urgency: (i) in consultation with the social actors and interested peoples, legislate the right to consultation set out in Convention No. 169; (ii) report on progress in the process of granting land title to indigenous peoples, giving details of the geographic areas allocated; and (iii) report on the programme for recruiting more labour inspectors in the coffee and Misquito zones and the results obtained in terms of improving working conditions for indigenous peoples in such zones.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee expressed concern at the lack of progress on the necessary regulatory framework for prior consultation.

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

- ensure the implementation of the Convention in a climate of dialogue and understanding, free from violence;
- regulate, without delay, in consultation with the social partners and in accordance with Article 6 of Convention No. 169, on the requirement to consult indigenous peoples, so that such consultations are held in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures. To this end, the Government can avail itself of technical assistance from the ILO;
- inform the Committee of Experts at its next session on the progress made in the implementation of the Convention in law and practice, including the General Mining Act.

The Government representative took note of the Committee's conclusions and recommendations and said that they would be transmitted to the highest authorities so that they could be implemented as soon as possible.

Worst Forms of Child Labour Convention, 1999 (No. 182)

MADAGASCAR (ratification: 2001)

The Government provided the following written information:

National Action Plan to Combat Child Labour (NAP)

Formulation of a National Action Plan. Madagascar began actively campaigning against child labour as early as 1997, when it conducted its first studies on the subject. In 2000, Madagascar ratified the ILO Minimum Age Convention, 1973 (No. 138), which sets the minimum working age at 15, and in 2001 the Worst Forms of Child Labour Convention, 1999 (No. 182). Having ratified these two fundamental Conventions on child labour, the country was then able to formulate the NAP which it validated in 2004.

Broad lines of the NAP. The NAP is a framework reference document for all activities aimed at combatting child labour in Madagascar. It is a 15 year national action plan (2004–19) that focuses on the worst forms of child labour. Madagascar is one of the very few African countries to have adopted such a plan. The implementation of the NAP is in three phases: launching and implementation (2004–09), during which a framework of laws and regulations is formulated and strengthened at all levels; extension (2009–14), during which the measures taken are broadened both in terms of target population and target areas; and consolidation (2014–19), during which children are effectively removed from the worst forms of child labour in accordance with the objectives. The NAP lists the four worst forms of child labour as: domestic work by children; the commercial sexual exploitation of children; work in mines and quarries; and dangerous and unhealthy work in urban or rural areas.

Objectives of the NAP

The objectives of the NAP are to: prevent the engagement of children in the worst forms of child labour; the removal of children from such work and their reinsertion in society; the protection of all working children under the minimum age for admission to employment from exploitation and dangerous work. The objective is to reduce significantly the incidence of child labour by 30 per cent by the end of the first phase, to 5 per cent by the end of the second phase, and to under 1 per cent by the end of the third phase of the programme.

Strategic areas of the NAP

Strategic area No. 1: creation of an institutional framework and capacity building; development of coordination and follow-up structures; promotion of external relations in order to foster synergy with other programmes; long-term follow-up of working children and child labour; and strengthening the capacity of ministerial personnel, NGOs and civil society partners.

Strategic area No. 2: improvement of the legal and regulatory framework; harmonization of laws and regulations (Penal Code, Labour Code and other official texts) so as to bring them into line with ILO Conventions Nos 138 and 182 ratified by Madagascar; publication and dissemination of the laws and regulations governing child labour;

establishment of appropriate machinery and methods of intervention; strengthening of supervisory bodies and the capacity of personnel; and implementation of sanctions.

Strategic area No. 3: improvement of the living conditions and income of parents at risk and of their families; increasing productivity in the urban and rural informal sectors so as to reduce the economic vulnerability of families whose children are liable to be employed in the worst forms of child labour; promoting village agreements prohibiting hazardous and unhealthy work in urban and rural areas; and extending social protection to the rural population.

Strategic area No. 4: improvement, reinforcement and promotion of children's access to quality education; promoting and improving access to education; improving and broadening access to vocational training; and promoting the access of children engaged in the worst forms of child labour to a transitional and non-formal system of education (reinsertion, rehabilitation).

Strategic area No. 5: strengthening and improvement of public awareness and social mobilization; ensuring the commitment of the public at large; securing the involvement of decision-makers, public opinion leaders, judicial and military authorities and civil society organizations; and promoting public awareness of the legislation.

Sexual exploitation of children

Strategic area No. 1: reinforcement, improvement and application of preventive and protective measures to combat the sexual exploitation of children; implementation of laws and regulations on children's rights (specifically, provisions relating to their sexual exploitation) and the application of provisions dealing with communication and the dissemination of information; ensuring that the expectations and needs of children are duly taken into account; and securing the support of all the parties concerned.

Strategic area No. 2: identification and implementation of measures designed to protect sexually exploited children and favour their reinsertion in society; promoting appropriate health measures and advisory services; and organizing vocational training.

Domestic work

Strategic area No. 1: improvement, strengthening and application of prevention and protection measures for domestic work; enforcement of laws and regulations on the right of the child, particularly texts on domestic work.

Strategic area No. 2: consideration and application of rehabilitation measures for child victims of domestic work; organization of occupational training.

Unhealthy work in rural and urban areas

Strategic area No. 1: improvement, strengthening and application of prevention and protection measures against unhealthy work; enforcement of laws and regulations on the rights of the child, particularly texts on unhealthy work in rural and urban areas.

Strategic area No. 2: consideration and application of protection and rehabilitation measures for child victims of unhealthy work in rural and urban areas: identifying and applying appropriate social protection measures; and increasing access to occupational training.

Work in quarries and mines

Strategic area No. 1: improvement, strengthening and application of prevention and protection measures against work in quarries and mines; enforcement of laws and regulations on the rights of the child, particularly texts on work in quarries and mines; and providing protection measures.

Partners and financing

Financing is obtained from funds for social action within the framework of the Public Investment Programme; ILO International Programme on the Elimination of Child Labour (IPEC); UNICEF; external funds with budget lines for social action; and the various centralized and decentralized structures.

Follow-up and monitoring

Follow-up focuses on the use of inputs; delivery of output and activities; and achievement of the aims of the project. *Monitoring* includes three mid-term evaluations conducted every 18 months of each phase; a biennial national evaluation workshop organized by the National Committee to Combat Child Labour; and a final evaluation focusing on the relevance of the aims of the programme.

Awareness raising and social mobilization

Each year, the Government of Madagascar participates in the commemoration of the World Day against Child Labour. Since 2005, public awareness-raising actions have been launched in many regions, through the Ministry of Labour and its partners. Commemorations have been held successively since 2005 in Analamanga, Diana, Haute Matsiatra, Boeny, Atsinanana, Atsimo Andrefana, Alaotra Mangoro, Vakinankaratra, Maevatanana and recently in Sakaraha. Local authorities, religious leaders, members of the National Committee to Combat Child Labour and the regional committees to combat child labour are all involved in awareness-raising actions related to the World Day against Child Labour. The awareness-raising programmes focus on a particular aspect of child labour or on an alternative to the problem. They target the general public and the authorities and deal essentially with the dangers and risks faced by children. Awareness is raised mainly through audiovisual messages, posters in *fokontanies* (village districts) and popular neighbourhoods, dialogue with parents, local authorities and community leaders, and mobilization of schools through various competitions and cultural events.

Campaigns

- 2005: child labour in quarries and mines; a national commemoration in Analamanga.
- 2006: no to the commercial sexual exploitation of children; a national commemoration in the Diana region; other commemoration sites were Antsiranana, Ambilobe, Ambanja, Nosy Be, Mahajanga, Ilakaka, Tuléar, Taolagnaro, Toamasina, Antananarivo and Fianarantsoa.
- 2007: child labour in agriculture; a national commemoration in the Haute Matsiatra region; other campaign areas were Analamanga, Vakinankaratra, Atsinanana, Diana, Atsimo Andrefana and Boeny.

- 2008: education and action to combat against child labour in Atsinanana, Analamanga, Haute Matsiatra, Boeny, Vakinankaratra, Diana, Atsimo Andrefana and Alaotra Mangoro.
- 2009: give girls a chance: abolish child labour in Mahajanga.
- 2010: direct action to abolish child labour in the Atsinanana region.
- 2011: wake up! Children in hazardous work: let's abolish child labour in the Diana region.
- 2012: human rights and social justice: let's abolish child labour in the Vakinankaratra region.
- 2013: no to child domestic labour in Maevatanana.
- 2014: let's abolish child labour by extending social protection; a national commemoration in Sakaraha; other commemoration sites were Sava, Atsimo Andrefana, Amoron'i Mania and Vatovavy Fitovinany.
- 2015: no to child labour, yes to quality education in the Analamanga region.
- 2016: let's abolish child labour in production lines: everyone's business (under preparation); in the Sava region.

Most of the vanilla export enterprises in the Sava region have signed the Code of Conduct on Child Labour in the Vanilla Industry. Twenty-one vanilla grower cooperatives are engaged in combating the employment of children in the industry.

In addition, before the Committee, a **Government representative** indicated, with regard to domestic child labour, that inspections were carried out to ensure compliance with the legislation regulating work by children aged from 15 to 18 years. The Government encouraged the population to report abusive or dangerous cases so that employers could be identified and prosecuted. Mass awareness-raising activities, through the media or otherwise, on the risks of domestic work were carried out for parents, children, religious leaders and members of civil society. They were concentrated in four regions from which children came. Concerning the sexual exploitation of children, joint brigades composed of labour inspection officials, the police responsible for juveniles and morals, carried out checks in at-risk zones, after which local monitoring units raised awareness and provided information to communities. Moreover, awareness-raising activities had been developed on the risks of sex tourism, particularly at sea resorts. With regard to action to combat child labour in mines and quarries, the legislation on the subject had been disseminated, and awareness raising was being undertaken through radio broadcasts and community discussions. Unannounced inspections of mines and quarries had taken place in four regions. For dangerous work in saltworks and agriculture, the Government was working with local governments, concluding partnership agreements with saltworks operators and raising awareness among heads of enterprises so that they would not establish commercial relations with production units that used child labour, particularly in the vanilla, clove, coffee, cocoa, rice and coconut sectors. The measures taken by the Government were also aimed at raising family incomes by creating income-generating activities and at expanding catch-up classes and vocational training. In this field, the areas of intervention were increasing due to the increase in poverty.

Finally, with regard to the enforcement of criminal legislation in the areas of prostitution, human trafficking and sex tourism, various ministries were involved depending on their competence, such as, for example, the Ministry of Labour, through labour inspection, or the Ministry of Internal Security, through the police responsible for juveniles and morals, which centralized complaints and conducted investigations. The Government representative concluded by emphasizing that the Government had taken steps – even if they were insufficient – to bring an end to the worst forms of child labour.

The Employer members commended the Government on having been candid and frank in describing the issues in the country. The worst forms of child labour consisted of children forced to work in mines and quarries and in the agricultural sector (in particular those engaged in picking vanilla), trafficking for sexual exploitation both to foreign countries and the coastal zones of the country (with sex tourism being on the rise), and the situation of street children, who were particularly vulnerable and often had no other option than to engage in begging and waste collection. While a substantive legal framework existed (in particular Decree No. 2007-563 on child labour which prohibited the procuring, use, offering or employment of children of either sex for prostitution, as well as Act No. 2007-038 establishing effective and dissuasive sanctions for the engagement, abduction or deception of a person with a view to their engagement in prostitution, sexual exploitation or sex tourism), these laws had not yet had any significant impact. On the contrary, there had been an increase in sex tourism, child prostitution and trafficking in persons. It was still too soon to assess the impact of Act No. 2014-040 of 20 January 2015 on trafficking in persons, which criminalized all forms of trafficking and provided for imprisonment and fines. However, the main issue with regard to the worst forms of child labour concerned the effective application and implementation of the national legal framework. The number of prosecutions appeared to be low. According to the United States Department of Labor, 187 cases had been investigated, but no information was available on whether these cases had also been prosecuted. All investigations, including those by the joint task forces, had to be followed up by prosecutions to achieve a deterrent effect (through the threat of fines or imprisonment). Moreover, there were only three labour inspectors employed in the Division for the Prevention, Abolition and Monitoring of Child Labour (PACTE), and the situation concerning inspection staff remained difficult due to budgetary cuts. In conclusion, the Employer members reiterated that, while an adequate legal framework was in place, it did not appear to be implemented in practice, and it was questionable whether sufficient measures were taken to address the problems in relation to the worst forms of child labour.

The Worker members referred, with regard to child prostitution, to Decree No. 2007-563, which prohibited the procuring, use, offering or employment of children for the purposes of prostitution, and to the Penal Code, which established effective and dissuasive sanctions. However, according to the United Nations Committee on the Rights of the Child, child prostitution and sex tourism were on the increase in the country. The Christian Confederation of Malagasy Trade Unions (SEKRIMA) reported that 50 per

cent of prostitutes in the capital were minors and were reportedly the victims of assault and sexual violence. Despite capacity building for entities engaged in tourism to combat the commercial sexual exploitation of children, thousands of children were victims of sexual exploitation, and sex tourism involving children was growing. Furthermore, prostitution affected the whole country, particularly urban areas and tourist resorts. The Committee of Experts had noted the lack of information on the number of investigations, prosecutions and convictions, while the Convention required immediate measures to prohibit and eliminate the worst forms of child labour. With regard to children performing work likely to harm their health, safety or morals, according to the observations of the General Confederation of Workers' Unions of Madagascar (CGSTM), children were working in precarious and dangerous conditions in mines and stone quarries. The Special Rapporteur on contemporary forms of slavery had noted that children worked from five to ten hours a day in the transportation of blocks of stone or water. Children between 3 and 7 years of age carried baskets of stones or bricks on their heads, on average 47 hours a week. A survey carried out with the support of the United Nations Development Programme (UNDP) and the ILO had shown that more than 1.5 million children aged between 5 and 17 were engaged in hazardous work, which was prohibited by the Convention. Work in mines and quarries could, moreover, be qualified as a contemporary form of slavery, as in some cases it involved debt bondage.

The Worker members regretted the insufficient nature of the measures taken by the Government. The programmes described were intended to remove 40 children from the worst forms of child labour each year, but the number of street children had increased in recent years and now stood at several thousand. The Convention required not only the prohibition of the worst forms of child labour, but also their elimination, which presupposed significant programme measures to combat the underlying causes of child labour. The Government's attitude went against Article 7 of the Convention, which obliged member States to take effective and time-bound measures to eradicate the sale and trafficking of children for economic and sexual exploitation as soon as possible. In that regard, recalling that child prostitution and hazardous child labour had already been the subject of a direct request in 2005, the Worker members deplored the fact that the Convention had not been applied in practice for ten years. The Convention did not provide for any exceptions, in view of the fact that certain forms of child labour were so intolerable that no derogation could be permitted. That justified the decision of the Committee of Experts to request the Government to provide information to the Conference Committee.

The Worker member of Madagascar, speaking on behalf of all Malagasy trade unions, supported the findings of the Committee of Experts and expressed the hope that it would help the country to bring an end to child labour and protect children's rights. The use of children in hazardous sectors, such as mines, domestic work and prostitution, led to their physical, psycho-social, cultural and spiritual destruction. In practice, shortcomings remained in the implementation of legislation and functioning of the labour inspection services. For example, while Decree No. 2007-563 provided for dissuasive sanctions for procuring or offering a child

for prostitution, the number of investigations and prosecutions was low. This was despite the fact that the number of children in prostitution and sex tourism was increasing, particularly in central urban areas, and affected young girls of barely 12 years of age. The situation needed to be addressed as a matter of urgency to protect these young girls at risk and remedy the harm caused by these indecent forms of child labour. In fact, 10 per cent of Malagasy children were victims of forced sexual exploitation. Some 40 per cent of girls were victims of abuse or forced sexual exploitation and 80 per cent of those did not report to the authorities because they feared retaliation. With regard to children engaged in hazardous work in mines or quarries, a high rate of accidents had been noted due partly to the absence of monitoring by the labour inspectorate. She called on the ILO to continue to support the Government of Madagascar to improve its legislative framework, strengthen enforcement, particularly through labour inspection, and ensure provision of free compulsory education for all children.

The Government member of the Netherlands, speaking on behalf of the European Union (EU) and its Member States, as well the former Yugoslav Republic of Macedonia, Norway and the Republic of Moldova, recalled the cooperation between Madagascar and the EU in respect of the abolition of the worst forms of child labour. The high rate of child labour in the country was a matter of deep concern, with one fourth of children between 5 and 17 being affected by this phenomenon, and half a million children affected by contemporary forms of slavery. It was regrettable that despite the alarming increase in child prostitution and sex tourism, there was an extremely low number of investigations and prosecutions. While noting the measures taken by the Government, she called on the Government to act urgently and to intensify its efforts to eliminate the worst forms of child labour. In particular, steps should be taken to: ensure that children were no longer engaged in work that was likely to harm their health, safety or morals, with special attention on those who worked in mines, quarries and domestic work; combat child prostitution and sex tourism, which included the prosecution and conviction of persons procuring, offering or employing children in prostitution; and ensure the rehabilitation and reintegration in society of street children, including the development and better targeting of school enrolment programme and training projects.

The Government member of Switzerland noted the comments of the Committee of Experts and highlighted the gravity of the problem of child labour, in particular prostitution and sex tourism, which were violations liable to criminal proceedings. This problem was everyone's responsibility: governments, social partners and the tourism industry. Around two million children were victims of sexual exploitation by tourists. For several years, Switzerland had been combating this exploitation. The awareness-raising campaign, "Don't look away" had been launched which, since 2013, had been extended to other European countries and aimed to protect children in tourist areas, inform travellers and encourage them to participate in combating child sexual exploitation. In addition, the Government supported initiatives, such as the Code of Conduct for the Protection of Children from Sexual Exploitation in

Travel and Tourism, which was a voluntary tool for corporate social responsibility aimed at the tourist industry. Switzerland encouraged the Government of Madagascar to promote the Code of Conduct.

The Worker member of Italy recalled that a very high number of children of school age were engaged in the worst forms of child labour. UNICEF reported that 47 per cent of children under 5 suffered from chronic malnutrition and child prostitution in the country had reached alarming levels and affected the whole of the country. Child labour proliferated in the national context of widespread poverty, leading to an increase in child sexual exploitation and child sex tourism, and leaving behind a generation of broken girls. While the Government had adopted updated anti-trafficking legislation in December 2014, which extended the scope of the previous legislation to cover sexual exploitation, labour trafficking, forced labour, forced begging and debt bondage, the number of prosecutions and convictions remained extremely low, leading to a situation very close to widespread impunity. The United Nations High Commissioner for Refugees (UNHCR) emphasized the inability of the Government to guarantee the rule of law. She urged the Government to ensure immediately the investigation and prosecution of those procuring, using, offering or employing children for prostitution and to impose penalties constituting an effective deterrent. A radical change in the attitude of the Government towards the issue was required not only to address the visible negative effects of structural problems, but also to combat their root causes. The Government should take concrete action to: adopt a national programme to assess the physical and mental health damage to child workers, implement an active policy to raise awareness of the risks and negative effects of child labour, and grant access to education for all children of school age. In conclusion, she called on the Government, without delay, to protect the right of children to a future in which they could live in peace and safety.

The Government member of Canada recalled that various United Nations bodies had expressed deep concern at the growing child sex tourism, insufficient measures and child prostitution, which had reached alarming levels. She urged the Government to take the necessary steps to ensure that thorough investigations and robust prosecutions were undertaken of persons suspected of procuring, using, offering or employing children, and that penalties were imposed that would serve as an effective deterrent. She also noted with concern the situation of children working in mines and quarries, and the growing number of street children. The Government should be urged to take the necessary steps, as called for by the Committee of Experts, to eliminate the worst forms of child labour.

The Worker member of France emphasized that, in ratifying the Convention in 2001, Madagascar had been aware of the need to protect its young people. The Convention sought the immediate elimination of the worst forms of child labour, that is work which, by its nature or the circumstances in which it was carried out, was likely to harm the health, safety or morals of children. However, the Committee of Experts noted that the work done by children in mines and quarries constituted a contemporary form of slavery. Hence, in the town of Ilakaka, children employed in sapphire mining were exposed to the risk of suffocation or death in the event of the accidental collapse of tunnels

in the mines. They were at increased risk of respiratory ailments, and exposure to high temperatures and the transportation of heavy loads had a detrimental effect on their health. Children of barely 7 years of age were employed in gold mines in the regions of Analamanga, Vakinankaratra and Anosy, working ten hours a day for a wage of US\$14 a week. An ILO–IPEC survey indicated that there were 1.5 million children in a total working population of just over 4 million. One out of two children between 7 and 17 years of age was working. Many of them were working in mines, which had the highest mortality rate in the world for children working in mines. In this regard, the Convention recalled the importance of education, and in particular access to free basic education, to combat the worst forms of child labour. The State should also use its labour inspection system to exercise appropriate controls to protect such highly vulnerable children. However, out of just over 120 labour supervisors and inspectors, 50 per cent worked in the capital.

The Worker member of Togo called on the Government to step up its efforts to adopt robust measures as a deterrent for individuals who were exploiting child labour. The Government had adopted certain provisions and launched actions to remedy the situation, such as: raising the awareness of 155 actors in the tourist industry with regard to the commercial sexual exploitation of children; implementing a programme of school enrolment and training for street children in the context of the Public Investment Programme for Social Action (PIP); conducting a National Survey of Employment and the Informal Sector (ENEMPSI 2012); and a base survey on child labour. However, in view of the seriousness of the situation, these measures were inadequate. The goal of removing 40 street children per year from the worst forms of child labour did not take sufficient account of the scale of the situation. Hence, according to the United Nations Special Rapporteur on the sale of children, child prostitution and child pornography, some 4,500 children lived on the streets and 28 per cent of children between 5 and 17 years of age were economically active, including 81 per cent in hazardous work. The measures taken by the Government in the area of school enrolment and aid to poor families were limited in scope, which constituted an obstacle to removing children from the worst forms of child labour. Poor families in rural areas continued to send children to urban areas to be employed in domestic work and 10-year-old girls were forced to work in conditions akin to slavery. In conclusion, he called on the Government to take effective action against the worst forms of child labour, involving the social partners and parents to seek lasting solutions.

An observer representing the International Transport Workers Federation (IFT) and the General Maritime Union of Madagascar (SYGMMA) addressed the issue of hazardous work in the fishing industry, as a sector in which the worst forms of child labour occurred. As observed by the Committee of Experts, of all the children working in the country, 88 per cent were working in agriculture and fishing. While the national legal framework provided for the prohibition of child labour, there were no laws specifically relating to the fishing sector. The Convention did not define hazardous work, although the Worst Forms of Child Labour Recommendation, 1999 (No. 190), provided some indications. Fishing was defined as the harvesting of wild

fish and encompassed a range of tasks, from light work to hazardous work. However, this work was not for children, as tasks such as crew work, hauling nets, line fishing and diving usually entailed long hours, extreme temperatures and harsh weather conditions. While acknowledging the collaboration of the Government with the ILO in the framework of the ILO–IPEC, more had to be done to address this issue in the fishing sector. The Food and Agriculture Organization (FAO) and ILO *Guidance on addressing child labour in fisheries and agriculture* suggested a system of classification for determining hazardous work in this sector, and recommended that action against child labour should be composed of prevention (to address the root causes of the phenomenon), withdrawal (to rescue and rehabilitate children engaged in hazardous fishing activities) and protection. He called on the Government to ratify the Work in Fishing Convention, 2007 (No. 188), which specified the minimum age for work in this sector and called for consultations with the social partners on the scope of activities and conditions of work in the sector. The Government should avail itself of ILO technical assistance, as appropriate.

The Government member of Algeria recalled that child labour remained a crucial problem which affected Madagascar, as it did many other countries. The Government had provided information on the efforts made to combat this scourge and had taken positive measures, including: the enforcement of the relevant laws and regulations; the establishment of institutional structures, namely a national and a regional committee to combat child labour; the identification of hazardous types of work; the implementation of special programmes for the elimination of child labour, particularly in domestic work, sexual exploitation and in mines, quarries, saltworks and agriculture. It was to be hoped that the Government would pursue its efforts to combat child labour, a phenomenon that challenged the whole international community and made it necessary for governments and social partners to combine their efforts.

The Government representative emphasized that his Government was aware of the gravity of the problems being discussed by the Committee. After five years of political, economic and social crisis, Madagascar needed to redefine its policies. The efforts made had proved inadequate and the country was appearing before the Committee for the first time. The problems had become worse due to the increase in poverty. In order to address these serious issues, the Government had to demonstrate more zeal and secure the support of parents, of the public and of all community leaders so that they reported the violations. Lack of resources constituted the biggest obstacle to the will of the Government to adopt more robust measures. For example, labour inspectors had no means of transport and, in some cases, depended on employers' vehicles, which undermined the performance of their duties. The National Committee to Combat Child Labour also constituted an important instrument established by the Government. Moreover, in response to poverty and despite free compulsory schooling, parents sent their children out to work, including girls for prostitution. He referred to a number of measures, such as the creation of income-generating activities and action programmes implemented in Nosy-be, in conjunction with the ILO, against the sexual exploitation of children, and also the legal framework for combating

trafficking in persons. However, difficulties in applying the legislation existed because of a lack of coordination among the various ministries concerned. The Government was also considering the ratification of the Work in Fishing Convention, 2007 (No. 188), in the near future. The Government would continue to make every effort to address the issues under discussion and the content of the discussion in the Committee would be brought to the attention of the President of the Republic and the Prime Minister.

The Worker members said that the situation was catastrophic and that the political crisis had further aggravated the situation of children. There was hope of an exit to the crisis and the Government should introduce structural measures to combat the worst forms of child labour. All of the worst forms of child labour that existed in Madagascar required an immediate and effective response. For that purpose, the Government needed to take the following programme measures: prepare a study on the worst forms of child labour and establish a follow-up programme; improve the judicial and institutional framework, particularly with a view to aligning the minimum school leaving age and the minimum age for admission to employment; step up efforts to combat sex tourism; increase access to school; and undertake awareness-raising campaigns for teachers on the worst forms of child labour. In addition, in order to address the structural causes of this scourge, these measures should be developed within the framework of a plan to promote employment. International cooperation should also be strengthened, as envisaged by the Convention, and efforts should be intensified to implement the time-bound programme (TBP) for the abolition of the worst forms of child labour. Following these measures, the authorities should be in a position to report on swift and substantial improvements. Finally, in view of the gravity of the situation, the Worker members encouraged the Government to request the technical assistance of the Office and called for the establishment of an international follow-up mechanism and a national tripartite follow-up committee.

The Employer members indicated that the case under discussion had been a good case to start the discussions on the individual cases. The Committee dealt with contentious issues, and consensus was often hard or impossible to achieve. However, in relation to this serious and double-footnoted case, all speakers, including the Government representative, generally agreed on the problems at issue. The Government did not deny, but fully acknowledged the problems concerning the application of the Convention. While the adoption of a number of laws concerning child labour had to be acknowledged, these laws were not effective. As indicated earlier, in the present case, the problem lay in their effective implementation and enforcement. These problems had a number of reasons, including the lack of resources and the political situation. They agreed with the Worker members on the way forward. Technical

assistance was a good start, and the Government should commit to increasing the funding for the Ministry of Labour to enable measures such as effective labour inspection, including of the joint task forces that had been set up. The collection of statistics was essential on the follow-up of investigations, as well as on prosecutions. Prosecution and the imposition of penalties on sex tourists should serve as a deterrent. Awareness-raising measures were definitely part of, but only one aspect of the solution. The Government should be commended for having taken initial measures, and particularly on having adopted adequate legislation. More should be done to better implement this legislation.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed on issues raised by the Committee of Experts.

The Committee deplored the lack of progress, and even worsening of the situation, in the country. The Committee noted the constructive attitude of the Government.

Taking into account the discussion of the case, the Committee urged the Government to provide an immediate and effective response for the elimination of the worst forms of child labour, including:

- **Strengthen its efforts to ensure the elimination of the worst forms of child labour, notably sexual exploitation of children for commercial purposes, work in mines and quarries, and work of children in the informal sector and rural areas that the labour administration is unable to cover.**
- **Improve the legal and institutional framework, including through a better alignment of the minimum school leaving age and the minimum working age.**
- **Collect and make available without delay information and statistics on investigations, prosecutions and penalties relating to the worst forms of child labour according to national enforcement mechanisms.**
- **Collect and make available without delay information and statistics on the phenomenon of child labour.**
- **Intensify efforts to prevent sexual tourism, particularly through a campaign; and strengthen the penalties for cases of sexual tourism exploitation involving children.**
- **Take measures to improve the capacity of the labour inspectorate, including providing adequate resources.**
- **Increase funding for the Public Investment Programme for Social Action (PIP) to withdraw street children from their situation and for awareness-raising campaigns.**
- **Urgently seek technical assistance from the ILO to ensure the full conformity with the Convention in law and practice.**

These initiatives should form part of broader programmatic measures for employment and access to education.

A national monitoring body which included the social partners should ensure supervision. The Government was invited to report to the Committee of Experts on the swift and substantial improvements at their November 2016 session.

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