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PART TWO

PART TWO

THIRD ITEM ON THE AGENDA: INFORMATION AND REPORTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

Report of the Committee on the Application of Standards

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PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

I. OBSERVATIONS AND INFORMATION CONCERNING REPORTS ON RATIFIED CONVENTIONS (ARTICLES 22 AND 35 OF THE CONSTITUTION)

A. Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations

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

A Government representative of Denmark regretted that the local authorities of the Faeroe Islands for the second consecutive year had not submitted the reports due. She indicated that the Faeroe Islands, with a view to fulfilling their reporting obligations, had asked the Danish Government to clarify the following: (1) which ILO Conventions they were bound by; and (2) whether those Conventions had been submitted to the Faeroese authorities. The Danish Government, consequently, sought clarification from the ILO, which provided a list of 22 Conventions by which it considered the Faeroe Islands to be bound. With regard to the second question, the speaker indicated that the Danish Government and the Faeroese Home Rule were in close dialogue on how to resolve the issue of reporting on Conventions that dated back some 30 to 50 years. She reminded the Conference Committee that the local authorities of the Faeroe Islands had full autonomy in the area of public welfare and labour, which meant that the Danish Government could neither instruct them in this area nor fulfil the reporting obligations on their behalf. However, the Danish Government would assist the Faeroese local authorities as best as possible so that they could fulfil their reporting obligations in the future.

A Government representative of Cambodia explained that over the past few years changes had occurred in the administration in charge of labour matters, owing to the creation of a new Ministry of Labour and Vocational Training. That had led to changes in the composition of the staff working in the technical departments. In that context, the Ministry had appointed a group of officials to undertake and follow up on the obligations prescribed by the ILO Constitution, in particular the Government's obligation to respond to the observations made by the Committee of Experts. As the group had recently been formed, it had been impossible to submit the reports due. He further indicated that with a view to fulfilling the unaccomplished tasks, an official had been sent to participate in the international labour standards training organized by the ILO International Training Centre in Turin. He undertook himself on behalf of his Ministry to speed up the fulfilment of all reporting obligations.

A Government representative of the United Kingdom apologized on behalf of the non-metropolitan territories of Anguilla, Montserrat and St. Helena who had been unable to supply information in reply to comments made by the Committee of Experts and, in some cases, had failed to supply reports on ratified Conventions. He stated that the Government of the United Kingdom went to great lengths to endeavour to ensure that all local authorities in non-metropolitan territories met their reporting obligations in full and on time. However, they had not always been successful and he regretted the effect that this could have on the supervisory system. He assured the Conference Committee that such failure was not due to a lack of political commitment on the part of the competent authorities, but rather was a question of capacity. He hoped that the Committee would recognize that heavy reporting schedules could place a considerable strain on even the largest administrations. Non-metropolitan territories were, for the most part, small and largely autonomous island administrations with limited human and financial resources. His Government would continue to work closely and actively with the local authorities on how best to ensure that they continued raising their human rights standards as well as fulfilling their ILO reporting obligations.

A Government representative of Togo indicated that the Ministry of Employment and Labour was experiencing difficulties owing to a shortage of personnel and skills. The Government had therefore requested ILO technical assistance in the form of training two officials and hoped that this would enable it to fulfil its standards-related obligations.

The Committee noted the information and explanations provided by the Government representatives who took the floor.

The Committee recalled that submitting reports on the application of ratified Conventions was a constitutional obligation essential to the supervisory system. The Committee stressed the importance of submitting reports, not only for their actual communication, but also of doing so within the prescribed time limits. The Committee recalled that the ILO could offer technical assistance to contribute to the fulfilment of this obligation.

In those circumstances, the Committee expressed the firm hope that the Governments of Cambodia, Congo, Denmark (Faeroe Islands), Iraq, Liberia, Saint Lucia, Togo, Turkmenistan, United Kingdom (St Helena) and Uzbekistan, that had not yet submitted reports on the application of ratified Conventions, would do so as soon as possible, and decided to mention these cases in the corresponding section of the General Report.

(b) Failure to supply first reports on the application of ratified Conventions

A Government representative of Armenia indicated that during the 95th Session of the International Labour Conference, her Government had declared that it would fully implement its reporting obligations within a period of two years. It attached great importance to those obligations and was currently undertaking considerable work in that regard with technical assistance from the ILO Office, and in particular the ILO Subregional Office in Moscow, which was greatly appreciated. She informed the Conference Committee that since the 95th Session of the Conference, Armenia had submitted seven of the 14 reports requested, notably on the application of Conventions Nos 29, 81, 95, 98, 100, 105 and 122. However, she regretted the fact that the bulk of the reports had been submitted in April 2007: too late to be included in the Committee of Experts' report. In conclusion, she was pleased to announce that the remaining seven reports on Conventions Nos 17, 18, 111, 135, 151, 174 and 176 were currently being drafted and would be submitted to the ILO in the next few months. Armenia would thus clear its entire backlog on reporting before the end of 2007.

A Government representative of Gambia stated that the reports on Conventions Nos 29, 138 and 182 had been sent to the ILO but had apparently not been received. His

Government would endeavour to locate copies of the reports and resend them to the ILO. If they could not be found, the reports would be rewritten. Since the Employment Division of the Ministry had only one member of staff, ILO technical assistance would be greatly appreciated on those and other issues.

A Government representative of Serbia stated that all state institutions were fully dedicated to fulfilling their country's constitutional obligations. However, two circumstances had had an impact on the failure to submit reports since 2003 and 2005. With regard to the period before May 2006, due to its constitutional particularities, lack of functionality and coherence of public governance had characterized the State Union of Serbia and Montenegro. After both republics became independent, Serbia had faced a new challenge, notably on how to undertake the necessary institutional transformations in order to meet international obligations in the most effective way. That was still ongoing. The other aspect concerned Serbia's interest in protecting labour standards in the sectors covered by the Conventions concerned. After the dissolution of the State Union with Montenegro, Serbia became a landlocked country. As a result, attention had to be paid to the relevant sectors and legislation. However, those developments had been duly taken into account in the context of the obligations arising from ILO membership. A consultative process with the line ministries had recently been initiated and the Government would consider carefully the reports on the application of all ratified Conventions. In conclusion, the speaker paid a special tribute to the ILO Subregional Office in Budapest for offering very useful assistance on reporting obligations, among other matters. Government experts had also participated in the course on international labour standards held in Turin and Geneva, and Serbia very much appreciated that help. Serbia was looking forward to participating in other training programmes and benefiting from further ILO technical assistance in order to fulfil its reporting obligations more efficiently.

A Government representative of The former Yugoslav Republic of Macedonia stated that since the last session of the Conference, his Government had been seriously engaged in clearing the reporting backlog with the assistance of the ILO. Since the beginning of the session, reports on Conventions Nos 87 and 98 had been submitted. Reports on Conventions Nos 105 and 182 were being prepared and would be ready by September 2007 at the latest.

The Committee noted the information and explanations provided by the Government representatives who took the floor and reiterated the crucial importance of submitting first reports on the application of ratified Conventions. The Committee recalled that the Office's technical assistance was available to the Governments concerned to contribute to the fulfilment of this obligation. The Committee decided to mention the following cases in the appropriate section of the General Report: since 1992 – Liberia (Convention No. 133); since 1995 – Armenia (Convention No. 111), Kyrgyzstan (Convention No. 133); since 1996 – Armenia (Conventions Nos 135, 151); since 1998 – Armenia (Convention No. 174), Equatorial Guinea (Conventions Nos 68, 92); since 1999 – Turkmenistan (Conventions Nos 29, 87, 98, 100, 105, 111); since 2001 – Armenia (Convention No. 176); since 2002 – Gambia (Conventions Nos 29, 105, 138), Saint Kitts and Nevis (Conventions Nos 87, 98), Saint Lucia (Conventions Nos 154, 158, 182); since 2003 – Dominica (Convention No. 182), Gambia (Convention No. 182), Iraq (Conventions Nos 172, 182), Serbia (Conventions Nos 27, 113, 114); since 2004 – Antigua and Barbuda (Conventions Nos 122, 131, 135, 142, 144, 150, 151, 154, 155, 158, 161, 182), Dominica (Conventions Nos 144, 169), The former Yugoslav Republic of Macedonia (Convention No. 182); and since 2005 – Albania (Conventions Nos 174, 175, 176), Antigua and Barbuda (Convention No. 100), Armenia (Convention No. 17), Liberia (Conventions Nos 81, 144, 150, 182), Serbia (Conventions Nos 8, 16, 22, 23, 53, 56, 69, 73, 74), The former Yugoslav Republic of Macedonia (Convention No. 105), Uganda (Convention No. 138).

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

A Government representative of Comoros explained that, for the past ten years, her country had been experiencing difficulties, which had largely destabilized governmental institutions. At that time, those institutions were progressively being re-established in accordance with law, and, thanks to the support of the ILO Office in Addis Ababa as regards training labour administration staff, the governmental services were undertaking to fulfil the standards-related obligations of Comoros.

A Government representative of Congo indicated that the reports requested for 2006 and 2007 had already been prepared and were being submitted to the social partners. Concerning the response to the Committee of Experts' comments, Congo had received the relevant observations and direct requests from the Director of the ILO Office in Kinshasa on 8 May 2007. The Government undertook to submit the replies due before 1 September 2007.

A Government representative of Djibouti stated that the reports expected had been prepared and submitted to the Office, but it appeared that they did not meet the Committee of Experts' expectations. The Government of Djibouti therefore undertook to review the reports and ensure that, in the future, they were submitted on time and met the Committee of Experts' expectations.

A Government representative of France indicated that her Government regretted not having been able to supply the information requested from the Department of Martinique, in order to respond to the Committee of Experts' comments within the prescribed time limits. This was due to a lack of capacity, particularly concerning the officer in charge of Martinique, and to the significant number of reports on the application of ratified Conventions to be submitted to the ILO, including for the non-metropolitan territories. France was committed to its constitutional obligations and undertook to submit the reports due as soon as possible.

A Government representative of Jordan expressed his surprise that the reports sent by his Government in 2006 had not been received by the ILO. Jordan had never failed to supply the reports requested. In the meantime, the Government had sent copies of the outstanding reports. In addition, the speaker informed the Committee that an agreement had been made with the ILO regarding training relevant officials.

A Government representative of Kiribati recognized that the comments made by the Committee of Experts were of urgent importance. The harmonization of the legal and political situation with Conventions Nos 87 and 98 was ongoing.

A Government representative of the Russian Federation stated that his Government was firmly committed to fulfilling its obligations in the context of the supervisory system. Efforts were being made to submit reports in a timely manner. The difficulties in replying to the Committee of Experts' comments were due to technical problems arising out of the recent restructuring of the government units responsible. All missing information would be provided to the ILO before 1 September 2007.

A Government representative of San Marino explained that the failure to submit replies to most of the Committee of Experts' comments was linked to the delay accumulated by the Ministry of Labour, the competent body for the preparation of reports due to the Committee of Experts, over the last three years. He indicated, however, that new staff had assumed office in 2006 and were undertaking to eliminate the accumulated delay. The submission of the reports on Conventions Nos 29, 87, 105

and 160 – albeit past the deadline of 1 September 2006 – represented the first fruits of their work. Among those four reports, two also contained responses to the direct requests made by the Committee of Experts. He reiterated that the delay should not be construed as a lack of commitment by San Marino to the obligations of member States or to the supervision of international labour standards.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee emphasized the great importance, for the continuation of dialogue, of providing clear and full information in reply to comments made by the Committee of Experts. It reiterated that this formed part of the constitutional obligation to supply reports. In this respect, the Committee expressed its great concern at the high number of cases of failure to supply information in reply to comments made by the Committee of Experts. The Committee recalled that governments could request ILO technical assistance to overcome any difficulties they might face in responding to the comments of the Committee of Experts.

The Committee urged the Governments of Albania, Belize, Bolivia, Cambodia, Comoros, Congo, Cyprus, Djibouti, Equatorial Guinea, France (Martinique), Guinea, Haiti, Iraq, Jordan, Kiribati, Kyrgyzstan, Liberia, Malawi, Russian Federation, Saint Kitts and Nevis, Saint Lucia, San Marino, Sierra Leone, Tajikistan, Togo, Uganda, United Kingdom (Anguilla, Montserrat, St Helena) and Uzbekistan to make every effort to provide the requested information as soon as possible. The Committee decided to mention these cases in the appropriate section of its General Report.

(d) Written information received up to the end of the meeting of the Committee on the Application of Standards [1]

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

Bosnia and Herzegovina. Since the meeting of the Committee of Experts, the Government has sent the first reports on Conventions Nos. 105 and 182.

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

Burkina Faso. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

Côte d'Ivoire. Since the meeting of the Committee of Experts, the Government has sent the first report on Convention No. 138.

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

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

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

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

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

Islamic Republic of Iran. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

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

Republic of Korea. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

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

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

Saint Kitts and Nevis. Since the meeting of the Committee of Experts, the Government has sent one of the reports due concerning the application of ratified Conventions.

San Marino. Since the meeting of the Committee of Experts, the Government has sent some of the reports due concerning the application of ratified Conventions.

Sao Tome and Principe. Since the meeting of the Committee of Experts, the Government has sent the majority of the reports due concerning the application of ratified Conventions as well as replies to most of the Committee's comments.

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

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

United Republic of Tanzania. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

The former Yugoslav Republic of Macedonia. Since the meeting of the Committee of Experts, the Government has sent some of the reports due concerning the application of ratified Conventions as well as replies to most of the Committee's comments.

Trinidad and Tobago. Since the meeting of the Committee of Experts, the Government has sent replies to most of the Committee's comments.

United Kingdom (Montserrat). Since the meeting of the Committee of Experts, the Government has sent some of the reports due concerning the application of ratified Conventions.

[1] The list of the reports received is to be found in Part Two of the Report: Appendix I.

Convention No. 29: Forced Labour, 1930

MYANMAR (ratification: 1955)

See Part Three.

Convention No. 81: Labour Inspection Convention, 1947

SRI LANKA (ratification: 1956)

A Government representative referred to the observation made by the Committee of Experts on action to improve the organization and operation of the inspection system. In that regard, he stated that the action had been carried out within the framework of the ILO technical assistance programme for revitalizing and restructuring the labour administration to meet the existing and emerging challenges of development. The changes implemented in the labour inspection system were not intended to undermine it, but rather to strengthen it further. As had been proposed in the ILO document on future directions for the Ministry of Labour Relations and Foreign Employment, an integrated labour inspection system was implemented with ILO assistance. Under that system, a general labour inspector was responsible for wages and working conditions, social security, safety in the workplace and occupational health. Neither inspections nor prosecutions had been reduced following the new system's introduction. However, under the new system, employers could be prosecuted for continued violations, as well as for ignoring corrective instructions given by inspectors. Inspections were supervised at the district level and review meetings were held regularly at the provincial level by the Commissioner General of Labour. The system's implementation was reviewed by ILO specialists, with the last review taking place in May 2007. Instructions were supplied on how to overcome the various difficulties encountered.

With regard to the observations on labour inspection staff, the Government had boosted their numbers. There were currently 674 inspectors, based in regional offices, depending on the number of establishments in each region. The system had been decentralized and for administration and better supervision of labour inspection, 12 provincial offices had been established. In addition, special team inspections were being undertaken, usually as a result of complaints, or as multidisciplinary inspections where all activities relating to labour, including occupational health and safety, were examined.

According to the Sri Lankan Central Bank's annual report, 63 per cent of workplaces were found in the informal economy. As with any country, Sri Lanka faced difficulties in addressing problems in that sector. However, under the new system, on the advice and guidance of the ILO, combined inspections were undertaken throughout the country in order to identify workplaces that failed to comply with labour legislation and did not contribute to the Employees' Provident Fund. Thirty per cent of new establishments had been identified and action was being taken to register them and ensure that they contributed to the Fund. However, it was too early to statistically demonstrate any progress made.

With regard to the observations on the appointment of both men and women to the staff of the labour inspectorate, Sri Lanka had made progress in recruiting both men and women. Increasing numbers of female officers were recruited to the labour inspectorate field offices and to supervisory posts. Some 35 per cent of the 674 inspectors were female. Those officers were working as effectively and efficiently as their male counterparts. Managers of both sexes had been trained with ILO assistance in labour inspection and gender sensitivity, and no notable difference had been observed between the officers in the course of their duties.

With regard to the right of labour inspectors to enter freely workplaces liable to inspection, the Government representative reiterated that workplaces in the export processing zones were not excluded from supervision by labour inspectors and that there was no restriction on entering those zones. All officers were issued with professional identification documents and had the right to enter workplaces freely, without the need to seek prior permission. In addition, some Department of Labour officers were based within the main export processing zones in order to facilitate dispute resolution by way of mediation.

The Board of Investment, the governmental organization responsible for managing the export processing zones, was a member of the National Labour Advisory Council, chaired by the Minister of Labour. Lanka Jathika Estate Workers' Union, which had made an observation, represented the trade unions as a member of the Council. The speaker presumed that the Committee of Experts was referring to an observation made by that trade union in 2003. In March 2004, the Board of Investment drew up the Labour Standards and Employment Relations Manual for the information of potential investors in export processing zones, which was adopted by the National Labour Advisory Council. It stated that the country's labour laws applied to all enterprises and that both the Ministry of Labour and Department of Labour were responsible for labour administration functions, including labour law enforcement and labour relations. Recognition of the role of both the Ministry of Labour and Department of Labour by the Board of Investment in enforcing legislation was a clear indication of the position regarding free access to the zones by inspectors.

With regard to the powers of injunction of labour inspectors, the Committee of Experts observed that labour inspectors were not sufficiently empowered to issue orders intended to remedy defects observed in plant layout or working methods that posed a potential threat to workers' health and safety. Such a matter should be handled by professionally or technically qualified officers, not by labour inspectors, who were expected to report such threats to the factory inspection officers or medical officers so that they could give the employer the required technical or medical advice. However, the Government would take suitable measures to address that issue in the new Occupational Health and Safety Act.

The Ministry of Labour Relations and Manpower and the Ministry of Healthcare and Nutrition, with assistance from the World Health Organization, were working together to further strengthen occupational health and safety. The principal objective was to explore the possibility of assigning the task of researching health and safety issues in the workplace to medical personnel. The speaker hoped that the measure would assist in overcoming the shortage of qualified occupational health and safety officers.

With regard to travelling allowances for officers, inspectors were entitled to use a vehicle as a condition of their employment. They received a loan to purchase a vehicle and were paid mileage at the prevailing rates applicable to all government officers. They were paid through the government budgetary allocations and separately for any work undertaken relating to the Employees' Provident Fund. The Lanka Jathika Estate Workers' Unions made their observations using 2003 as a point of reference but, between 2003 and 2007, the upper limit of the travelling allowance paid to officers had almost doubled.

In that context, the speaker stressed that the proper planning and management of visits by the inspectors was equally as relevant as the sum paid. That matter was addressed during the introduction of the new system.

With regard to dissuasive sanctions, Sri Lanka had revised its penalties – both fines and imprisonment – under the Employment of Women, Young Persons and Children Act. Action was being taken by the committee appointed to update labour legislation to revise penalties under all other labour legislation. The speaker expressed the hope that it could be finalized by the end of 2007.

With regard to statistics and the publication of the annual report on labour inspection activities, action was being taken to duly collect and analyse the data. That information could be included in the next report under the Convention.

The Employer members thanked the Government for the detailed and useful information presented. The Committee of Experts had dealt with the application of the Convention by Sri Lanka almost every year since 1992, while the Conference Committee had dealt with the case in 1997 and 1999. The Committee of Experts had noted progress in a number of areas: with ILO assistance the restructuring of the labour inspection service had continued and more emphasis was now being laid on prevention and improvements than on sanctions and enforcement. Four female labour inspectors had been appointed. New occupational safety and health legislation was being prepared and a new institute on occupational safety and health had been established. Further, the penalties for infringements of the Employment of Women, Young Persons and Children Act had been increased. Currently 30 per cent of new workplaces were covered by labour inspection.

The Employer members felt that considerable progress in the application of the Convention had been made. However, they also stressed that a number of issues remained unresolved and further information was necessary on various points, such as indications regarding the number of labour inspectors in relation to the number of workplaces to be inspected. Regarding the issues relating to the Employees' Provident Fund, the Employer members stated that those were matters not directly related to the Convention. The funding of labour inspection was a responsibility of the State. They also drew attention to the Committee of Expert's request to ensure effective implementation of the legislation with regard to access to workplaces, including in export processing zones. Finally, the Employer members recalled the need to provide further information on the provision of travelling allowances to labour inspectors and compliance with the requirements concerning annual inspection reports. Welcoming the document on future directions for Sri Lanka, they noted the measures taken so far which illustrated that the Government was committed to applying the Convention.

The Worker members observed that the application of the Convention to Sri Lanka had been addressed before, in 1997 and 1999. Points of divergence between national practice and the Convention's provisions had been noted at that time, particularly with regard to labour inspection staff, the frequency of inspections and the publication of annual reports on labour inspection activities. The Committee had stressed specifically the need for inspections concerning the provisions of the labour legislation protecting children and adolescents against exploitation in export processing zones. In countries exposed to the most drastic effects of trade liberalization, effective enforcement to ensure respect for social standards was essential for protecting workers. Currently, the results were mixed. Reports were indeed being published annually by the labour inspectorate, preventive activities were beginning to appear, new legislation concerning occupational safety and health was being drafted, both men and women were beginning to be employed in the labour inspectorate, an institute had just been established for health and safety in the workplace and the amount of fines had finally been adjusted. However, with regard to certain fundamental issues, results remained unsatisfactory, or at least, difficult to corroborate given the lack of statistics. Were there sufficient numbers of labour inspectors? Were employers paying their contributions? Would the principle of free access to all establishments liable to inspection finally be respected in legislation? Would the prerogative of the labour inspectorate to suspend any activity in case of imminent danger finally be expressed in legislation? A specific response to each of those issues should be supplied to the Committee of Experts. Decent work also depended on efficient and effective labour inspection. Respect for international labour standards relied upon strong labour inspection. That principle took on even greater significance in the export processing zones. They should not be exempt from the rule of law, only recognizing the rule of total flexibility. Labour inspection should enjoy the means necessary for accomplishing, including in those zones, the mission set forth in Convention No. 81, particularly if the eradication of child labour were to become a reality.

The Worker members therefore felt that further efforts were expected on the part of the Government in terms of improving the legislation and its application, in collaboration with the country's social partners and, if necessary, with ILO technical assistance.

The Worker member of Sri Lanka said that the question of labour inspection was intertwined with enforcing labour laws, and proper implementation: inspection and enforcement had to be considered together. In his view, there was a widening gap between law and practice which was primarily due to the lack of political will and commitment on the part of the Sri Lankan authorities. Labour inspection in the public sector was non-existent. Industrial relations in the public sector depended on political patronage and there was no independent dispute settlement mechanism. In addition, the lack of inspection of wages and of a national wage determination mechanism had given rise to wage disparities and wage discrimination in both the public and private sectors. The current state of labour inspection and the implementation and enforcement of legislation demonstrated that the measures taken by the Government had been tardy. There was no inspection of overtime hours, which had been increasing drastically, and had affected the health of workers, especially in the export processing zones. Moreover, the overtime worked was not voluntary thus causing the country to fall into the category of countries practicing forced labour.

The speaker further pointed to problems in the area of freedom of association, especially with regard to public servants, and regretted that the authorities were still to take meaningful steps to implement the proposals for legislative reform made by the tripartite workshop, held in 2002, to give effect to the freedom of association Conventions. In addition, he indicated that the current state of emergency had had an impact on labour inspection and that the ongoing war with the Tamil Tigers had led to a situation where a significant sector of the Sri Lankan working class had been kept outside the labour movement. The shortcomings in the application of the Convention had a long history where little progress had been made both in law and in practice.

The Government member of Finland speaking on behalf of the Government members of Denmark, Finland, Iceland, Norway and Sweden considered that the role of Convention No. 81 was paramount. It was a priority Convention, intended to ensure safe working conditions. Besides occupational health and safety, labour inspection also contributed to fair terms of employment. Therefore, in addition to preventing discrimination in employment and child labour it contributed to decent work. She urged the Government to provide adequate and appropriate resources and powers to the labour inspection as well as to ensure access to workplaces without prior permission.

This was particularly important in export processing zones where workers often belonged to the most vulnerable groups such as women and young persons. The Government was asked to ensure that the legislation included adequate sanctions that were sufficiently dissuasive, and that the legislation was effectively enforced.

The Worker member of Australia highlighted the essential link between labour inspection and the capacity to enforce labour law. Enforcement of labour law in Sri Lanka was weak. It was, however, recognized that labour inspection had been effective in addressing child labour and occupational health and safety – two critical aspects of the labour situation in Sri Lanka.

The Government's future plans for labour inspection focused on prevention and improvement rather than enforcement and penalties. The Government should be asked as requested by the Committee of Experts to elaborate on the practical consequences of its plans, given that even where inspection had been undertaken, follow-up was often lacking, and cases for prosecution were excessively delayed. The speaker sought further information and accompanying statistical data to verify activities promoting occupational health and safety, especially under the new Institute on Occupational Health and Safety in relation to labour inspection.

She stated that the monitoring and follow-up of inspections was deficient, and the legislation relating to access to workplaces in the free trade or export processing zones (EPZs) was not compatible with the Convention. The effectiveness of the inspection system needed to be seriously addressed, so as to prevent measures concealing a violation of a legal provision, and to explicitly authorize inspectors to enter workplaces freely. The Labour Department needed to be further encouraged to promote labour standards, most especially in EPZs, through its labour education programme, and to engage the social partners in that programme.

Even more fundamentally, there was a need to acknowledge that there had been widespread violations of trade union rights in Sri Lanka's EPZs. The Labour Ministry rarely became involved in EPZs, since the zones were managed by the Government's Board of Investment (BOI). In the export garment sector, there was a factory inspection service, and the BOI took priority over the Labour Ministry in setting wages and conditions. The Labour Commission, under pressure from the BOI, had failed to prosecute employers who refused to recognize trade unions, or enter into collective bargaining with them, which had major implications for labour legislation as a whole. Although union recognition constituted a serious problem in the EPZs, the Free Trade Zone and General Services Employees' Union (FTZGSEU) of the National Workers Congress, representing garment workers, had managed to organize.

The speaker believed that the capacity of labour inspectors and inspector supervisors needed to be improved by means of training for inspectors in data collection, follow-up and monitoring skills as well as in the use of information collected for initiating legal proceedings. She denounced the serious violations in the EPZs in terms of working hours, overtime, wage rates and non-payment of wages, and the growing wage gap between men and women. The cost of living was so high that many workers were compelled to work excessive hours under poor conditions in EPZs, with serious implications for safety, productivity and costs to workers' families in case of injury or illness. The Government needed to take responsibility for the health and safety of workers by applying the full range of measures available to the labour inspectorate.

Legal action against errant employers was often slow, since the Labour Department often failed to file complaints against employers alleged to have engaged in unfair labour practices. As there was no time limit on bringing cases to court, the cases were delayed until the union had been weakened or disbanded. According to the Labour Department, there were "instructions" for filing complaints within 30 days, but those were not enforced, as demonstrated in the 2006 Annual Survey of the International Trade Union Confederation.

While Sri Lanka benefited from the United States Generalized System of Preferences (GSP Plus) in recognition of its record on the observance of labour rights, the speaker concluded that the Government still had a long way to go in terms of enforcement of existing laws. Prevention of occupational accidents and injuries, and improvement of labour conditions depended on the willingness and capacity to identify and address the existing problems. Compliance with the Convention was important to improve the quality and coverage of the information collected, the action taken and the realization of decent work.

The Government representative thanked the Worker and Employer members for their observations which he hoped would contribute to strengthening the labour inspection system in Sri Lanka. The requested statistics on labour inspection would be submitted on time in order to be examined by the Committee of Experts. Furthermore, the Government representative highlighted the support of the ILO for restructuring and revitalizing Sri Lanka's labour administration system and the importance of ILO technical assistance.

The Employer members thanked the Government for the constructive debate and encouraged it to continue to make further progress with the assistance of the ILO. It was particularly important that the annual labour inspection reports analysed relevant developments and inspection results, and that those reports were provided to the ILO. In addition, information on the other measures taken should also be submitted to ensure that the Convention was being implemented.

The Worker members stated that, while the particulars provided so far by the Government showed that some progress had been made, especially in the legislative field, information was still needed to be able to appreciate the reality of those developments. It was with respect to export processing zones that clarifications appeared most necessary. The Worker members requested the Government to supply information enabling an assessment of the extent to which labour inspection henceforth exercised effective enforcement and prevention, and hoped that such labour inspection activities would soon be regulated by a legislative framework finally meeting the requirements of the Convention. They reiterated the particular importance of labour inspection activities in export processing zones, as well as of the principle of freedom of access of labour inspectors to all workplaces, as provided for in Article 12 of the Convention.

Conclusions

The Committee took note of the statement made by the Government representative as well as the discussion that took place thereafter. It noted the observation made by the Committee of Experts concerning the lack of information about labour inspection staff in terms of numbers and qualifications; the infrequency of inspection visits; and the character of sanctions; the lack of information about transport facilities and means; the administrative and legislative obstacles hindering the freedom of inspectors to enter establishments; the lack of information about powers of labour inspectors; and the need to publish an annual inspection report containing the statistics required under the Convention.

The Committee noted the detailed information provided by the Government representative on the restructuring of the labour inspection system, with ILO assistance, the efforts to develop the prevention side of labour inspection aimed at promoting the qualifications of labour inspection staff, and

at increasing the number of female and male labour inspectors.

While noting the declaration made by the Government on the absence of any restriction on the right of access by inspectors to establishments in export processing zones, and its confirmation that the system of administration was decentralized to allow better supervision of its operation, the Committee requested the Government to communicate to the ILO precise and detailed information on the relevant legal provisions, and of their practical application. It further requested the Government to communicate to the ILO a copy of the instruments providing for the doubling of the allocation of professional travel expenses of labour inspectors, and to explain the reimbursement procedure of expenses claimed by inspectors.

The Committee requested that the Government ensure that the legislation is modified so as to give effect to the provisions of Article 13 relating to the powers of injunction, and to communicate to the ILO information on progress achieved to that end, and provide a copy of any relevant draft text or final text.

The Committee also requested the Government to ensure the publication of an annual inspection report containing all legislative and practical information required under Article 21 of the Convention, and its communication to the ILO within the deadline provided for in Article 20. It expressed its hope that detailed information on inspection activities on child labour would also be included in such a report. It requested the Government to submit a full report to the Committee of Experts for its next session this year.

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

ARGENTINA (ratification: 1960)

A Government representative said that several issues in the report of the Committee of Experts warranted clarification: the questions related to Decree No. 272/2006 and the complaint made by the Central of Argentine Workers (CTA) concerning the granting of trade union status. She expressed concern that her country might have been included in the list due to reasons other than those which had been mentioned in the request for more information or the analysis of the case from a juridical point of view, other possible reasons having been omitted.

She referred to the provisions of section 24 of Act No. 25877 and its regulatory Decree No. 272/2006 respecting strikes in essential services and the establishment of minimum services. While the report recognized the fact that the new national legislation constituted an improvement, the Committee of Experts should have explained in detail the possible reasons for concern, given that the legislation had followed the principles established by the ILO supervisory bodies and was therefore in full conformity with Convention No. 87. Indeed, section 24 provided that only health care and hospital services, the production and distribution of drinking water, electricity and gas and air traffic control were considered essential. It also provided that, exceptionally, other services could be considered essential, as determined by an independent commission after the initiation of a conciliation procedure, as provided for in the legislation, and only in the following circumstances: (a) when, due to the duration and territorial extension of the activity's interruption, the measure might threaten the lives or safety of all or part of the population; (b) when it involved a public service of extreme importance, in accordance with the criteria of the ILO supervisory bodies. Furthermore, the legislation provided for consultation with employers' and workers' organizations, in accordance with ILO principles.

In conformity with the law, the Executive had issued the above Decree after consulting all the social partners concerned. This Decree expressly provided that the independent committee would be called the Guarantees Commission and would be composed of five members with recognized technical, professional or academic competence in matters relating to work, labour or constitutional law as well as considerable experience. Consequently there had been genuine progress compared to the former legislation.

With regard to the procedure initiated by the CTA to request trade union status, the speaker indicated that the Government had fulfilled the procedure provided for under the current legislation, which the applicant organization had expressly accepted by submitting its request for trade union status within the framework of Act No. 23551 and its regulatory Decree. The authorities had continuously followed the procedures and guaranteed respect for the rights provided by articles 14bis, 17 and 18 of the national Constitution, ILO Conventions No. 87 and No. 98 and the abovementioned legislation, with regard to all the trade union organizations eligible for the procedure. Naturally, respecting the procedures and guaranteeing the exercise of the right to be heard for all those concerned, in an administrative procedure in which first-, second- and third-level trade union organizations are involved in an adversarial process, necessarily implied a certain period of time in accordance with the importance of the procedure.

With reference to the general restrictions on freedom of association that Act No. 23551 respecting trade union organizations allegedly caused, she indicated that the Act was not contrary to the provisions of ILO Conventions Nos 87 and 98. Indeed, in its formulation, not only had the provisions of both Conventions been taken into account, but also the interpretations that had been given with regard to the scope of the concept of freedom of association, both in the discussions that had taken place in the ILO, and in the evaluation that her country had received from the Professor Nicolás Válticos' mission to Buenos Aires in 1984. The purpose of his mission had been to present his observations to the Government with regard to the legislation that was being formulated at the time and would replace Act No. 22105 respecting workers' trade union associations, which had been issued by the military dictatorship in 1979. The report of Valticos' mission had recommended that the legislation contain three major aspects. The first related to the principle of representativeness, in the context of trade union plurality and the resulting diversity. The second concerned the authority of the State to intervene in matters concerning the constitution and the formation of trade union organizations, and guarantees for the representation of minorities. The third addressed the possibility to join international workers' organizations and protection against discriminatory anti-union acts.

With regard to the first aspect, the mission's report accepted two types of organization: those with trade union status and those that were simply registered. With regard to the latter, it was provided that they had to be allowed to carry out their activities which had at the very least to enable them to represent and defend the interests of their members in the event of individual grievances. The powers arising from section 23 of Act No. 23551 strictly complied with this observation. Furthermore, Executive Decree No. 757 of 2001 provided that all registered trade union organizations had the right to defend and represent the individual interests of their members before the State and employers. Along the same lines, the document also provided that the most representative trade unions enjoyed preferential rights, particularly in matters relating to collective bargaining. In this respect, the powers arising from section 31 of the Act concerned were in full conformity with the report's recommendations.

With regard to "trade union monopoly", the country's legislation was also in conformity with the report. In no

way did Argentine legislation impose a trade union monopoly, since it accepted the possibility to form trade unions in an unrestricted manner and without prior authorization by the State, granting certain privileges to specific organizations based on the system of representation corresponding to national practice. In this respect, it was important to mention section 28 of this Act, which provided a system to determine which of two associations claiming to represent the same group of workers had majority support for the purposes of granting trade union status.

With regard to the second aspect, the legislation was in full conformity with international instruments, with regard to which her country had not received a single observation from the Committee of Experts. Indeed, Act No. 23551 contained a chapter devoted to trade union protection and specific provisions concerning interference by the administration. It also fully respected the right of organizations to formulate their statutes and administer their assets, in strict respect of the principles of organizations' independence.

With regard to the third aspect as well, there could be no doubt that the legislators had followed the guidelines set out in the ILO Expert's report, as was evidenced by the active international participation of Argentina's trade unions in international organizations. With regard to the CTA, she reiterated that since 2002 it had represented workers in the Conference, participated in the Commission on Employment, Productivity and Minimum Wage, and MERCOSUR, together with trade union organizations from different international forums, without any type of exclusion or discrimination. The legislation had guaranteed the creation and functioning of all the trade union organizations that the workers had considered necessary to form. In Argentina there were currently more than 2,800 first-, second- and third-level trade union organizations. This indicated that, in the 19 years in which Act No. 23551 had been in force, every month a trade union had obtained trade union status, with one trade union organization existing for every 3,500 wage workers. The significance of these numbers clearly indicated that freedom of association in Argentina was not only a right, but was being widely and fully exercised, thereby demonstrating that the Government had faithfully complied with the conclusions made by the Conference Committee in 2005.

Finally, the speaker reaffirmed the Government's commitment to continue to be open and receptive to carrying out technical cooperation activities with the ILO, aimed at promoting social dialogue and achieving consensus among all the social partners concerned.

The Worker members pointed out that, although this case had already been discussed several times, several issues raised by the Committee of Experts over many years still remained. It was therefore a matter of concern that the CTA had still not received a reply to its request, made three years ago, to obtain trade union status, a fact which impacted on its members. As the Committee of Experts had made clear, the very principle of freedom of association was at risk in Argentina and examples of breach of compliance with Convention No. 87 were numerous: dismissals of union representatives or workers affiliated to the CTA, non-recognition by the Government and employers of the CTA in the railway sector or the paper industry. However, in practice the CTA was operating and was recognized both by national and international bodies and its representatives were participating in the Conference. In the context of a country where two organizations were active both geographically and sectorially, it was unacceptable that one of them, the CTA, did not enjoy the same legal conditions. The Government had to act without delay on the request for union status made by the CTA.

The Worker members also drew attention to the situation in the education sector in Neuquén province, and especially to the decree replacing teachers on strike as well as the intervention by the police at a demonstration in support of wage claims during which a union member had been killed.

The way in which the minimum service was determined was also a concern, as the Guarantees Commission which determined these services only had a consultative role and the final decision was always in the hands of the administrative authority. As the Committee on Freedom of Association had requested in examining this situation, the Government had to supply information on the number of cases in which the administrative authority had modified the terms of the Guarantees Commission's opinion.

The Employer members wished to state in light of the selection for discussion of the case of Argentina, i.e. a country which did not appear on the preliminary list of cases, that there was a need to review the methods of work of the Committee. Specific criteria was needed which would make it possible to address additional cases not appearing on the preliminary list. However, in the light of the current methods of work, the care taken in selecting additional cases and the very limited number of cases appearing on the preliminary list, the inclusion of Argentina in the list of cases was correct.

Turning to the present case, they thanked the Government for the information it provided which was both wide-ranging and extensive, going to some extent beyond the comments of the Committee of Experts. The Committee of Experts would need to give its appreciation of the new information presented by the Government before this Committee could discuss it.

This was not a case concerning fundamental matters of freedom of association but more technical in nature. Although the comments of the Committee of Experts were somewhat more extensive than those made during the last discussion of this case in 2005, the Experts had once again confined themselves to a presentation of the issues without making any analysis. In essence, the Committee of Experts requested information to get more clarity on several matters that it highlighted. The Committee of Experts had requested information on the application in practice of the provisions of Act No. 25877 concerning minimum services and the advisory role of employers' and workers' organizations in this context. In the Employer members' view, there was no requirement in Convention No. 87 to provide for this type of procedure and the Government had gone beyond the requirements of the Convention in providing a role to the social partners in determining minimum services. The Committee of Experts had requested further information in this respect.

The Committee of Experts had also raised issues relevant to the length of time it had taken to grant the CTA "trade union status". The hierarchy of different statuses that unions might have was not exclusive to Argentina. Many levels could exist based on quite complex requirements. The matter at issue seemed to be more one of inter-union competition rather than a question of the application of Convention No. 87 in law and in practice.

Not much information was provided with regard to the last three matters raised in the Committee of Experts' observation. On the 30-day suspension of 50 school directors in the province of Neuquén, the Experts noted that the matter had been examined by the Committee on Freedom of Association and appeared to have been resolved. On the assault against a member of the communications sector union and pressure on workers to leave the union, they noted that the National Appeals Chamber had upheld the lower court's decision to sanction the enterprise for discrimination against five union members. Finally, regarding the dismissal of 168 pilots in the context of a collective dispute, the Experts noted that the dismissals had been cancelled and a new collective agreement had been concluded. All this tended to indicate that the matters were resolved and that the law in Argentina worked ap-

propriately. Thus, all that was needed of the Government was more information to clarify the situation with precision.

A Worker member of Argentina stated that it was unacceptable to have any further delays in the commitments his country had made to the ILO with regard to the Committee of Expert's observations concerning freedom of association. The current Act respecting trade unions had been adopted in 1989, been examined by the Committee of Experts on 13 occasions and twice been submitted to the Conference Committee. Despite the two direct contacts missions and more than six technical assistance missions which took place between 1998 and 2005, the Act had not been amended, nor had the Executive sent a bill to the Congress.

The speaker pointed out that the number of cases that had been submitted to the Committee on Freedom of Association from Argentina had increased considerably. A mission had been organized on 30 August 2005 for purposes of implementing the Conference Committee's recommendations. Another mission had been organized for the same purpose in February 2007, giving no results in so far as the Government was concerned. The delay of successive governments in addressing the observations showed that there was no, nor had there ever been, any political intention to amend a single section of the Act respecting trade unions.

He indicated that the Central of Argentine Workers (CTA) was recognized in national and international spheres as one of the two trade union centrals in Argentina and participated in the institutions of MERCOSUR. This, however, did not solve the problem of workers, who, in the absence of legislation guaranteeing freedom of association and democracy in trade union matters, not only could not freely organize, but were also discriminated against when they did. It was not solely an issue of the Argentine legislation being contrary to Convention No. 87, but of the practical consequences for workers who lacked protection and guarantees, which was the result of inadequate representation. According to a recent study by the Ministry of Labour, a mere 12.7 per cent of all businesses enjoyed direct trade union representation in the workplace, and only 52.2 per cent of businesses enjoyed direct trade union representation for enterprises of more than 200 workers. In August 2006, a conflict had broken out between the Alto Paraná enterprise and the chainsaw workers affiliated with the CTA. The reaction of the enterprise had consisted in notifying a series of dismissals and the suspension of the principal activists. Furthermore, a compulsory payment of dues was deducted from the workers' pay for the benefit of the trade union for rural workers, as they were considered to be rural workers. This was a direct consequence of the Act which determines affiliation to one or another trade union in accordance with the activity of the employer, workers wishing to belong to another union having no say in the matter. On 17 November 2006, Mr Guillermo Carrera, the former Secretary of the CTA who had been developing concerted trade union activities in the company, had been dismissed.

Since the CTA belonged to the category of so-called "simply registered" entities, it lacked protection as a trade union and, therefore, the enterprise was, as a principle, able to proceed with a number of dismissals, which was a direct consequence of the current trade union Act, which only protects representatives of entities with trade union status. This protection is what the Committee of Experts referred to as the "privileges" of entities with trade union status, which were denied to those considered to be "simply registered".

The 2001 crisis had been followed by sustained growth in the gross domestic product and a significant recovery in the industrial sector. Nevertheless, the distribution of wealth continued to be unequal and many workers had not benefited from the profits made as a result of the economic growth. As a result, workers needed to organize and fight for an equitable distribution of the wealth.

He expressed his concern that trade union leaders continued to receive threats, trade union premises were the object of continuous robberies and the murder of Carlos Fuentealba, a unionist of the CTA of Neuquén, during a demonstration and a teachers' strike in that province.

This case is important for two reasons: the Government's continuous procrastination with regard to amending the Act and the long period of time the case had been the subject of observations by the Committee of Experts and this Committee, with no evidence to indicate that the Government had the will to implement the commitments made to the ILO supervisory bodies. Such procrastination could only be interpreted as a refusal by the Government to amend the Act respecting trade unions. It is in this context that its refusal to grant full recognition to the CTA had to be interpreted. It had been almost three years since the request for trade union status by the CTA had been made, yet the Government continued to delay the procedure with meaningless administrative measures, thus preventing workers and the organizations affiliated with the CTA from fully enjoying their right to representation. The Committee of Experts had urged the Government to resolve the issue of the CTA's request for trade union status. There were, however, no signs that that procedure was on its way to completion and that trade union status would be granted. He requested the Workers' group to continue to support them, so as to ensure that, through the assistance of the ILO, a draft amendment of the Argentine legislation would be formulated to bring it in full conformity with Convention No. 87.

Finally, he said that in many cases form obstructed substance, just as the Argentine model for trade unions thwarted the fundamental and universal rights of many workers. It was not an issue of majorities or minorities, but of universal principles and rights which characterize humanity. It concerned the centuries-old debate about democracy, freedom and equality, with no discrimination of any kind.

The Employer member of Argentina stated that the employers in his country were aware that the re-establishment of democracy had been achieved at the cost of great sacrifice by society, which had recovered its civil liberties. Argentina had ratified Convention No. 87 and, with it, committed itself to the principle of freedom of association and the Declaration on Fundamental Principles and Rights at Work.

The speaker wished to clarify a number of points. Firstly, no climate of impunity exists in his country. Secondly, social dialogue and collective bargaining existed in Argentina in the context of the issues of employment and the minimum wage and in different forums as the ILO, the OAS and MERCOSUR, in which employers and workers participated. When needed, the employers had requested technical assistance from the ILO concerning the issue of representativeness. This could be a means to resolve the pending issues, as the Government was open to dialogue.

This Committee was not the place to debate the issue of the distribution of wealth. The trade unions were active in the private sector and there was no anti-union discrimination. If such discrimination existed, there were judicial and administrative remedies for the resolution of problems that may arise. Thirdly, both trade union centrals had legal personality. There were unions affiliated with CTA which had trade union status and their leaders enjoyed trade union immunities. Finally, the technical issues would have to be resolved in an equitable manner.

Another Worker member of Argentina expressed, on behalf of the General Confederation of Labour (CGT), his surprise at the fact that this case concerning his country was being heard in light of the progress made, as demonstrated by the actions of the entire Argentinean trade un-

ion movement. He stated that since the crisis of 2001 during which unemployment, exclusion and poverty had grown, the trade unions represented the force of opposition and provided a means of finding political solutions, through social dialogue, with a view to guaranteeing the democratic system, the recovery of employment and social cohesion, with an important role for the CGT in this context. The workers' movement in his country was one of the pillars of democracy.

The speaker considered that the concept of freedom of association was based on a permanent tension between two ideas: the freedom to establish trade unions and the effectiveness of trade union action. Both concepts should go hand in hand and pluralism was not necessarily synonymous with quality and effectiveness of trade union action. The trade union system in his country guaranteed the autonomy of the workers to establish trade unions freely, thus strengthening the effectiveness of trade union action. Trade union unity was compatible with the right to trade union pluralism and was therefore in line with freedom of association according to the letter and scope of Convention No. 87. The Argentinean industrial relations system had the largest number of affiliated workers in Latin America and their collective agreements covered the largest number of workers in all of America, both North and South. It was the trade unions, and not the confederations, that negotiated and concluded the collective agreements and undertook through their shop stewards, to verify its effective application in the workplace. Every four years, the trade unions have elections and the affiliates expressed themselves freely through direct and secret vote in order to confirm or withdraw their confidence from the trade union leadership. This was the basis of the force and legitimacy of trade unions, thus there was no need to request the granting of such legitimacy or a document evidencing registration. Trade unions had been the privileged actors in a system of industrial relations in which they had participated in 2006 a thousand successful joint negotiations.

The speaker stated that trade union activity was protected in the general laws and in particular the law which regulated trade union activity. Since 2005, the courts had received a large number of lawsuits alleging anti-union discrimination and had ordered the reinstatement and payment of wages due to the workers who suffered prejudice, in the framework of the application of standards so that no one was left without protection. In Argentina, the right to strike and its exercise was guaranteed. However, isolated and regrettable incidents could take place like the death of trade unionist Fuentealba, in the province of Neuquén. This incident had been unanimously and jointly condemned by both confederations in his country, with the calling of a nationwide strike. He stated that another fact, which proved what he had just said, was that he had undertaken the post of Secretary-General of the Trade Union Coordination of the Southern Cone and, in that capacity, could state that all the confederations grouped in that body strove to strengthen the trade union movement in a democratic and progressive political framework.

The trade union confederations active in Argentina were also represented and fully integrated in all the participatory and consultative institutions provided for in the law. For example, both confederations participated in the social and labour institutions of MERCOSUR. Furthermore, they participated in the collective bargaining processes in the public and private sectors. They also participated in international delegations. There was still, nevertheless, some steps to be taken and problems to resolve. This was the challenge. Certain questions had to be addressed on the basis of the economic, social and cultural reality against which every evaluation of the implementation of standards should be measured.

He concluded by thanking the ILO for the support and assistance provided during the last crisis, emphasizing that Argentina was one of the countries in which the Decent Work Country Programme was in force, with the participation of workers and employers. He praised the history of the trade union movement in his country and pledged to continue moving forward toward the consolidation of democracy, the just distribution of wealth and the full recognition of social justice for workers and the entire population.

The Worker member of Norway expressed satisfaction that the two main labour centres of Argentina, the CGT and CTA, were now active members of the International Trade Union Confederation (ITUC) and active participants in the ILO Conference, both organizations being representative. She noted with satisfaction the recognition of the CTA by the Government but also noted with concern that the CTA had not been granted "trade union status" and was thus prevented from exercising its right to bargain collectively, represent workers in conflicts, go on strike, collect union dues and exercise other trade union rights. Furthermore, Act No. 23551 continued to allow for the recognition of only one union per industry and geographical region and, as a result, new groups of workers were effectively excluded from the right to organize and engage in trade union activities.

A country that truly respected labour rights should be willing to recognize all groups of workers that wished to form national trade unions and trade union confederations, regardless of their political orientation. After one of the most dramatic economic crises in Latin America, the Argentinean economy had achieved a strong growth rate, low inflation and an unemployment rate that had dropped considerably. But for inequality to decline and for all Argentineans to enjoy the benefits of economic growth, there was a need to further strengthen trade union rights so that all trade unions and confederations in the country could carry out their full trade union functions. Both the CTA and the CGT were strong and representative organizations, which deserved the right to bargain collectively, collect union dues, and otherwise represent their members. And the workers of Argentina deserved to be represented by the trade union of their choice. She called upon the Government of Argentina to grant without delay trade union status to the CTA and to modify Act No. 23551 to allow trade union pluralism. It was unacceptable for a democratic country like Argentina not to be in full compliance with Convention No. 87 and full compliance would not be achieved until the CTA was granted trade union status. It was unacceptable to wait any longer.

The Worker member of Uruguay stated that he had not attended the meeting to discuss the recognition of the Central of Argentine Workers (CTA). The subject was not related to that issue, but more to equality, because multinational enterprises could not be affiliated. What was at stake was not the denial of its "trade union status" as much as the limitations set on participation on an equal footing. It was for that reason that employers had to be asked to recognize trade union activity.

The Worker member of Spain spoke on behalf of the two main trade unions of his country, Comisiones Obreras and the General Workers' Union, and considered that the Act respecting trade unions was not in conformity with Convention No. 87, which requires the Government to guarantee the right for all workers to freely establish organizations of their own choosing and ensure that the legislation does not favour one union over another.

He pointed out that the Committee on Freedom of Association had already, on several occasions in the past, criticized the fact that the organizations with trade union status enjoyed a number of exclusive privileges which were denied to other organizations and might influence a worker's decision as to which trade union to join. The denial of trade union status violated the principle of equality among trade unions and the resulting limitation of rights was contrary to the very principle of freedom of

association. A trade union without the right to bargain collectively or the right to strike had no raison d'être. The difference in representativeness among trade unions was not reason enough to deny less representative trade union organizations the essential means to defend their members, which without a doubt included collective bargaining, the declaration of trade disputes, trade union protection and the collection of union dues. The Argentine legislation denied such means to organizations which did not have trade union status. He recalled that unity among trade unions had not to be imposed through legislative means and indicated that he hoped that the Government would take steps without delay to bring the trade union legislation into conformity with Convention No. 87 and grant trade union status to the Central of Argentine Workers (CTA).

The Government member of Mexico expressed the surprise of the Group of Latin American and Caribbean States (GRULAC) for the list of cases to be examined at the current meeting of the Conference, as in his view, the necessary transparency had been absent in its elaboration.

He highlighted the questions on which he founded his opinion, in particular: that the preliminary list of potential cases to be considered by the Committee traditionally served as a basis for the elaboration of a reduced list during the sessions; the inclusion of countries which did not figure on the preliminary list had an adverse effect on these countries taking into account that they did not have the necessary time to prepare their comments – moreover, a country which did not figure on the preliminary list could not present abbreviated documents; the same technical criteria which served as a basis for the preparation of the preliminary list should apply to the selection of cases for examination and the inclusion of other countries; the reasons given for the inclusion were surprising, as while certain cases were considered to be cases of progress. He emphasized that the question of process was just as important as the substance and that the main question was that the rules of procedure had not been respected in the preparation of the list of cases.

The Government member of Brazil supported the statement made with respect to GRULAC by the Government member of Mexico regarding the need to assure transparency in the selection of cases. The Government's statement responded to the points raised and also underlined the close collaboration between Brazil, Argentina and other MERCOSUR member States to promote and reinforce social dialogue in the region. With the support of the ILO, the Argentine Government would continue to improve employment conditions while at the same time reinforcing national democratic institutions.

The Government representative said that any help was welcome and that the comments provided by the representatives of the employers and the workers would be taken into account. She assured the Committee that she had taken due note of all the questions and subjects raised and stated that given the technical nature of the legislation, it was not necessary to enter into the details of the debate.

The Worker members concluded by asking the Government to take action without further delay to grant the trade union status requested by the CTA; to adopt the necessary amendments to Act No. 23551; to amend Decree No. 272/06 so that, in case of disagreement between the parties of the determination of minimum service, the final decision did not go back to the administrative authority; to provide information on the number of cases in which the administrative authority had changed the terms of the Guarantees Commission's opinion; and to accept technical assistance in order to revise the legislation and ensure its practical application with respect to attributing union status to the trade unions.

The Employer members recalled, in reply to the comments made on the inclusion of Argentina in the list of cases, that the Committee had just gone through a year-long process of consultations and had reached consensus over a set of methods of work including the criteria for the selection of cases. Furthermore, a briefing had been provided to the members of the Committee to ensure full transparency in the process of selection.

Turning to the issue of Argentina, the Employer members observed that they disagreed with the comments made by the Worker members because there was no indication in the Committee of Experts' report that there was a problem with the law in Argentina. There were requests for more information but no indication that Act No. 23551 fell short of the requirements of the Convention. Although this might prove to be the case in the future on the basis of the information to be provided by the Government, there was no basis for the time being to request the Government to change its law. The Committee of Experts wished to see how the law worked in practice in order to make an assessment. The Government should therefore be asked to provide a report addressing the issues identified by the Committee of Experts.

Conclusions

The Committee took note of the information provided by the Government representative and the discussion that followed. The Committee noted that the issues raised by the Committee of Experts in its observation referred to the delayed response by the authorities with regard to the request for trade union status submitted by the Central of Argentine Workers (CTA), as well as various allegations of anti-union acts and the request for information on the application in practice of the legislation respecting the establishment of minimum services.

The Committee took note of the Government's detailed statements on the legislation regarding essential services and the establishment of minimum services and concerning the creation and functioning of the independent commission by virtue of Decree No. 272/2006, as well as the procedure for the request for trade union status undertaken by the Central of Argentine Workers (CTA) and the provisions of Act No. 23551 respecting trade union organizations. Furthermore, the Committee took note of the Government's statements indicating that the CTA participated in various national and international forums without discrimination. It particularly noted that the Government had indicated that it was open to dialogue and technical cooperation and that a tripartite commission was being considered to examine the issues mentioned by the Committee of Experts.

The Committee urged the Government to reply to the request for trade union status submitted by the CTA, before the next session of the Committee of Experts, taking into account all of the provisions of the Convention. The Committee expressed the hope that the Government would send a full report this year on all of the issues relating to the application of the Convention, including those raised in previous years on trade union legislation, and hoped that the Committee of Experts would be in a position to evaluate all of the information relating to the allegations of anti-union acts, as well as the issues related to the Guarantees Commission advising on the establishment of minimum services.

The Committee requested the Government, with all the social partners and the assistance of the ILO, to elaborate draft legislation for the full application of the Convention, taking into account all of the comments of the Committee of Experts.

BELARUS (ratification: 1956)

A Government representative said that, since the last session of the Committee, the situation regarding the implementation by Belarus of the recommendations of the Commission of Inquiry had drastically changed. Over the past year, the Government had taken a series of concrete measures that had led to certain of those recommendations being implemented in full. Significant progress had

been made with the others. He referred in this respect to the written information provided to the Committee.

In relation to recommendation No. 2 of the Commission of Inquiry, a draft Trade Union Law was being developed, the aim of which was to simplify the procedures for establishing and registering trade unions. The draft Law was an attempt by the Government to adapt the legislation to the current situation and to create a legal basis for further and more intense development of trade union pluralism in the country. The adoption of the new Law would solve the problems in the legislation that had been raised by the Commission of Inquiry.

Throughout its elaboration of the draft Law, the Government had undertaken intensive consultations with the ILO. It had discussed the initial concept of the draft law with the Office in October 2006. Consultations had taken place in Minsk in January 2007 and in Geneva in February. The Government had also actively discussed the draft Law with the social partners in the country. Three expert meetings had taken place on the issue of improving legislation in the labour and social sphere and the draft Law had been discussed in that context. All interested parties had been involved in the consultation process: the Government, the Federation of Trade Unions of Belarus (FPB), the Belarus Congress of Democratic Trade Unions (CDTU) and employers' organizations. Further discussions had been held with the ILO in Geneva in May 2007.

Each article of the draft Law had been reviewed and positive steps were taken by the Government to resolve a series of issues that had been noted. The standards about which the ILO had particular concerns had also been discussed. The Government and the ILO had agreed to continue working jointly on the draft Law. Towards the end of June 2007, consultations would resume in Minsk with the participation of the Government, all trade union and employers' organizations and the ILO.

The concerns raised by the Committee of Experts would be addressed by the new Law. It would not prohibit the creation of a second primary trade union organization in those enterprises where an organization with over 75 per cent of the workers as members already existed. The draft Law guaranteed the right to create trade unions at all levels and in any organization. This resolved two of the main issues raised by the Commission of Inquiry: the need for a legal address and the 10 per cent minimum membership requirement. These requirements had been abolished. The draft Law was advantageous to small trade unions. A trade union could be formed in any enterprise, as long as it had three members. Instead of a legal address, all that was needed was a contact address. Trade unions with a legal address had the right to obtain legal personality. Those without a legal address, however, would have the same rights to undertake trade union activities and defend the interests of their members.

The recommendations of the Commission of Inquiry touched upon issues relating to the creation of trade unions at the enterprise level, which was also dealt with in the draft Law. In addition, the draft Law considerably relaxed the procedures for establishing trade unions of workers from various enterprises. The fact that such trade unions could be set up with a minimum membership of 30 people was in accordance with ILO principles. The provisions of the draft Law relating to the representativeness of trade unions were also in accordance with ILO standards. All trade unions, regardless of their level of representativeness, would enjoy the rights and guarantees needed to ensure that they could function normally and protect the interests of workers. They also had the right to the following: independently establish their statutes; elect their officers and organize their activities; collect dues from their members; establish and join federations; receive and disseminate information relating to their statutory activities; participate in discussions between employers and workers on labour issues; defend the rights of their members, including by representing them in court; organize strikes; and undertake industrial action. Thus, their authority was safeguarded. The additional rights of representative trade unions included the right to engage in collective bargaining, become involved in the development of government policy and monitor observance of labour laws.

The draft Law stipulated that an enterprise-level trade union would be recognized as representative if its membership included no fewer than 10 per cent of the enterprise's workers. A trade union operating throughout the country would be recognized as representative if it had no fewer than 7,000 members, or one-third of the workers in a specific branch or profession. The Government's opponents asserted that the issue of representativeness had been included in the draft Law only to drive the CDTU from the process of social dialogue. That was not true. The draft Law took into account the interests of the various types of trade unions and it created the necessary conditions for the development of trade union pluralism. Most importantly, it guaranteed that the right of freedom of association could be exercised by anyone who so desired. It was therefore clear that the presence or absence of the additional rights afforded to representative trade unions would not exert an excessive influence on the choice of a trade union organization by workers.

The promotion of social dialogue in general had been one of the principal achievements of the Government over the past year. In terms of the draft Law, the consultations between the Government and the social partners had led to concrete results. At first, the draft Law had stated that no fewer than 8,000 members were required for recognition of a trade union as representative at the national level. Following consultations, however, that figure had been reduced to 7,000. Furthermore, two Republic-wide trade unions had previously been required to create a trade union association. That number was now only one. There were currently two such associations in Belarus: the FPB, with 4 million members, and the CDTU, which had 10,000 members. The changes introduced by the draft Law provided an opportunity for both of them to confirm their status as national associations and to take part in social dialogue at national level, which included representation on the National Council on Labour and Social Issues. Nevertheless, the absence of national-level status in no way impinged on the possibility of creating a trade union or association of trade unions.

In order to further encourage the development of the trade union movement, the draft Law provided for a waiver on state registration fees. This was particularly important for small trade unions. In addition, the registration procedure had been simplified and the creation of trade unions had been made easier in general. At the enterprise and regional levels, it significantly reduced the minimum requirements for numbers of members. For nationwide trade unions, however, the figure remained at 500, a number that had never been criticized by the ILO.

The adoption of the Law would be a major step forward in guaranteeing the right of freedom of association in Belarus and a real contribution to the implementation of the recommendations of the Commission of Inquiry. The draft was not yet in its final state and the process of intensive negotiations would continue. In July 2007, it would be examined by the National Council on Labour and Social Issues (NCLSI) and was due to be considered by Parliament later in the year. The Government considered it a well-balanced Law that was in full accordance with Conventions Nos 87 and 98.

In 2006, the Government had undertaken a series of other steps to implement the recommendations. It had embarked upon a process of relaxing the procedures for the registration of trade unions and had abolished the Republican Registration Commission, thus implementing recommendation No. 3. The Ministry of Justice was now responsible for the registration. In December 2006, it had

posted on its web site information on membership which explained that citizens had the right to create trade unions of their own choosing and to join trade unions if they were willing to comply with their union's statutes. In 2006, six applications for registration had been received. Four trade unions had been registered and two applications had been denied, but the reasons were mainly that they were violating their own statutes. Nevertheless, they had the right to reapply.

Regarding the full dissemination of the recommendations of the Commission of Inquiry, recommendation No. 4, the Government had published them in its official journal *Respublika*, which had a large countrywide circulation. It had also informed members of the judicial system of the need to examine complaints from trade unions thoroughly. In January 2007, a seminar had been organized, in conjunction with the ILO, with the aim of raising awareness among the judiciary. Given the success of the event, the Government had approached the ILO regarding the possibility of holding another seminar on issues of discrimination in labour relations as a result of membership of a trade union. He added that the Government had provided the ILO with detailed information on the cases of the eight workers who had been dismissed due to their trade union membership, and he was pleased to inform the Committee that air traffic controller Mr Oleg Dolbik had been re-engaged.

Social partnership bodies were fully involved in the process of implementing the recommendations. On 31 January 2007, the National Council on Labour and Social Issues had admitted Mr Yaroshuk, Chairperson of the CDTU. Thus, recommendation No. 11 had been implemented in full. The social partners were constantly and systematically involved in consideration of issues relating to the interaction between the boards of enterprises and trade unions, in accordance with recommendation No. 6.

Belarus had also set up additional mechanisms to protect the rights of trade unions and their members. The Council for the Improvement of the Legislation in the Social and Labour Sphere had assumed the role of an independent body for examining complaints related to interference in trade union affairs, thereby implementing recommendation No. 5. It would examine cases brought by workers relating to discrimination as a result of membership of a trade union. By guaranteeing independent review of the cases, it was implementing recommendation No. 7.

He observed that the working methods of the Conference Committee meant that it concentrated on the comments made by the Committee of Experts. Yet the situation in Belarus had changed substantially since the comments had been made; he therefore urged the Conference Committee to take the current situation into account in its deliberations. He said that ILO decisions would also be used by other international organizations. The European Union (EU) had referred to the ILO's position when introducing economic sanctions against the country, and the conclusions of the present session of the Committee could be used by the EU to justify its position. At its present session, the Conference had set up a committee to examine the ILO's position on ensuring the sustainable activity of enterprises. Support for and the development of sustainable enterprises was one of the pillars of the ILO strategy for achieving decent work. Such enterprises ensured economic growth, and jobs and income for workers. The EU's economic sanctions would have a negative effect on the performance of enterprises.

In conclusion, he said that his Government had done everything it could to implement as fully as possible the conclusions adopted by the Conference Committee the previous year. He called on the Committee to support the efforts made by the Government and to adopt conclusions that confirmed the existence of real and tangible progress.

The Employer members recalled that the case had a long history going back over 15 years, including a Commission of Inquiry, a process reserved for the most serious cases. They noted that, in comparison with 2005 and 2006, the Government's orientation to the case appeared to have changed. It had previously maintained that the recommendations of the Commission of Inquiry needed to be adapted to national conditions. It was now saying that it would fully implement them. The change was to be welcomed.

The Employer members noted that in the oral and written information that had been provided, reference had been made to a number of possible changes in the law. There would also be a high-level visit to the country by the ILO immediately following the Conference. While the latest version of the draft Trade Union Law appeared to address some of the matters at issue, a minimum number of measures needed to be taken in this serious and long-standing case. Firstly, the Government needed to repair the damage suffered over recent years by employers' and workers' organizations so that there could be full, complete and vibrant social dialogue. Secondly, as everyone was aware, even with the best intentions, there could be a gap between the provisions of draft legislation and the requirements of the Convention. It was not possible to review the proposed text of the draft Law in the Conference Committee and, even if the text had tripartite support, this did not necessarily mean that it fulfilled all of the Government's obligations. The ILO therefore needed to provide the Government with an opinion on whether all aspects of the draft legislation met the obligations of the Convention. The Government, in consultation with the employers' and workers' organizations, needed to reach agreement on the revised draft Law, which should be submitted in time for consideration by the Committee of Experts at its next session. This would provide the Conference Committee with a basis for assessing the real situation next year. Although the Employer members expressed a certain level of hope, they still remained concerned in view of the history of the case. They therefore hoped to see progress in the case in the very near future.

The Worker members thanked the Government representative for the oral and written information and emphasized that the application of Convention No. 87 in Belarus was one of the cases with which the ILO supervisory bodies were most familiar. Since 1995, the serious and systematic violations of the Convention in Belarus had been the subject of repeated observations by the Committee of Experts, the Committee on Freedom of Association, the Credentials Committee and the Conference Committee. In 2003, the Governing Body had decided to establish a Commission of Inquiry, a measure reserved for the most serious cases of non-compliance with ratified Conventions. The Commission of Inquiry had issued 12 recommendations, most of which should have been implemented two years ago. Unfortunately, progress had clearly not been sufficient. In view of the serious implications of this discussion of the case, the developments that had occurred since the publication of the report of the Committee of Experts could not be ignored, with particular reference to the discussion in the Committee on Freedom of Association and the conclusions of the Governing Body in March 2007.

The Worker members took note of the exhaustive information provided by the Government. However, in their view the information was confusing at best, misleading at worst, and did not address the heart of the matter. The present discussion should focus on only two matters: whether the observations of the Committee of Experts had been addressed, and whether the Government had implemented two very simple requests in the conclusions adopted by the Governing Body in March 2007. The Governing Body had called upon the Government to ensure that all workers' and employers' organizations could

function freely and without interference, and obtain registration; and to abandon the approach set out in the conceptual framework on the Trade Union Law, which had now become a draft, while reviewing the national legislation in full to ensure that the right to organize was fully protected.

They acknowledged the developments mentioned by the Government representative, namely the granting to the CDTU of a seat on the National Council on Labour and Social Issues, the disbandment of the Republican Registration Commission, the re-engagement of Oleg Dolbik and the recent registration of a few independent trade union organizations. These were steps in the right direction, but they did not resolve all the pending issues. Moreover, none of the independent trade union organizations specifically mentioned in the report of the Commission of Inquiry had so far been registered, even though the Committee of Experts had called on the Government to take immediate measures for the registration of those organizations and of the territorial organizations of the CDTU, namely those in Mogilev, Baranovici and Novopolotsk-Polotsk. In the meantime, the Committee on Freedom of Association continued to examine new cases of the refusal to register independent trade unions. Even where such unions won their battle for registration, the workers suffered unacceptable humiliation in the process. For example, the Radio-Electronic Workers' Union (REWU) had suffered unacceptable interference by the Ministry of Justice, which had itself been closely involved in dialogue between the ILO and the Government. Moreover, immediately after the Conference last year, the Ministry of Justice had issued its own interpretation of the REWU's constitution, prohibiting workers who were not employed in the radio-electronic industry from joining the union, even if the union itself was prepared to accept them. This interpretation had led to a situation in which prosecutors refused to address cases of harassment of REWU members, effectively giving a green light to union-busting campaigns. Examples included the registration of the Borisov union in February 2007, as indicated by the Government representative, who should have added that it was the union's sixth application for registration and that the previous application had been refused because of the font size of the related documents.

The Worker members recalled that, according to Convention No. 87, as interpreted by the Committee of Experts and the Committee on Freedom of Association, the registration procedure should be a mere formality. This was not the case in Belarus. Trade unions could not register unless they could provide a legal address, for which a number of rules existed. For example, enterprise unions in the structures of the official FPB could use the legal address of the company, but independent trade unions could not, as employers refused their consent. In view of the large number of state enterprises in the country, consent for the use of legal addresses could easily be controlled by the State. The ILO had urged the Government to repeal Presidential Decree No. 2, which set out the provisions referred to above. However, the Government had still expressed no commitment to make this change and the draft Law was, to their understanding, still not compatible with the Convention. It was to be regretted that the text of the draft had not been placed before the Committee. The Worker members recalled that the new Trade Union Law was not one of the recommendations of the Commission of Inquiry. What was needed was to repeal or amend Presidential Decrees Nos 2, 11 and 24. The new Law would only be a positive development if it were in full conformity with the Convention, which it was not. The unacceptable registration requirements were still in place, at least for unions wishing to acquire legal personality. The fear was that the adoption of the new Law would mean that all trade unions would have to go through difficult re-registration procedures once again.

The Worker members noted with interest the re-engagement of the trade unionist, Mr Dolbik, although on a fixed-term contract. However, the Government had not indicated what had happened to other people in similar situations. The Committee on Freedom of Association had before it new cases of anti-union harassment, including the non-renewal of the fixed-term contracts of the members of the independent trade union in the Avtopark No. 2 in Gomel and discrimination against independent trade unionists in the Belshina enterprise, which had resulted in the President of the union going on a hunger strike.

One of the urgent requests of the Committee of Experts was for the Government to repeal the Law on Mass Activities and the corresponding Presidential Decree No. 11, which made it practically impossible for trade unions to organize public protest actions because of the administrative obstacles and high fees. However, nothing had been done to change these rules and pickets and demonstrations organized by independent trade unions were simply prohibited or moved to other locations. Workers in Belarus did not have full freedom to join an organization of their choosing. If they wished to form an organization outside the official structures, which was the essence of Convention No. 87, they would probably have to fight a long battle for registration, face strong pressure from the Government or the authorities and, if they persevered, they would still not have the right to organize mass activities.

The Worker members referred to the overall political and human rights climate in the country, where the independent trade union movement, despite the many obstacles it had to overcome, was one of the very few elements in society that stood up to what was basically an authoritarian regime. Other civil society organizations, including employers and their associations, also faced limitations of their fundamental rights. Although there was on-going dialogue between the Government and the Office, the danger was that the dialogue was being diverted from the main issue and that it was only taking place in view of the international pressure faced by the Government, notably the decision by the European Union to withdraw trade preferences temporarily. While the Government was making every effort to prevent that decision from being enforced, it had shown no intention of genuinely implementing the Convention. Instead, it was introducing a few purely cosmetic changes, while engaging in an organized lobbying campaign that desperately sought to prevent the case from being assessed on its merits. The Worker members therefore called on the Committee to consider the merits of the case at least as seriously as it had in previous years.

The Worker member of Belarus said that the process of formulating the draft Trade Union Law had addressed a number of issues raised in the recommendations of the Commission of Inquiry. All types of trade unions had been involved in the process, including those that were not members of the FPB. The text of the draft Law had been studied and amendments would be proposed, as his initial impression of the text was that it needed much improvement. He therefore hoped that the comments made by the FPB would be taken into account so as to offer greater protection for trade union activities and strengthen the text in other areas, such as the minimum number of members required to achieve representative status. He believed that the trade unions in the country would be in a stronger position to bargain with the Government if they achieved greater unity amongst themselves.

He also agreed that constructive dialogue was taking place between the Government and the Office and he hoped that it would lead to the full implementation of the recommendations of the Commission of Inquiry, leading to full protection and freedom of action for trade unions. The FPB was a confederation with 4 million members, but it always supported equal relations with other unions.

He therefore welcomed the fact that the Government was implementing the majority of the recommendations of the Commission of Inquiry. He believed that their implementation would be reinforced through the adoption of the new Trade Union Law, which he hoped would be fully in line with ILO standards and would be adopted in the near future.

However, he expressed concern at the negative consequences of the decision by the European Union to withdraw the trade preferences for Belarus. He believed that the decision was premature, as it was still too early to assess the extent to which the recommendations of the Commission of Inquiry were being implemented. Although he could understand the concern of the European Union, he believed that it would be more appropriate for the ILO itself to address issues relating to the fulfilment of the Government's commitments in relation to ILO standards, especially since the action proposed by the European Union was likely to have a particularly prejudicial effect on working and living standards in the country in general.

He therefore concluded that there had been progress in the implementation of the recommendations of the Commission of Inquiry, although much still remained to be done. The trade union legislation was being improved and trade unions would be able to operate more effectively. It was therefore to be hoped that the European Union decision would not be put into effect.

The Employer member of Belarus assured the Committee that employers' organizations in Belarus, together with the Government and trade unions, were working to fulfil the recommendations of the Commission of Inquiry and that the situation had improved considerably over the past months. A number of important steps had been taken, as indicated by the Government representative. Nevertheless, there remained a number of unresolved issues in the work of employers' organizations with the Government, including questions relating to taxation, the business environment, bureaucratic barriers to business and the adoption of laws enabling companies to operate more freely. As co-chair of the National Council on Labour and Social Issues he reaffirmed that dialogue on social issues had been activated recently and hoped that the progress already made would lead to substantial results.

However, he expressed great concern at the intention of the European Union to exclude Belarus from the generalized system of preferences (GSP). If the decision were enforced, it would result in a considerable decline in trade with European countries to the detriment not only of businesses in Belarus, but also their European partners. Those who suffered the most would be small and medium-sized enterprises (SMEs), and particularly exporters of textiles, where the main workforce was made up of women. Moreover, a large number of SMEs were located in the Chernobyl area. Such a negative impact on trade and economic cooperation with the European Union was not in the interests of those seeking stability and economic and social security in Europe. The continuation of dialogue with the ILO and the European Union would be much better than measures which would jeopardize the situation of thousands of people in the country. He called on the Committee to take a position against the implementation of the decision by the European Union to exclude Belarus from the GSP.

The Government member of the Russian Federation noted that a number of important steps had been taken and that the Government was making progress in its efforts to give effect to the recommendations of the Commission of Inquiry. A new version of the draft Trade Union Law had been submitted to the Office for evaluation, demonstrating the cooperation between the Government and the ILO. The draft Law no longer contained a minimum membership requirement of 10 per cent of employees for the creation of a trade union and a legal address was no longer required for registration. The decision to include the Chairperson of the CDTU as a member of the National Council on Labour and Social Issues was another such positive step. The conceptual framework of the draft Law, and subsequently the draft Trade Union Law, had been discussed repeatedly with trade union representatives, as a result of which significant changes had been made to the draft Law. Dialogue with the social partners was systematic in the Council for the Improvement of the Legislation in the Social and Labour Sphere, where the CDTU had two seats.

More progress was of course needed, but it could not be achieved overnight. More work and better cooperation with the ILO was also required. The Belarusian Government was clearly committed to the process of implementing the recommendations of the Commission of Inquiry, in law and in practice, as demonstrated by the participation of the Deputy Prime Minister in the Conference Committee.

During the last session of the Governing Body, most participants had noted the progress made by the Government in implementing the recommendations of the Commission of Inquiry and bringing the law into line with the provisions of Convention No. 87. The Conference Committee should in turn be unbiased, conscientious and objective in its deliberations. Cooperation, not penalization, was the order of the day. The country should be provided with the assistance needed to enable it to fulfil its obligations. The fact that progress had been achieved and that the Government was moving in the right direction should be reflected in the Committee's conclusions.

The Government member of Germany also speaking on behalf of the Government members of the European Union represented in the Committee and the Government members of Croatia, The former Yugoslav Republic of Macedonia, Turkey, Albania, Bosnia and Herzegovina, Montenegro and Serbia; in addition, Norway, Switzerland and Ukraine aligned themselves with her statement. She recalled that in the Governing Body in March 2007 the European Union had strongly supported the conclusions on Belarus adopted by the Governing Body in March 2007 which, inter alia, called upon the Government to cooperate fully with the Office for the implementation of all the recommendations of the Commission of Inquiry. The Government had been urged to review all of its legislation in full consultation with all the social partners concerned with a view to ensuring the right to organize in both law and practice so that free and independent trade unions could exercise their full rights. The European Union had also noted with interest various of the activities carried out by the Government and the signs of the political will to cooperate with the ILO at a high level. However, it had been necessary to acknowledge that the high-level activities were in contrast with the outcomes on the ground, where there had been no substantial progress on most of the essential issues. In particular, the European Union had called on the Government to amend the draft Trade Union Law to ensure the right of trade unions to be established and function freely and without interference.

She expressed disappointment that the Committee of Experts had been forced to conclude that the current situation remained far from ensuring full respect for freedom of association. The European Union shared the concern with regard to the conceptual framework of trade union legislation and its possible impact on trade union pluralism. The focus on representativeness in the new draft Law was likely to have a serious impact on the existence of first-level organizations and their corresponding federations at the level of the Republic, thereby giving rise to a de facto union monopoly. She once again urged the Government to abandon this approach and to take the necessary steps to ensure that the relevant legislation fully ensured freedom of association and the right of all workers

to establish and join organizations of their own choosing at whatever level.

With regard to the right of trade unions to be established freely and to operate without obstacles, she acknowledged the disbandment of the Republican Registration Commission and the adjustments to the registration process. She firmly hoped that the process of registration in its present form did not in practice amount to a requirement of previous authorization. She also regretted that no progress had been made in complying with the recommendations of the Committee on Freedom of Association to register the first-level organizations covered by the complaint, and hoped that all the necessary measures would be adopted for their immediate re-registration. She further regretted the failure to amend the Law on Mass Activities, the implementation of which in practice routinely rendered meaningless the right to demonstrate.

In conclusion, she once again urged the Government to fully and effectively implement all of the recommendations of the Commission of Inquiry with a view to ensuring full respect for freedom of association in consultation with all trade unions. To this end, she strongly encouraged the Government to continue a transparent and close dialogue with the ILO, and indicated that the European Union would follow closely and with great interest any further developments in the country.

The Worker member of the Russian Federation recalled that, for seven years, the violation of Conventions Nos 87 and 98 by the Government of Belarus had been discussed at almost every International Labour Conference and Governing Body session. During that period, the Commission of Inquiry had visited Belarus, which had also received several high-level ILO missions. The Governing Body had last examined the case in March 2007, when the Workers' group, as a concession, had not called for it to be included on the agenda of the present session of the Conference. They had therefore accorded the Government more time to implement in full all 12 recommendations, noting that certain progress had been made in relation to some of them. However, the Government had not taken any of the measures that were urgently required to redress the situation.

Referring to the proposed creation of a state union between Belarus and the Russian Federation, he said that Russian trade unions would not accept violations of workers' rights and the non-observance of freedom of association in part of a future united state. Thus, on 4 June 2007, the Federation of Independent Trade Unions of Russia (FNPR) had sent a letter to the President and Prime Minister of the Republic of Belarus expressing the hope that the authorities would heed the views of the international community and take decisive measures swiftly to implement in full the recommendations of the Commission of Inquiry. Two other Russian union organizations had sent similar letters.

He sincerely hoped that, by the next session of the Governing Body, the Government would have fulfilled its promises to implement in full the recommendations of the Commission of Inquiry, thereby demonstrating compliance with its international obligations and re-establishing its authority in the world and in Europe. Furthermore, it would have a positive impact on the development of trade unions in the country and create a climate of trust and non-interference as a basis for real tripartite cooperation, which would be to the benefit of the rights and interests of all parties.

The Worker member of Germany said that the Governing Body and the Committee on Freedom of Association continued to express concern about the situation of independent trade unions in Belarus and that they reviewed the case on a regular basis. The ILO was providing the country with a very high level of assistance and support, and would undoubtedly continue to do so. It had therefore been a matter of great surprise to hear the Government representative at the last Conference accusing the Office of merely criticizing Belarus and in so doing acting in the interests of the West. Hardly any other member State received so much support from the ILO, including missions at all levels, to help bring its law and practice into accordance with the freedom of association Conventions. It was therefore all the more worrying that there remained severe obstacles to the exercise of freedom of association and to the establishment and membership of independent trade unions. Although the Governing Body and the Committee on Freedom of Association had been able to note certain progress, a great deal still remained to be done. Even where unions were set up, their action was restricted and they could not organize the necessary protest and industrial action. Until the Government repealed the Law on Mass Activities and renounced interference in all types of protest activities, free trade union activity would hardly be possible. She therefore urged the Government to give effect to the many commitments that it had made before the November session of the Governing Body, which would have to decide on further action with a view to ensuring the application of the Convention.

The Government member of the Bolivarian Republic of Venezuela commended the Government of Belarus for its efforts. He stated that the Government had adopted substantive measures since the 95th Session of the International Labour Conference. They had been sovereign efforts and should therefore be taken into consideration in the conclusions.

The Worker member of Ecuador speaking on behalf of the Andean Labour Consultative Council, the Andean Coordinating Unit for Women Workers and 16 confederations in five Andean countries: Colombia, Bolivarian Republic of Venezuela, Peru, Bolivia and Ecuador, said that any type of sanction intended to affect the economy of a country which prejudiced men and women workers was not compatible with ILO principles or with workers' solidarity. He emphasized that for this reason he was opposed to the exclusion of Belarus from the European Union's General System of Preferences, which was not in accordance with the recommendations of the ILO Commission of Inquiry.

The linking of labour standards with trade sanctions was unacceptable and dangerous, particularly when it could be seen that once again, as a result of the position of the Employer members, it had not been possible for the Committee on the Application of Standards to examine the extremely serious case of Colombia. It was therefore unacceptable that sanctions should be imposed on Belarus, where there were no murders of trade union leaders. These practices were in violation of the ILO's spirit of persuasion, particularly as Belarus was making efforts to give effect to the recommendations of the Commission of Inquiry. In conclusion, he called on the Worker members to show solidarity with the workers of Belarus and to oppose the decision of the European Union.

The Government member of Canada thanked the Office for its continuing efforts to encourage the Government to promote and protect human rights, in accordance with the recommendations of the Commission of Inquiry. He noted that the Government had taken some specific steps since 2006 to implement these recommendations and had requested technical assistance from the Office in relation to the trade union legislation. His Government, however, remained deeply concerned by the blatant denial of fundamental rights and democratic principles which permeated all spheres in the country, and particularly freedom of assembly and trade union rights. He emphasized the importance for the Government to recognize the gravity of the situation and to take prompt action to redress the effects of severe violations of the most basic elements of the right to organize. He urged the Government to collaborate closely with the Office and to keep it fully in-

formed of further developments in the implementation of the recommendations of the Commission of Inquiry.

The Worker member of the Syrian Arab Republic, recalling the fundamental importance of the impartiality of the ILO, criticized the approach of imposing economic sanctions and restrictions on Governments on account of their political positions, as well as other factors. Such measures were prejudicial to the people, workers and their interests. His own country was exposed to economic sanctions and the real victims were the Syrian people and workers, not its Government.

He therefore called on the ILO to adopt a clear position in opposing economic sanctions, whatever the political pretext, as they had a harmful effect on the interests of workers, on opportunities to achieve development, on social security protection and on the reduction of unemployment. He reiterated the importance of continued efforts to strengthen the application of international labour standards and other relevant international instruments. In conclusion, he reaffirmed his solidarity with the trade unions in Belarus and called on the European Union to refrain from imposing economic sanctions and instead to engage in effective dialogue.

The Government member of China noted the observation made by the Committee of Experts in relation to Conventions Nos 87 and 98 and stated that he had listened very carefully to the statement by the Government representative. His Government noted with satisfaction that the Government had been faithfully implementing the recommendations of the Commission of Inquiry since the Conference in 2006. The Government had been engaged in drafting the Trade Union Law in cooperation with the social partners and the Office, as well as the establishment of a tripartite dialogue mechanism and the protection of trade union rights. He considered that meaningful measures had been put in place and positive progress was being made. He called on the Committee to recognize and encourage these efforts and the progress made by the Government and its willingness to continue the ongoing cooperation with the Office. He expressed the hope and belief that further cooperation between the Government and the Office would promote the effective application of Conventions Nos 87 and 98.

The Worker member of Finland noted that, according to the information provided by the Government, under the proposed new system there would be several different kinds of trade unions. There would be those with legal personality, and those without legal personality. There would also be representative and non-representative trade unions. Trade unions with a different status would have different kinds of rights and obligations. For instance, non-representative trade unions would not have the right to negotiate collective agreements. Although the Government representative had claimed that the conditions were being created for the development of smaller trade unions, it was clear that the Government believed that small trade unions were acceptable only if they remained silent. When examining the status of representative trade unions and the acquisition of national status, the picture was even more confusing. Who would have the power to confirm the status of a national association and what formalities would be involved? Would that mean new forms of interference, such as having to produce a list of members? The prerequisite that had been mentioned of 7,000 members, or one-third of the workers in a particular branch or profession, for the acquisition of national status appeared far too high in a country where workers were still being harassed for trying to establish or join a trade union outside the traditional structure. It appeared that the intended structure was designed to make workers choose between traditional trade unions enjoying all the necessary rights, and other trade unions without such rights in the areas of collective bargaining, supervision of compliance with labour law, and also such aspects as housing. Moreover, she wondered whether the focus on the definition of representative trade unions was not an attempt to draw attention away from the core issues.

She emphasized that Convention No. 87 was not about different thresholds for trade unions of different kinds and on different levels. It was not about making life difficult for trade unions. The Convention created an obligation to implement freedom of association and protection of the right to organize in law and practice. It was a fundamental ILO principle that freedom of expression and freedom of association were essential to sustained progress, and that injustice anywhere constituted injustice everywhere. She therefore urged the Government to comply with the recommendations of the Commission of Inquiry and to guarantee the right of collective bargaining in full freedom to all trade unions voluntarily elected by workers.

The Government member of Cuba considered that the Committee should recognize that since the last International Labour Conference, the Government of Belarus had adopted a series of measures to implement the recommendations of the Commission of Inquiry, and that tangible progress had been observed as a result of their implementation. Belarus had taken a number of measures to improve its legislation, in close collaboration with the ILO and the social partners. The Government had also paid attention to monitoring and analysis of practices relating to the registration of trade unionists and had emphasized the need to strictly comply with the right of freedom of association, as well as the inadmissibility of taking decisions which were not in compliance with the law. The recommendations made in this respect were being addressed through the development of a new Trade Union Law.

On the one hand, the information provided to the Commission revealed the political will of the Government to implement the recommendations of the Commission of Inquiry and, on the other, that the channels of communication between the Government of Belarus and the ILO were working well. Such efforts should be supplemented by greater ILO technical cooperation, and should be adequately reflected when drafting the conclusions on the case.

The Government member of the United States recalled the comprehensive assessment provided by the Commission of Inquiry of the serious fundamental violations of freedom of association and of trade union rights. The Commission of Inquiry's recommendations contained 12 specific measures to be taken by the Government without delay to bring its law and practice into compliance with international labour standards. The implementation of these recommendations was still the benchmark for measuring progress.

She noted the consultations and technical discussions which had been held in the past few months between the Government and the Office and with the social partners, and expressed the hope that the dialogue would continue. She also noted the oral and written information provided by the Government concerning recent developments in the preparation of the draft Trade Union Law and other measures that had been taken by the Government to implement the recommendations of the Commission of Inquiry. These developments needed to be analysed and evaluated by the Committee of Experts.

Her Government would continue to expect the Government of Belarus to implement fully all of the recommendations of the Commission of Inquiry. She looked forward to the day when genuine freedom of association became a reality in Belarus and when no barriers existed, in law or practice, which impeded the right of workers and trade unions to associate, organize, register and to express their opinions without threat of interference or reprisal.

The Worker member of Ukraine said that democracy ended when the state authorities tried in any way to sub-

ordinate and control trade unions, which were among the most basic and influential institutions of civil society. He described some of the violations of workers' rights that had occurred in Belarus: the prevention of the creation of trade union organizations; unjustifiable suppression of industrial action; and the issuing of short-term contracts to undermine the basis of collective bargaining and trade unions. The fundamental rights enshrined in ILO standards were being undermined in law. Trade unions were being hindered at all levels and were often required to pay for certain services that ought to be provided free of charge.

Referring to the decision by the European Union to exclude Belarus from the Generalized System of Preferences in trade relations with the European Union, he said that it was important to remember that responsibility for the exclusion did not lie with the trade unions, but with the Government. The Federation of Trade Unions of Ukraine (FTUU) had sent a letter to the President of Belarus indicating that specific measures were needed to ensure observance of trade union rights. He emphasized that, in the twenty-first century, a country could not develop normally in isolation. Only through cooperation could the rights of workers and trade unions as a whole be protected. He hoped that the Committee's conclusions would emphasize the need for Belarus, as well as other countries, to respect those rights.

The Government member of India noted with satisfaction the statement by the Government representative informing the Committee of the recent concrete developments with regard to the implementation of the recommendations of the Commission of Inquiry in 2004, as well as the recommendations made by the International Labour Conference and the Governing Body in 2006. He also noted that the Government had continued to engage in dialogue with workers and employers and had discussed the draft Trade Union Law, in collaboration with the Office. These steps were encouraging and should lead to steady progress and therefore should be viewed as signs of commitment and progress.

He recommended that the Committee reflect positively in its conclusions the developments and progress made, with a view to encouraging the Government to speed up the implementation of the recommendations of the Commission of Inquiry. He also noted that the Government delegation was once again led by the Deputy Prime Minister, which was indicative of the continued importance attached by the Government to this matter. He welcomed the Government's continued commitment to engage with the ILO at such high level to further facilitate the process of cooperation with the ILO.

The Government member of Bangladesh called upon the ILO to ensure that its standards were applied in a manner which accommodated local needs. Due to the differing levels of development and challenges faced by developing countries, the standards that could be applied in a developing country were not necessarily the same as those in a developed country. He noted that the Government of Belarus had made remarkable progress in line with the recommendations of the Commission of Inquiry. A number of trade unions had been registered in 2006–07 and the Ministry of Justice was taking measures for the strict observance of the right of freedom of association. Cooperation was continuing with the ILO for the drafting of a new labour law, in which the requirement of 10 per cent support for the establishment of a trade union, which was well beyond the requirement of the related Conventions, had been abolished. An independent body, the Council for the Improvement of Legislation in the Social and Labour Sphere, which had the confidence of the parties, had been established to maintain dialogue and interaction between the Government, trade unions, employers and non-governmental organizations. The Government was striving to make progress and there had been tremendous development over the last two years. Belarus should therefore be given adequate time to achieve implementation of the recommendations of the Commission of Inquiry.

The Worker member of the Islamic Republic of Iran, referring to the opinion expressed by the Worker member of the Syrian Arab Republic, indicated that imposing economic sanctions did not resolve a country's problems. On the contrary, the direct and harmful repercussions would be felt by the population. He hoped that the ILO would be impartial and provide the necessary technical assistance for the full observance of international labour standards.

The Worker member of Colombia, who spoke on behalf of Colombian trade unions (the Single Confederation of Workers of Colombia (CUT), the General Confederation of Labour (CGT), and the Confederation of Workers of Colombia (CTC)), indicated that the opinion expressed by the Worker member of Ecuador did not represent them. He said that such a position had been formulated without prior consultation with the above trade unions. It was not appropriate for workers to speak in the name of a trade union to justify positions held without consultations. It was for that reason that he requested that, in future, he did not speak on behalf of the above trade unions.

An observer representing the International Trade Union Confederation (ITUC) commented on the implementation by the Government of Belarus of each of the recommendations made by the Commission of Inquiry.

He said that recommendation No. 1 had not been implemented as independent trade unions could not normally create and register new organizations, and thus in the absence of a legal status many had ceased to exist altogether. Recommendation No. 2 had not been implemented as the draft law elaborated by the Government would serve to curtail the independent trade union movement, worsen the legal situation, tighten controls and further complicate the process of registration for trade unions. Regarding recommendation No. 3, the Republican Registration Commission had been abolished and its functions delegated to the Ministry of Justice. Recommendation No. 4 had not been implemented as the population of Belarus had not been clearly informed of the problems at the heart of the recommendations made by the Commission of Inquiry. Nowhere did the publicity mention the violation of trade union rights, and the state mass media had even described the ILO's position as prejudiced. Furthermore, although law enforcement bodies had been asked to place utmost importance on dealing with violations of trade union rights, it was still the case that organizations and individuals were being subjected to pressure, blackmail, threats and persecution, including from the courts. Recommendation No. 5 had not been implemented as no independent arbitration body had been set up. The Council for the Improvement of Legislation in the Social and Labour Sphere could not be considered as such a body.

Regarding recommendation No. 6, which aimed to stop any interference by the management of enterprises in trade union affairs, the exact opposite was occurring in practice. As a result of pressure, the Grodno-Azot trade union had lost 700 members, or 80 per cent of its membership, and the Belshina trade union lost two-thirds of its members. In relation to recommendation No. 7, only one of the ten people who had been unlawfully dismissed as a result of belonging to an independent trade union had been reinstated. Furthermore, the use of certain contractual forms of employment seriously undermined the rights of workers. With regard to recommendation No. 8, the Belarusian courts remained under the complete authority of the Government. There had been no progress at all in implementing recommendation No. 9. Regarding recommendation No. 10, when planning industrial action, trade unions had to pay thousands of dollars for the services of various organizations. This had prevented them from undertaking any industrial action for the past two years. In

relation to recommendation No. 11, the CDTU had been given a seat on the National Council on Labour and Social Issues. Nevertheless, as the CDTU was not covered by the general agreement, it was forced to continue to cover its own costs in terms of rent, heating and other such services. Finally, regarding recommendation No. 12, government control over the formation and development of independent structures of workers' organizations had tightened rather than diminished.

He therefore concluded that the Government had done very little to implement the recommendations, and the situation regarding trade union rights in the country had not improved. How long that would be allowed to continue depended on the Conference Committee, which needed to remember all those in Belarus who were suffering from injustice, harassment and violence. The Committee should not under any circumstances allow evil to triumph.

The Government representative said that he had listened carefully to the discussion and would take into account all the comments that had been made in relation to the implementation of the recommendations of the Commission of Inquiry. While he wished to comment on some of the observations, he said that it was difficult to judge what was being achieved in the country if the information provided was not taken into account. The Government had been careful to provide full and detailed information on the work that had been carried out since the discussion of the case the previous year. He added that a number of allegations had been made. For example, the observer representing the ITUC had indicated the previous year that he did not believe that he would be allowed to return to the Conference: the fact that he had just spoken in the debate showed that this type of allegation was baseless. While it was clear that social development was taking place, and that the Government had every intention of pursuing such development, allegations continued to be made. Nevertheless, the fact that progress was being achieved was illustrated this year by the fact that there had not been the normal campaign of complaints to the ILO prior to the Conference. In practice, there were remedies that could be used by workers if they considered themselves under pressure within their enterprises, including through the courts. Trade unions could provide assistance to their members in this respect. He added that collective agreements were also being concluded.

He recalled that the improvements that were being made in labour and social matters were discussed by the social partners in the National Council on Labour and Social Issues. He added, with regard to the draft Trade Union Law, that the present version was very different from the one examined by the Committee of Experts and the Governing Body. A copy of the new text had been supplied to the Office recently and comments had been prepared on it. It had been found that, in comparison with the conceptual framework and the February version of the draft Law, the May 2007 version did not contain provisions on a single union system at the enterprise level. Moreover, the numerical requirements for trade union registration had also been lowered. Dialogue on the draft Law was continuing and he believed that the Government was in the process of establishing a legal framework within which trade unions could develop. However, he warned that the same standards should be applied to all countries. For example, there were many European countries where there was a single main confederation of workers' organizations, as was the case in his own country, but they did not appear to be subjected to criticism by the ILO supervisory bodies in the same way as Belarus. It was therefore the intention of the Government to prepare a balanced law governing trade unions. In so doing, it was working with the trade unions in the country, including the FPB, which had 4 million members. In that context, it was not unrealistic to set a national total of 7,000 members to achieve representative status at the national level. At lower levels, lower thresholds applied. Other procedural requirements were also set out in the draft Law, such as the need for trade unions to have a legal address. This was a normal requirement and merely meant, for example, an address to which post could be sent, such as the registered office of the trade union. In the case of enterprise unions, it could be the address of the enterprise. In addition, other documents were needed, such as the constitution of the trade union, records of recent meetings and lists of the officers of the trade union. All of the documents were fully justified and could be easily prepared by the trade unions themselves.

In conclusion, he believed that the Government had demonstrated its commitment to developing cooperation with its international partners, and in particular with the ILO. He therefore hoped that when preparing its conclusions, the Committee would take into account the progress achieved and the good will shown by the Government.

The Employer members concluded that the recommendations of the Commission of Inquiry had yet to be implemented and that there was no full compliance with Convention No. 87. For that reason, the Employer members had asked that the conclusions on the case appear in a special paragraph. However, in view of the positive steps taken by the Government, they considered that the designation in the special paragraph of continued failure to comply would no longer be appropriate.

The Worker members welcomed the varied information supplied by the Government and that it had adopted a new attitude. However, they felt that the steps were insufficient to conclude that real and tangible progress had been made. Very little had been done to ensure that trade unions could operate and exercise their legitimate activities in full freedom, without interference. Significant efforts were needed to ensure even modest results, but the Worker members welcomed the fact that work had already begun and hoped that it would continue. However, they harboured serious doubts as to whether those results meant that the Government had genuinely understood the objectives of the ILO supervisory bodies and the technical assistance provided. There were clearly good intentions, but the information provided was confusing.

The Worker members recalled that the conclusions of the 2006 Conference Committee had indicated that the Government had not understood the seriousness of the situation and that no tangible progress had been achieved. Therefore, the Committee entrusted the Governing Body with reassessing whether the Government could report any tangible progress at the end of November 2006, and, if no tangible progress could be reported, to consider further measures provided for in the ILO Constitution. The fact that the 298th Session of the Governing Body (March 2007) had not explicitly decided on further measures was not because the developments in Belarus had been satisfactory, but because no real progress had been noted, although dialogue with the ILO had begun. The Worker members considered that giving the Government additional time was a significant favour. While the Government had made an effort to seize that opportunity, it did not completely understand its nature.

Specific results had been scant and some recommendations by the Commission of Inquiry had been partially addressed. However, the Government had failed to address the concerns of the Committee of Experts, the Committee on Freedom of Association and the Governing Body since Decree No. 2, which established a procedure for trade union registration tantamount to requesting prior authorization, remained in place. The new draft legislation followed essentially the same approach that the Government had been urged to abandon. Moreover, refusals of registration, anti-union harassment and interference in trade union affairs were still commonplace. The Govern-

ment had stated that there were no new complaints, but the Committee on Freedom of Association had established that complaints were numerous. The Law on Mass Activities and the respective decree still prevented trade unions from freely exercising their right to collective action. Therefore, the Worker members urged the Government to reflect on the fact that, while work had finally begun, no real and tangible progress had been made. They requested the dialogue between the ILO and the Government to continue, but they harboured serious doubts as to whether technical assistance alone could lead to any further improvements. Dialogue had only become possible following the adoption of the conclusions of the Conference Committee and the Governing Body, and as a result of decisions reached by other international bodies, principally the European Union (EU).

With regard to the measures taken by the EU, the Worker members stressed that they could not be blamed on anyone other than the Government itself. The Government knew exactly what it needed to do, and by when. The Worker members would never call on measures that harmed workers. The Government's credibility and international reputation were at stake. The statement by the few Worker members pleading against the EU measures were ill-informed, last-minute, manipulated and they did not represent the majority, let alone the consensus of the Worker members, whether in the Conference Committee or in the full Conference. The Worker members found it remarkable that such an important international body as the EU based its own decisions on the assessment of the ILO, standing as an example of the credibility and influence of the ILO on the international stage. The EU and the ILO were separate, legally distinct mechanisms, and should remain so. The EU measures would not necessarily be permanent and the Government knew that it had to implement the ILO recommendations quickly and in their entirety. If so, the Worker members would acknowledge the measures taken and other bodies could draw their own conclusions accordingly.

Since the attention focusing on the case and the assistance provided had so far produced modest results, the Worker members saw no other option but to ensure that the issue remained high on the ILO agenda. They asked the Government to take urgent measures to ensure that the recommendations of the Commission of Inquiry, as well as the Committee of Experts' observations, were implemented without further delay. They asked the Governing Body to reassess the situation at its 300th Session (November 2007). If no real and tangible progress had been noted by then, the Governing Body should consider what further measures could be taken under the ILO Constitution. The Worker members asked that the Committee's conclusions be included in a special paragraph of its report.

Conclusions

The Committee took note of the written and oral information provided by the Government representative, the Deputy Prime Minister, and the discussion that took place thereafter. The Committee recalled that it had been examining this case ever since the issuance of the report of the Commission of Inquiry and had, on each occasion, deplored the absence of any real concrete and tangible measures on the part of the Government to implement the Commission's recommendations.

The Committee noted the statements made by the Government representative according to which the Government had been and was actively continuing its consultations with the ILO and the social partners, in respect of a draft Trade Union Law which would be discussed yet again in the Council for the Improvement of Legislation in the Social and Labour Sphere in July. It observed that the text of that draft had not been made available to the Committee. It further noted the detailed information provided by the Government on steps it had taken since this Committee's discussions of the case in June 2006.

The Committee took due note of progress made in respect of some of the Commission of Inquiry's recommendations, particularly as regards the seat for the Belarus Congress of Democratic Trade Unions (CDTU) on the National Council on Labour and Social Issues (NCLSI), the disbandment of the Republican Registration Commission, the re-engagement of Oleg Dolbik – whose contract had not been renewed following his having provided testimony to the Commission of Inquiry – the publication of the Commission of Inquiry recommendations in the Government's official newspaper, and a few recent registrations of independent trade union organizations. Nevertheless, the Committee expressed its concern since these steps were clearly insufficient and did not address the heart of the matter. The Committee recalled that what was at stake in this case was the imperative need for the Government to act without delay to ensure that all workers' and employers' organizations could function freely and without interference and obtain registration without previous authorization.

The Committee noted the concerns raised relating to the draft Trade Union Law. Noting the statements made to the effect that the registration requirements remained quite complicated and that the requirements that had been criticized by the Commission of Inquiry and the Committee of Experts for many years were still necessary to obtain legal personality, the Committee urged the Government to vigorously pursue its consultations with all social partners in the country, and its cooperation with the ILO, with a view to making the legislative changes required to bring the law and practice into full conformity with the Convention and the Commission of Inquiry recommendations. It further urged the Government to take active steps to redress the damage suffered by workers' organizations that had been noted in the report of the Commission of Inquiry.

Welcoming the Government's statement that it would continue to cooperate with the national social partners and that it had invited a high-level ILO mission immediately following the Conference, the Committee expressed the firm hope that significant progress in ensuring full respect for freedom of association would be made without any further delay. In order to appropriately monitor developments in this regard, the Committee recommended that the Governing Body reconsider this matter in November 2007.

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

BOSNIA AND HERZEGOVINA (ratification: 1993)

A Government representative conveyed her Government's appreciation for allowing it to present its views on the case and indicated that the Confederation of Independent Trade Unions of Bosnia and Herzegovina had been registered at the cantonal level, which permitted it to function both in the whole of Bosnia and Herzegovina as well as outside the country. The existing laws regulating the operation of trade unions and employers' organizations allowed them to operate as such. With regard to the creation of preconditions for the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina at the state level, she indicated that the process of amending the Law on Associations and Foundations of Bosnia and Herzegovina was reaching its final stage. The amendments were intended to resolve key issues relating to the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina, as well as of other employers' organizations and trade unions at the state level, and would be submitted to the ILO for comments to determine their compliance with the international labour standards on freedom of association. The authorities of Bosnia and Herzegovina would continue to make significant efforts to discharge the obligations arising out of the ILO Constitution. However, the speaker hoped that the Conference Committee would take

into account the specific situation of the country which was reflected in the complexity of its institutional mechanisms and multiple reform processes. In conclusion, she thanked the ILO and the Office for their valuable assistance and cooperation in the past and requested that it continue in the future.

The Worker members regretted that the Government of Bosnia and Herzegovina had, once again this year, furnished only fragmentary information in reply to the observations of the Committee of Experts and had not complied with the request of the Committee of Experts to submit a full report for its November 2006 session. Recalling the chronology of events, the Worker members indicated that the Confederation of Independent Trade Unions of Bosnia and Herzegovina had filed a complaint with the Committee on Freedom of Association in 2002 against the refusal of its registration. The Committee on Freedom of Association had concluded in 2003 that that refusal constituted a clear violation of Article 2 of the Convention and that the reasons put forward by the Government were unfounded, demanding that the Government urgently take all necessary measures. In 2006, the Conference Committee had requested the Government to: (a) take measures to modify the law and practice regarding the registration of employers' and workers' organizations, in particular to eliminate the requirement of previous authorization laid down in section 32 of the Law on Associations and Foundations of Bosnia and Herzegovina; (b) take without delay all the necessary steps to ensure the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina; (c) submit a full report to the Committee of Experts; and (d) to accept a technical assistance mission. However, nothing had been done since last year. The Confederation of Independent Trade Unions of Bosnia and Herzegovina remained unable to participate in social dialogue at the national level, in particular in the Economic and Social Council; lawyers representing union members affiliated to that Confederation had been systematically rejected by certain judges; and the threat of a ban weighed heavily and constantly on all activities of the Confederation. In the light of the consensus of the ILO supervisory bodies, the Worker members came to the conclusion that there was a lack of political will on the part of the Government. They stressed the Government's obligation to give effect to the recommendations of the Committee on Freedom of Association and the conclusions of the Conference Committee, by immediately authorizing registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina at the national level, since there was no legal obstacle to it. They requested that the Office provide the technical assistance necessary for the Government to put its national legislation and practice into conformity with the Convention.

The Employer members thanked the Government for having been prepared to appear before the Committee early and asked whether the ILO had in fact provided technical assistance to the Government since the Committee's last session. It was the fifth time that the case had come before the Committee since Bosnia and Herzegovina had ratified the Convention in 1993. Noting that the Committee of Experts repeatedly pointed out a number of requirements concerning registration, the Employer members considered that those issues raised by the Committee of Experts appeared to be of a technical nature that should be easily resolved. The Convention was quite clear on that matter: workers' and employers' organizations should be free to establish their organizations without prior authorization. The process for registration under article 32 of the Law on Associations and Foundations of Bosnia and Herzegovina could clearly lead to arbitrary and unexplained results. That provision therefore needed to be repealed. The current legal situation did not, in practice, appear to affect the possibility of employers' organizations organizing themselves at the national level. However, referring to the problems with respect to the registration of the Confederation of Independent Trade Unions of Bosnia and Herzegovina they noted that the situation was serious for workers' organizations. The legislation needed to be brought into line with the Convention to provide for more reasonable time limitations so that workers' and employers' organizations did not suffer adverse consequences from delay. Further technical assistance was certainly needed, as the Committee would have liked to have noted progress in law and practice since its last session.

The Worker member of Bosnia and Herzegovina regretted the fact that it was the third time that trade unions had experienced maltreatment because of Government failure to allow them to register. There was a flagrant lack of respect for the Convention in Bosnia and Herzegovina, and although the Government had recently been elected as a member of the United Nations Human Rights Council, it preferred to occupy itself with defending human rights in other countries instead of respecting those of its own workers. There was a violation of fundamental rights of workers' organizations in Bosnia and Herzegovina and the situation was unacceptable. In his view, the Government simply wanted the Confederation of Independent Trade Unions of Bosnia and Herzegovina to be eliminated; if not, it would have explained the reasons why the Confederation could not be registered. The speaker called upon the Conference Committee to take all the necessary measures to defend the union which had existed for 102 years, and which had never faced difficulties until then. He called for an ILO mission to be sent to the country since, for the workers, vital issues were at stake.

The Worker member of Pakistan stated that the case was understandable in the light of the special circumstances that the country faced during the war. However, it was a serious concern that the legislation in force was not in conformity with the Convention which was the lifeblood of the ILO and the main vehicle to promote tripartism and social dialogue. Without respect for the principles of freedom of association, social justice could not be achieved. The speaker agreed with the Committee of Experts that the specific provisions mentioned in the observation needed to be amended in order to ensure that the workers and employers of Bosnia and Herzegovina fully enjoyed their right to organize.

The representative of the Secretary-General indicated that in follow-up to the discussion at the Committee in June 2006, a communication had been sent to the Government in August 2006 concerning the effect given to the conclusions of the Conference Committee. In addition, the International Labour Standards Department, the Subregional Office for Central and Eastern Europe in Budapest and the ILO National Correspondent had organized assistance in the area of international labour standards in the form of two missions, one in September 2006 and one in March 2007. Meetings had also been held with the Permanent Mission of Bosnia and Herzegovina in April 2007, followed up by a communication proposing a technical advisory mission to deal with all ILO standards-related issues, and in particular those relating to the freedom of association Conventions.

Another Government representative explained once again that the Confederation of Independent Trade Unions of Bosnia and Herzegovina was registered at the cantonal level and was thus able to function. However, her Government was committed to continuing to develop legislation and to settling the question of registration at the national level. In order to do so, it had to find a structure for entities to register at the national level. The draft legislation still had some shortcomings and could not yet be adopted. The speaker further informed the Committee that a working group had been established which had prepared amendments to the Law on Associations and Foundations of Bosnia and Herzegovina, a final text of which could be

expected in two months. The new Government was aware of the issue of registration and was determined to solve the problem. It would certainly succeed with the assistance of the ILO, but currently, the Government believed that it had met all its obligations under the Convention.

The Worker members recapitulated the four substantial requests that the Committee had already made to the Government in 2006: (a) to take measures to amend the law and practice concerning the registration of employers' and workers' organizations, in particular by eliminating the requirements laid down in section 32 of the Law on Associations and Foundations; (b) to allow for the registration without delay of the Confederation of Independent Trade Unions of Bosnia and Herzegovina at the national level; (c) to submit a full report to the Committee of Experts; and (d) to accept an ILO technical assistance mission. The Worker members expressed the hope that the Government would supply specific information concerning the amendment of the abovementioned law before November 2007. They further requested the Government to indicate clearly whether it accepted an ILO technical assistance mission. The Worker members requested that the social partners be consulted during the ILO technical assistance mission.

The Employer members expressed concern that, even with the assistance already provided by the ILO, progress had not been forthcoming. The current legislation was insufficient. The Employer members agreed with the Worker members that the Government should accept a technical assistance mission. Such a mission should take place well in time in order to ensure that the Committee of Experts could examine the planned legislative amendment at its forthcoming session in November–December 2007. The Employer members requested that the Government indicate to the Committee its readiness to accept such a mission.

Another Government representative reaffirmed his Government's request for technical assistance in the light of the current discussion. The working group had taken into account the recommendations of the Committee of Experts and insisted that amendments be made to the Law on Associations and Foundations of Bosnia and Herzegovina. As soon as the proposed draft legislation was finalized, it would be sent to the ILO and the Committee of Experts to determine whether it was in accordance with the Convention as well as with other ILO instruments.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee observed that the pending questions concerned the requirement of previous authorization for the establishment of employers' and workers' organizations and the long-standing refusal to register the Confederation of Independent Trade Unions of Bosnia and Herzegovina (CITU).

The Committee noted the information provided by the Government according to which a working group was in the process of drafting legislation with the aim of bringing it into conformity with the Convention and eliminating the obstacles to the right to organize of workers' and employers' organizations at the national level.

Observing that no specific progress had occurred since the Committee's examination of the matters last year, the Committee expressed the firm hope that the Government would take the necessary measures without delay so as to ensure that legislation was rapidly adopted to guarantee full conformity with the Convention. In particular, the Committee requested the Government to eliminate all obstacles to the effective registration of workers' and employers' organizations, including ensuring an acceptable time frame for registration, and to take steps for the immediate registration of the CITU at the national level. In the meantime, the Committee requested the Government to ensure that the CITU was able to participate in social dialogue in the country at all levels, including the Economic and Social Council. Noting the Government's request for an ILO technical assistance mission, the Committee trusted that the mission would have full access to the social partners concerned and expressed the preference that the mission would take place in time to report back to the forthcoming session of the Committee of Experts. The Committee urged the Government to provide a detailed report including all relevant draft legislation and proposed amendments to the Committee of Experts for its examination in 2007 and trusted that it would be in a position to note progress in that regard in the very near future.

CAMBODIA (ratification: 1999)

A Government representative stated that freedom of association was assured under sections 266–278 of Chapter 11 of the Cambodian Labour Law, which were themselves in conformity with the provisions of Convention No. 87. As of 2007 there were 1,075 trade unions, freely established and registered in accordance with national laws. Union members exercised their rights freely, and no threats or harassment against trade unionists had ever occurred. The reports of the ILO Better Factories and Labour Dispute Resolution projects indicated that the situation with respect to freedom of association rights had improved dramatically in the garment sector; as a result, many labour disputes were settled in a timely manner and to the satisfaction of the parties concerned.

He stated that on 6 April 2007 the Court of Appeal held a hearing on the murder of Chea Vichea, the former president of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC), and on 12 April 2007 rendered a verdict upholding the municipal court's August 2005 sentence of 20 years' imprisonment for the defendants, Born Samnang and Sok Sam Oeun. The case had passed through the judicial process, and was therefore beyond the Government's competence. As regards the case concerning Ros Sovannareth, that case was presently under investigation by the competent authority.

He maintained that the Government had emphasized the effective and efficient management of civil servants under the competence of the Education and Interior Ministries, especially with regard to their financial and technical aspects, and that civil service workers' associations fell within the scope of the Labour Law. The above information, he concluded, demonstrated the Government's commitment to upholding the principles of Convention No. 87.

The Employer members regretted that the Government had provided no report on the implementation of Convention No. 87, in spite of the fact that the Committee of Experts had been requesting such information since 2003. This failure to report gave the impression that no effort had been made to implement the Convention's provisions. This amounted to a failure to apply the Convention in law and in practice. Judges and civil servants must be able to establish organizations to defend their interests and to become members. The Experts had also requested an amendment of the provision of the Labour Law, according to which everybody who had been convicted of a crime was barred from being elected to a responsible position in a professional association. The Employer members further remarked that it remained unclear which civil servants were defined as "officials with legislative tasks" and barred from establishing organizations, as well as under which conditions the establishment of an organization of workers or employers could be denied. Additionally, limitations existed on the right of associations of professional organizations to affiliate with international organizations.

Noting the reported problems of applying the Convention in practice, they affirmed that the right of workers'

and employers' organizations can only be exercised in a climate free from violence, pressure or threats of any kind against the leaders and members of these organizations. They stated that the examples touched upon infringed not only upon the Convention, but also upon the Constitution of Cambodia, which expressly provided for freedom of association. They concluded by urging the Government to provide full information on the Convention's implementation, as requested by the Committee of Experts for several years running.

The Worker members regretted that the Government had not submitted a report and deemed the statement by the Government representative to be disappointing. It was vital that, at a time when this country was experiencing strong economic growth, particularly thanks to the garment sector, all workers, including those in that sector, should enjoy freedom of association. This, unfortunately, was not the case. The Labour Law did not apply to civil servants or domestic workers. The Cambodian Independent Teachers' Association (CITA) had not been recognized as an independent trade union. It could not bargain collectively on behalf of teachers and was the target of harassment, intimidation and surveillance by local authorities and police. This lack of protection also existed in the informal sector.

Where they were able to organize, workers were confronted with a climate of intimidation and violence. Three years ago, the Chairperson and another member of the Free Trade Union of Workers of the Kingdom of Cambodia (FTUWKC) were murdered. Two innocent people had been condemned for this crime, while a witness to it, found by the International Trade Union Confederation (ITUC), was afraid of testifying. This year another trade unionist was murdered. There was no lack of proof for acts of harassment and repression systematically carried out by the police against collective action led by the unions, especially the FTUWKC. It was the Government's duty to ensure a climate free of violence, threats or pressure so that employers' and workers' organizations could exercise their rights.

Furthermore, there was no system for conflict resolution, as courts foreseen by the Labour Law to settle litigation between workers and employers had still not been set up. Workers who complained or protested were sometimes brought before civil courts on charges of damages to companies. In most cases, the complaints were withdrawn if the worker resigned or accepted to forego his or her action. Intimidation and corruption had replaced legal procedures in conflict resolution.

There was still a long way to go in order to put an end to the climate of impunity and ensure the essential conditions for the exercise of freedom of association.

The Worker member of France underscored the serious aspect of the International Trade Union Confederation's comments and added his own. In November 2004, the trade union organization to which the speaker belonged, after having met Rong Chlun, the Chairperson of the Cambodian Independent Teachers' Association, communicated its concern to His Majesty the King of Cambodia regarding the mounting pressure and threats to which trade union leaders and members were subjected because of their union activities. Two other union activists – Chea Vichea and Ros Sovannareth – were assassinated in the same year. The facts pointed to violent police action against striking workers through the use of water cannons, aggression, etc. In addition, the imposition of minimum service in all the enterprises mentioned in the direct request of the Committee of Experts further limited the right to strike. These proved well founded as, in October 2005, Rong Chlun and another trade unionist were arrested for criticizing government policy. An arrest warrant was also issued against Chea Mony, Chairperson of the FTUWKC. The speaker could testify to the tense situation for workers exercising their union rights, mainly in the textile and garment sector, which was experiencing the full impact of trade liberalization policies. This tense situation had led to the murder of a trade union official in the Suntex clothing company, Hy Vuthy. The impunity of the guilty parties put further pressure on trade union members and workers. In this respect, the international community had mobilized to demand the reopening of the trial which resulted in two innocent people being condemned for the assassination of the FTUWKC members.

Finally, he said it was deplorable that, despite the seriousness of the situation regarding freedom of association in Cambodia, the Government had not submitted reports due under Conventions Nos 87 and 98.

The Worker member of the United Kingdom asserted that although freedom of association was said to exist in Cambodia, in reality its exercise was severely restricted. Although workers were able to form unions – indeed, a multiplicity of unions existed – serious problems arose when unions attempted to bargain collectively. Workers were also subject to repression in the form of dismissals, intimidation, violence and even murder.

He stated that workers who attempted to engage in collective negotiations were routinely fired. Moreover, dismissals were easily resorted to, due to an extremely high incidence of contract labour in Cambodia: 60–70 per cent of workers were employed on short-term contracts, rendering true freedom of association all but impossible. He offered, by way of example, the case of the River Rich Trade Union, 30 members of which were dismissed in December 2006 after joining the union and having tried to negotiate a collective agreement. As they were on short-term contracts and had received dismissal compensation, the Arbitration Council denied their reinstatement. Fierce protests by factory workers followed these unfair dismissals. The company, for its part, failed to honour the compromise reached in February 2007, refused to reinstate the trade unionists in their jobs, bribed 20 dismissed workers into withdrawing their complaints, and continued with an anti-union campaign that included threats made against the union.

He added that the police had also been involved in the company's anti-union campaign, using tear gas to disperse a press conference organised by the Coalition of Cambodian Apparel Workers Democratic Union (CAWDU), a trade union federation of which the River Rich Trade Union is a branch, and attempting to arrest CAWDU's General Secretary and other union activists. Three unionists – Phin Sophea, Check Bunsan and Pom Chimma – were now facing criminal charges for having taken part in this legitimate protest.

He maintained that the repression of trade unionists took many forms, including the blacklisting and bringing of criminal charges against union members. In the case of the Fortune Garments Trade Union, he stated that the company brought charges against the union leader for inciting workers to strike, and sued the union's executive committee for US$50,000 – the equivalent of more than nine years' wages per committee member. The repression of trade union leaders could also turn deadly, as testified to by the assassinations of the trade union leaders Hy Vuthy, Chea Vichea and Ros Sovannareth.

He remarked that the power of the Arbitration Council was severely limited and the functioning of the Labour Department severely inadequate. In spite of the efforts of some international buyers and the ILO Better Factories project, violence persisted, illustrating the weakness of the rule of law and the general climate of violence and intimidation, directed particularly at the FTUWKC, which was identified as the most representative independent trade union in the garment sector by a joint World Bank and ILO Better Factories project report.

He concluded by stressing the need for an objective investigation, conducted by an ILO expert mission, and called upon the Government to take urgent measures to

ensure the full respect for workers to exercise their rights without fear of dismissal, blacklisting, violence and even murder.

The Government representative thanked the Employer and Worker members for their contributions to the debate. He maintained, however, that some of the comments made had no basis in fact.

The Worker members emphasized that the Cambodian workers did not enjoy freedom of association in law or in practice. The Government should take action to ensure that the labour laws applied to civil servants and domestic workers; it should recognize the CITA and other independent unions; it should recognize and respect the right to strike; it should establish labour courts; and, particularly, it should bring an end to the climate of intimidation and impunity. The Worker members therefore called for a direct contacts mission.

The Employer members joined the Worker members' appeal to the Government to transpose the requirements of the Convention into law and practice. Recalling that freedom of association was the basis for social dialogue, they called upon the Government to provide a full picture of the freedom of association situation in Cambodia in its next report. Finally, they seconded the Worker members' request for an ILO direct contacts mission to the country.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee recalled that the Committee of Experts had referred to comments from the International Trade Union Confederation alleging permanent harassment against the Cambodian Independent Teachers' Association (CITA), the non-recognition of the Cambodian Construction Trade Union Federation (CCTUF), the arrests and disappearance of trade union leaders, police and military violence against workers and the conviction of two innocent men for the murder of a trade union leader. The comments further referred to a number of provisions in the labour legislation contrary to the Convention.

The Committee deplored the failure on the part of the Government to provide full reports to the Committee of Experts. It expressed its deep concern at the statements made concerning the assassination of the trade unionists: Chea Vichea, Ros Sovannareth and Hy Vuthy; death threats and the emerging climate of impunity in the country. The Committee, like the Committee of Experts, recalled that the right 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 these organizations. It called upon the Government to take the necessary measures to ensure respect for this fundamental principle and bring an end to impunity. To this end, it urged the Government to take steps immediately to ensure full and independent investigations into the murders of the abovementioned Cambodian trade union leaders so as to bring, not only the perpetrators, but also the instigators of these heinous crimes to justice. The Committee urged the Government to accept an ILO direct contacts mission in respect of these serious matters. It expressed the firm hope that it would be in a position in the near future to note that significant progress had been made in bringing both law and practice into full conformity with the Convention and requested the Government to provide a detailed report to the Committee of Experts for its examination in 2007.

DJIBOUTI (ratification: 1978)

A Government representative stated that his Government was surprised to be called before the Committee once again and observed that the explanations that he had provided to the Committee of Experts had seemingly not been taken into consideration. With regard to legislative issues, he asserted that the new Labour Code enacted in January 2006 marked the outcome of a decade's effort, over the course of which all the relevant partners had been consulted, at both the national and international levels, including the ILO and the Arab Labour Organization. In its final version, the Code reflected all relevant comments. Moreover, after the draft Code had been approved by the Council of Ministers, it was sent to the National Assembly, which summoned all the workers' and employers' organizations in order to listen to their opinions once again. It then studied the text article by article, having no qualms about amending various provisions, even if the Government did not agree. It was understandable that persons or groups were challenging the Code's contents, but the fundamental truth was that the law was the law and the Code had to be abided by once it was adopted. Nevertheless, the Government undertook before the Committee to amend all provisions of the Code that were found to violate the Convention.

With regard to the practical application of the Convention, and particularly the factual issues set forth in the Committee of Experts' report – arrests of trade unionists, physical aggression against demonstrators and strikers, acts of anti-union harassment, raids on the homes of trade unionists and the prohibition on holding elections in the national mint – the Government representative asserted that those allegations were based solely on imprecise information which was inadmissible and which the Government emphatically rejected. The Government would remain attentive to any comments made by the Committee of Experts in the future on legislative issues.

The Employer members recalled that this case had been discussed in 2000 and 2001. They noted the adoption of a new Labour Code in 2006 and the Government's indication that broad consultations had taken place during the drafting process. While noting that according to the Government the new Labour Code had resolved the issues relating to the requirement of prior authorization for the establishment of trade unions, the Employer members regretted that this matter had not been duly reported to the Committee of Experts. Similarly, the Government failed to report on the new Labour Code's provisions regarding the ability of foreign nationals to hold trade union office. Regarding the exercise of freedom of association of public servants, the Employer members recalled the Committee of Expert's observation that the legislation should limit the President's power of requisitioning to those public servants exercising authority in the name of the State and to essential services in the strict sense of the term. The Government had not provided any information on this matter. The Employer members noted the Government's promises to reinstate promptly the dismissed trade union leaders. In conclusion, they requested the Government to provide a detailed and comprehensive report on all the pending issues.

The Worker members expressed regret that, although several years had passed since the commitments undertaken by the Government in 2001, the Committee was again bound to address the issue of non-application of the Convention. Firstly, the Government had undertaken to introduce the appropriate amendments on the occasion of the revision of the Labour Code, in order to eliminate the requirement of previous authorization for the establishment of workers' organizations foreseen in section 5 of the Act. According to the new Labour Code published in January 2006, however, the establishment of a trade union still required the authorization of several ministers and the public prosecutor, who, moreover, had the power to dissolve a workers' organization by simple administrative decision.

Secondly, the Government had committed to amending section 6 of the former Labour Code that exclusively conferred on nationals of Djibouti the right to exercise trade union functions. While this matter had indeed been ad-

dressed in section 214 of the new Labour Code, the exercise of trade union functions was henceforth prohibited for any previously condemned person and any person exercising functions in the management and administration of political parties, which was contrary to Article 3 of the Convention.

Thirdly, as regards the restriction of the right to strike of public servants, the Government had undertaken to specify the limits of the "power of requisitioning" of public servants engaged in essential services, but nothing had been done in this respect.

Fourthly, the Government had committed in 2002 to reinstating trade union leaders who had been dismissed for reasons linked to trade union activities. These persons were requested to give pledges of loyalty to be able to be reinstated. To date, ten trade union leaders had still not been reinstated, despite the request of the Committee on Freedom of Association to reinstate workers wishing to be reinstated and to compensate those refusing reinstatement.

Fifthly, notwithstanding the recommendations of the ILO, the Government put forward a workers' organization manipulated by it, and again this year had designated persons affiliated to this union to represent the workers at the International Labour Conference.

The new Labour Code damaged and obstructed independent workers' organizations, and its anti-union provisions clearly violated the Convention. The anti-union repression had become worse, as illustrated by the dismissal of certain trade union leaders who were also subject to harassment, intimidation and blackmail; the violent repression of a strike of bus drivers, the arrest of trade unionists and the assassination of one of them; the prohibition to hold trade union elections in the national mint; the obstruction of the establishment and election of free trade unions; the mass arrest and detention of trade unionists of the Union of Port Workers (UTP); the arrest of trade union leaders for having "communicated information to a foreign power"; the expulsion of an international union solidarity mission; the harassment of trade unionists in the education sector; and the exile of trade unionists.

The Worker members believed that these facts demonstrated the Government's will to constantly reduce the role of the trade union movement in the country. They requested the Government to accept a direct contacts mission to the country, in order to assess the application of the Convention.

The Worker member of Djibouti stated that workers' organizations had been consulted on the occasion of the drafting of the Labour Code, but some of their suggestions had not been accepted. He pointed out that the critical comments formulated by an expert on the draft code had only partially been taken into consideration, and the rest had been rejected. As a fundamental Convention, Convention No. 87 prevailed over domestic law. Thus the Government had accepted to amend the Labour Code to bring it into conformity with this international instrument and had relied on a tripartite committee to this end. Finally, it would appear desirable that a direct contacts mission be carried out in the country.

The Worker member of Senegal stated that the non-observance of the relevant provisions of the Convention demonstrated the Government's will to stifle and repress freedom of association. The supervisory system as embodied by the Committee came up against the refusal of the Government to comply with the provisions of the Convention. The observation of the Committee of Experts mentioned specific cases of anti-union repression (physical aggressions, measures of removal, harassment, opposition to trade union elections, exile of trade unionists, etc.). The Government's restrictions on freedom of association had to be denounced, and the Committee needed to stand up against such practices. The indifference of the Government revealed how it perceived this matter. The repression had to cease, as freedom of association was the foundation of social dialogue, and the Committee needed to strive to ensure that the Government stopped infringing the rights and principles laid down in the Convention.

The Government representative challenged the Worker members' allegations of anti-union actions committed by his Government. He indicated that all cited trade unionists had refused reinstatement, pretending to exercise, contrary to the law of Djibouti, a political mandate and a union mandate. Moreover, compensation had been granted to those unionists in lieu of reinstatement. There had been no assassinations of trade unionists in Djibouti. Trade unionists that had left the country had done so of their own free will. In response to a question raised by the Employer members, the speaker specified that the Labour Code had been modified so as to ensure that foreign workers could exercise trade union functions. The Government did not hold foreigners up to public disgrace. Finally, the Government undertook to accept a direct contacts mission and to review its labour legislation if necessary.

The Employer members noted that previously the Government had submitted incomplete reports, while the information presented to the Committee had been of a very general nature. They urged the Government to ensure that the requirements of the Convention were fully reflected in law, including in the Labour Code, and in practice. Finally, they urged the Government to supply the Committee of Experts with a detailed report replying to all the points raised in its observation, as soon as possible.

The Worker members noted all elements brought up in the course of the discussion and came to the painful conclusion that the facts as they perceived them were radically different from the facts as presented by the Government. They deplored the bad faith of the Government in refusing to recognize the inconvenient truth. The Worker members nonetheless considered the acceptance of the principle of a direct contacts mission as a step forward. They expressed the hope that the new Labour Code could thus be revised so as to give full effect to Articles 2 and 3 of the Convention. They also hoped that the Labour Union of Djibouti (UDT) and the General Union of Djibouti Workers (UGTD) would be officially recognized and could thus normally convene their Congress. Finally, the Worker members expressed the hope that, thanks to this direct contacts mission, light would be shed on the climate of violence and oppression weighing heavily on the trade union movement.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee observed that the pending questions concerned allegations relating to numerous arrests of trade unionists, physical aggression against demonstrators, raids on the homes of trade unionists and acts of anti-union harassment. The Committee of Experts had further noted information concerning the non-compliance of the recently adopted Labour Code with the Convention. The Committee also recalled the discrepancies between the national legislation and the Convention that had been raised by the Committee of Experts for many years.

The Committee noted the information provided by the Government according to which the new Labour Code was the fruit of ten years of consultation. The Government further denied ever having arrested trade unionists for exercising trade union activities.

Welcoming the Government's expressed commitment to review the new Labour Code, in light of the Convention, the Committee trusted that it would rapidly begin this process in full and meaningful consultation with the social partners with a view to ensuring its compliance with the provisions of the Convention. It requested the Government to provide detailed information on the new Labour Code, particularly

as regards the requirement of previous authorization for the formation of a union and restrictions relating to the holding of union offices for certain persons, as well as on any consultations held thereon, in its report due in 2007 so that the Committee of Experts would be in a position to examine its conformity with the Convention. It further requested the Government to provide detailed information on the steps taken to ensure that workers' organizations may elect their officers freely without interference by the public authorities.

As regards the allegations concerning the arrest and detention of trade unionists, physical aggression and intimidation and anti-union harassment, the Committee, like the Committee of Experts, recalled that the rights of workers' and employers' organizations could only be exercised in a climate that is free from violence, pressure or threats of any kind against the leaders and members of these organizations. It urged the Government to ensure respect for this principle.

The Committee welcomed the Government's acceptance of a direct contacts mission in order to clarify the situation as regards all of the issues raised. It expressed the firm hope that it would be in a position to note significant progress made in the application of the Convention next year.

ETHIOPIA (ratification: 1963)

A Government representative welcomed the opportunity to engage with the Committee in a spirit of constructive dialogue and tripartism. He assured the Committee and the social partners of his Government's full cooperation and wished to present some of the measures taken to ensure the fullest implementation of Convention No. 87.

He recalled that Ethiopia was one of the oldest African members of the ILO and was party to all the fundamental Conventions. The Government had always understood and shown unwavering commitment to the premise that ratification was only the first aspect of a state's obligation in implementing ILO norms and standards. All the ILO Conventions that had been adopted by Ethiopia were therefore an integral part of the Ethiopian legal system, in accordance with articles 9 and 13 of the Ethiopian Constitution. The Constitution also contained a panoply of entitlements, most of which had a direct bearing on workers' rights.

In responding to the allegation that Ethiopian law limited the right to organize of certain categories of workers, he quoted article 42, paragraph 1, of the Constitution, which covered a wide variety of workers who enjoyed the right to form associations to improve their conditions of employment and economic well-being. The Government had also taken additional measures to ensure the compatibility of legislation promulgated before the adoption of the Constitution in 1996 with constitutional norms. One such law was Labour Proclamation No. 42, adopted in 1993. The Government had also taken specific steps to ensure the compatibility of such proclamations with the Constitution, thereby ensuring that the right to organize was protected both in law and in practice. Thus, Labour Proclamation No. 42 had been amended in 2003, and a new Labour Proclamation No. 377, had been adopted in an attempt to fill the gaps left by the previous proclamation.

He recalled that the Conference Committee had recommended that, during Ethiopia's reform process, a specific national legislative regime be designed in order to allow the diversification of trade unions in an enterprise. The current system was thus responsive and responsible. In that same spirit, the Government was continuing its reform efforts to ensure the compatibility of legislation with the Constitution and with the State's international obligations. The Federal Civil Service Agency had continued to review federal legislation with view to providing further and additional guarantees to the categories of workers mentioned in the Committee of Experts' observations.

He then supplied information relating to allegations concerning the Ethiopian Teachers' Association (ETA), particularly those regarding the detention of some of its members, the alleged closure of its office and the alleged confiscation of the association's property and documents. He said that there were currently two Ethiopian teacher associations in the country. Both claimed to be the legitimate successor of the old ETA that had existed since 1949. The existence of multiple professional associations in one sector should have been a normal state of affairs, but it had become an intensely contested legal matter because the two associations were claiming the same legal identity, membership and facilities. He said that the allegations that the Government was supporting one ETA over the other, detaining members of the other association and confiscating its property were utterly false and unfounded.

He recalled that several cases had been brought to the attention of the Committee while the self-styled communist junta had been in power. Although it had created the Worker's Party of Ethiopia in 1987, that Government had also effectively dissolved en masse professional associations, including the ETA. It had disbanded the Confederation of Ethiopian Labour Unions and replaced it with the All Ethiopian Trade Union (AETU), which was effectively under its control. It had closed down the ETA's offices in 1975 and officially confiscated its property in 1979.

When the military junta had been overthrown in 1993, teachers countrywide had attempted to create an institution that would represent them rather than be an ideological tool of the State. To that end, they had established a national coordination team, the members of which were elected from all over the country. The new ETA had officially been launched in 1994. It had been given a certificate of registration to be renewed annually following presentation of its financial and activity report. This association currently had tens of thousands of members from all over the country, who contributed membership dues. The allegation that the Government had illegally transferred ETA union funds was simply baseless.

Following the establishment of the ETA, a group, led by a former member of the military government, Dr Taye Woldesemayat, had tried to resurrect the old ETA, disrupt the already established association and impose their will on others. They had set up their own office, which was still running at present, despite allegations that the Government had closed it down. The group had assumed the name ETA, continued to organize meetings, and had corresponded with international organizations in the name of ETA. However, not once had the group sought to be recognized by the Government authorities entrusted with registering associations.

Given the situation, the recognized ETA had sought a court ruling on the matter. On 27 November 2006, the Federal Supreme Court, while ruling on procedural issues, had ordered the High Court to decide on the merits of the case. The Committee on Freedom of Association was being provided with that communication, even though the Government was not even a party to the case in question. Nevertheless, he requested the Conference Committee to play a constructive role in helping the judicial process to run its course.

Regarding the allegation of arrests of ETA members, including the Chairperson of ETA's Addis Ababa office, Mr Kassahun Kebede, the Government acknowledged that some members of the ETA had indeed been arrested owing to their alleged direct involvement in violence that had occurred following the May 2005 elections in Ethiopia. The Independent Inquiry Commission had established that schools were the primary targets of the violence that had claimed the lives of 193 innocent civilians and dozens of law enforcement officers. Nevertheless, the Government vehemently rejected the allegation that the arrests

were related to the exercise by teachers of their right to organize and associate. The individuals, including Mr Kassahun Kebede, had been arrested because they had allegedly violated provisions of the Federal Criminal Code through their direct involvement in violence that had led to the destruction of innocent life and public property, and severely endangered national security.

The detention and trial processes had scrupulously followed constitutional provisions and international standards. Family members, medical personnel, religious personnel, NGO members, members of the national Human Rights Commission and lawyers had all had access to the teachers. Furthermore, the detainees had been visited by international human rights institutions and personalities, including the High Commissioner for Human Rights. Thus, the allegation that the detainees, including the few teachers, had been prevented from meeting their lawyers was clearly untrue.

The trial process had also met accepted international human rights standards, and was being observed by international legal observers, including the European Union and Amnesty International. The High Court, which was considering the matter, had started to hand down rulings. For example, following consideration of the extensive evidence presented by the Federal Prosecutor, the High Court had ruled on 10 April 2007 that the individuals concerned, including Mr Kassahun Kebede, had no case to answer. The Government was happy to provide the Committee with the documents pertaining to that judgment. There were currently no teachers in custody.

The Government had already sent a *note verbal* to the ILO on 23 May 2007, stating that a thorough investigation into the allegations would be required to enable it to respond. Although the Government believed that most of the charges were baseless and inaccurate, it assured the Committee that it would leave no stone unturned in its investigation of the matter and would respond as promptly as possible.

The Employer members recalled that the case of the application of Convention No. 87 by Ethiopia had been examined by the Committee on nine occasions since 1987, the last of which was in 2003.

The lack of conformity with the Convention arose partly from certain provisions which prevented the free exercise of the right to organize by certain categories of workers. The exceptions envisaged in the Convention only covered members of the police and the armed forces, and did not therefore apply to teaching personnel in the public or private sectors, nor to public officials. They recalled that the Labour Proclamation of 1993 excluded teachers from its scope of application and allowed for the possibility of the administrative dissolution of trade unions or prior authorization for their establishment. For this reason, in 2003 the Government had been urged to bring the provisions of the Proclamation into conformity with the Convention. ILO technical assistance had been offered and the Government had been urged to guarantee the exercise of the right to organize by teachers and public officials. The Proclamation had been amended in 2003, removing the exclusion of teachers, but only in the private sector. In practice, the exclusion continued to cover teachers in the public sector and other categories of public officials. Furthermore, although the amendments had removed the requirement for direct authorization and the possibility of the administrative dissolution of workers' organizations, the power had been retained to cancel the registration certificate of organizations that were prohibited under the Labour Proclamation. In practice, this possibility could amount to a new restriction that was contrary to Convention No. 87.

The Committee of Experts had also raised the practical issue of unlawful interference in the activities of teachers, and particularly the detention of the Chair of the ETA in November 2005, the closure of trade union offices, the confiscation of documents, the freezing of assets, the arrest of teachers and detention of other teachers and other persons, and the emergence of a new trade union organization with the same name.

The Government indicated that it had responded adequately to these allegations and that the detention of the trade union leader was related to his political rather than his trade union activities. If these events were based exclusively on the legitimate exercise of trade union activities or membership of an organization considered to be unlawful because it did not lie within the scope permitted by the Labour Proclamations of 1993 or 2003, that would constitute another violation of the Convention. It was necessary for the Government to provide detailed information on these matters and on the membership and conditions relating to the establishment of the new trade union organization in the teaching sector so that they could be verified.

The Employer members considered that, despite certain progress in terms of the legislation, there was too much evidence of repeated failure to comply with the Convention, particularly in practice. They wondered whether the Government was in a position to provide detailed information on the measures adopted to achieve fuller compliance with the Convention in practice and on the acts of interference to which reference had been made.

The Worker members recalled that between 1998 and 2003 the Committee had examined the case of Ethiopia at each of its sessions. It was the time to verify whether progress had been achieved since then. The statement by the Government representative led to the belief that the situation had improved considerably, which the Worker members had also believed until very recently. Last week, however, trade unionists had been arrested once again. The Government was engaging in doublespeak. On the one hand, the Government representative spoke of the commitment to engage in dialogue with the trade unions while, on the other, the intimidation and detention of trade union members continued.

Regarding the restriction of the right to organize of teachers, they indicated that teachers in the private sector had the right to form unions and to bargain collectively. The right of association of teachers in the public sector was considerably limited. According to the Government, teachers employed in the public sector also enjoyed the right to form professional associations. In a communication sent to the ILO on 1 June 2006, the Government had indicated that the Civil Agency was studying the manner in which public officials could form unions. It would be interesting to obtain information concerning this study.

According to the Government, there existed two professional associations of teachers in the public sector. In its observation, the Committee of Experts referred to the ETA and the Confederation of Ethiopian Trade Unions (CETU). However, the Worker members believed that the Committee of Experts had confused the two organizations. The CETU was the national centre to which the organizations of teachers could not affiliate because teachers in the public sector did not have the right to organize.

The two associations mentioned by the Government had the same title, namely the ETA. In 1993, the procedure for the registration of civil society organizations had been modified and the ETA had had to renew its registration with the Ministry of Justice. It had then been found that another organization bore the same name. The new organization had initiated judicial proceedings to claim the ownership of the buildings and the financial assets of the original organization. The case was still before the court. The Supreme Court of Ethiopia had however rejected the explanation of the Ministry of Justice that the original ETA had been dissolved, as the general assembly of the original ETA had never dissolved the organization. Under Article 4 of Convention No. 87, employers' and workers'

organizations shall not be liable to be dissolved or suspended by administrative authority. Unfortunately, the ruling of the Supreme Court of Ethiopia had never been executed. The buildings of the ETA were currently under seal and its assets frozen. In addition, union dues of the members of the original ETA had been redirected to the new organization.

The ETA had been subject to permanent interference from the Government. Meetings had been interrupted by the armed forces; activities for World Teachers' Day had not been able to take place in 2003, 2004 and 2005; and documents and electronic equipment had been confiscated. The organization was therefore no longer able to carry out its activities and defend the interests of teachers. The Government claimed that only one ETA organization existed and would no longer engage in dialogue with the members of the original organization. Since April 2003, several members of the original ETA had been dismissed, transferred, detained or maltreated. Others had received threats aimed at making them cut their contacts with the original ETA. The Chairperson of the Addis Ababa branch of ETA had been detained for 17 months and had been released in March 2007. In December 2006, three trade union leaders had been arrested and, on the day of their trial, it was obvious that they had been subjected to ill-treatment. They had been released in April 2007 but, just before the beginning of the Conference, the Worker members had been informed that the three leaders of the original ETA had been arrested once again.

With regard to the situation of journalists and freedom of the press in Ethiopia, it had to be emphasized that freedom of association was no longer possible for Ethiopian journalists. The leaders of their associations had to go into hiding or exile, for example in Kenya. In a report dated 2 May 2007 on the protection of journalists, Ethiopia was cited as the country in which freedom of the press had deteriorated the most during the past five years.

The Worker members said that it was clear that the Government was trying to control all civil society organizations, in particular by imposing leaders on those organizations.

An observer representing Education International emphasized that the application of the 1948 Declaration of Human Rights and ILO Convention No. 87 was intrinsic to any self-respecting government of any nation, but particularly a developing nation that described itself as being in the process of democratization, a country with high levels of poverty, in which there were 15 million of the world's 120 million children who did not go to school, and which was the origin of one of the oldest civilizations. Instead, the reality was unremitting harassment and intimidation, including being warned to stay away from the ETA, being followed, having identification documents confiscated, arbitrary arrest and even torture.

The ETA was a most reliable, well-organized and representative teachers' organization. It was a professional association under current legislation, functioned according to trade union principles and was independent and democratic. Despite having its General Assembly in August 2006 closed down by security forces and all its records of members confiscated, the ETA had nevertheless managed to complete the selection of a new executive board and therefore maintained its mandate from members. The organization had a constitution and a code of conduct that stipulated no engagement in partisan politics by any member or in the name of the organization. The ETA had been founded in 1949 and registered with the Ministry of the Interior in 1968. It was to be noted that the registering body changed to the Ministry of Justice in 1993. Since that time, there has been continued litigation, with offices remaining closed, bank accounts frozen and dues forcibly channelled to the other ETA, which had been formed in 1993. The rulings of the Supreme Court in that regard had never been implemented.

The ETA continued to function despite the adverse conditions and to engage in Education International programmes. It sought to function independently of the Government as an autonomous and democratic trade union that could use its resources, energies and skills to further human and therefore social and economic development for Ethiopian society, through education.

For many years, the ETA and Education International had sought opportunities to engage in dialogue with the Government and had recently thought that they were making progress. At the same time, however, the organizations had protested in the strongest terms about human and trade union rights abuses. Those approaches were not contradictory. She went on to draw attention to the arrest of teachers and ETA officials and the Government's obstruction of a subregional conference on professional ethics that Educational International had sought to hold in Addis Ababa in April 2007. However, the Government had refused to allow the conference to take place without a prior meeting to address the mistrust between itself and Education International. The Government used fear and intimidation, and wanted to impose its agenda, not only on the ETA, but also on Education International. The ETA and Educational International were willing to work with the Government, but not at the cost of human and trade union rights, including freedom of association and the right to organize.

She concluded by calling for the following: the release of three jailed teachers and one that had disappeared; the cessation of arbitrary arrest, torture and harassment; and correct use of the justice system. She also called for implementation of Conventions Nos 87 and 98 and for the ETA to be allowed to exist and function as a teachers' trade union. Education International believed that teachers were being targeted because they were members of the ETA and that they were being denied the right to organize. She firmly rejected the claim that the ETA was composed of members of the previous military junta.

The Worker member of Botswana commended the work of Education International. He said that teacher members of the ETA had been dismissed, involuntarily transferred and arbitrarily detained and he enumerated several events that had taken place between 2002 and the present day in which hundreds of ETA members had been harassed, dismissed, tortured and jailed. Detained teachers were sometimes imprisoned in jails far away from where their families were living. While in detention, the teachers were not paid, although their families were dependent on their income. It was also unusual for arrested teachers to be reinstated after their release.

Prominent ETA activists and elected officers were also harassed, intimidated, arrested and even tortured. Citing the examples of three ETA officers, Tilahun Ayalew, Anteneh Getenet and Meqcha Mengistu, he explained that no arrest warrant had been produced in the early days of their detention; they had been refused access to a lawyer and to medical assistance; and they had been detained incommunicado. Another such case was that of the Chairperson of the ETA Addis Ababa branch, Kassahun Kebede, who had spent 17 months in prison on charges of misusing the association outside its objectives and inciting violence. The Government was also stubbornly refusing to admit that 11 people had been killed, including the Deputy General Secretary of the ETA, Assefa Maru, who had been shot dead on his way to the union's premises in 1997. No investigation had ever been carried out into the circumstances of his murder.

He added that this long list of examples proved that teachers were systematically discouraged from becoming affiliated to the ETA. Nevertheless, the ETA wished to engage in dialogue with the Government of Ethiopia because it sought to contribute to improving education in the country. He said that the Workers' group hoped that the Government of Ethiopia would open up avenues for dia-

logue on education policy matters or for consultations and negotiations with the ETA, which had been created in 1949.

The Worker member of Swaziland recalled that Ethiopia had ratified Convention No. 87 more than four decades previously and had therefore had ample time to incorporate its provisions into domestic legislation and to apply them in spirit, law and practice. In becoming a Member of the ILO, a government chose to accept the fundamental principles embodied in the Constitution and the Declaration of Philadelphia, including the principle of freedom of association.

He said that the Ethiopian Government had arbitrarily: occupied ETA offices; searched and confiscated ETA documents and electronic equipment; frozen the ETA's financial assets; detained and arrested ETA leaders and members; redirected ETA dues to another union; and attempted to dissolve the original ETA. All such acts were gross violations of Convention No. 87. Public servants and teachers were being denied the right to form professional associations and were not accorded the rights enshrined in the Convention. And yet, it was a fundamental principle of the ILO that the right to adequate protection of trade union property was a civil liberty that was essential for the normal exercise of trade union rights. Furthermore, the Committee on Freedom of Association had emphasized that the arrest and detention of trade unionists, even for reasons of internal security, could constitute a serious interference with trade union rights unless accompanied by appropriate judicial safeguards.

A thematic response was still awaited from the Ethiopian Government on the questions raised by the Committee of Experts. He therefore called on the Conference Committee to implore the Government to: unconditionally release those it was holding or charge and prosecute them without delay; return all ETA assets; cease occupation of ETA offices and return its documents and electronic equipment; with the utmost urgency, put in place a labour law allowing public servants to exercise fully the rights enshrined in Convention No. 87; stop redirecting dues and return all unlawfully redirected dues; and obtain from the Office any technical assistance that it might require.

The Government representative thanked all those who had contributed to the important debate, which was vital for the future that his Government wished to create in Ethiopia. Ensuring the fullest implementation of ILO standards was crucial for the entrenchment of good governance and the protection of human rights. That was the understanding that underpinned his Government's close relationship with the ILO and its supervisory mechanisms.

He said that a lot had happened since the publication of the report by the Committee of Experts and reiterated that his Government had supplied the Committee on Freedom of Association and the ILO with all the information at its disposal. In a letter to the Office dated 23 May 2007, it had even requested additional time for further investigation of the many allegations contained in the original communication. The Government had notified the Office of the release of all the arrested teachers following the ruling by the Federal High Court. It had also provided a copy of the letter, written by the Secretary-General of Education International to the Ethiopian Prime Minister, H.E. Meles Zenawi, expressing satisfaction at the release of the teachers and their rapid reinstatement in their posts. The Government believed that the gestures that it had made and the various measures it had taken merited endorsement by the Committee along with a decision not to take the matter further.

Even though the issues raised regarding the application of general human rights in Ethiopia drew his greatest sympathy, he strongly contested their relevance to the present forum and its clearly defined mandate. He said that the Ethiopian Government was led by people who had given their lives to the fight against the worst dictatorship in Africa. The Government was leading a country heavily burdened with, inter alia, poverty, tough neighbourhoods and a lack of capacity. Nevertheless, the country was trying to rise from the ashes. Its economy was growing at an annual average of 9 per cent which, if it continued for the next five years, would help Ethiopia meet its critical Millennium Development Goals earlier than the target of 2015. About 90 per cent of primary-school age children attended schools, whereas only a decade ago that figure had only been 40 per cent. The Government was investing heavily to improve the education sector and the conditions of teachers.

Ethiopia had also made strides in other aspects of human rights. There were now over 100 opposition members in its Parliament, whereas five years ago there had only been 12. Over 30 per cent of the ruling party's members of Parliament were women. There was an active National Human Rights Commission, an Office of the Ombudsman and an Anti-Corruption Commission. He admitted, however, that many challenges remained and stressed that the Government was open and would be transparent in addressing those problems together with partners.

Returning to the issue of the ETA, he said that it was not true that the Government had closed the ETA's office – both associations of that name still had an office. He expressed regret at the intervention by the representative of Education International, noting that the organization's Secretary-General clearly spoke one language and his representative another.

The Employer members recalled that Convention No. 87 set out a right, freedom of association, which was applicable to all workers irrespective of whether they were in the public or the private sector. Although certain progress had been made with the 2003 amendment to the legislation, the lack of conformity between national legislation and the provisions of the Convention was a matter of concern. Even more relevant was the alleged persistence of action which could be considered interference in the exercise of trade union rights, or at least the lack of sufficient information to explain the reason and context in which such action had occurred. Finally, they urged the Government to adapt its legislation to the requirements of the Convention, to refrain from acts of interference in the free exercise of trade union activities and to provide detailed information to the Committee of Experts on these matters.

The Worker members said that they had listened to the statements by the members of the Committee and the response of the Government representative and they wished to make the following remarks. In Ethiopia, the right to organize of teachers in the public sector was limited. The Government should therefore provide information on the study which was to have been carried out on the establishment of professional associations of public officials. The Worker members reiterated their concerns with regard to the situation of the original ETA, and particularly the interference in its activities and the continued threats, arrests, detentions and violence against its leaders and members.

In view of the Worker members, the time had come for the Government to give up its doublespeak and to engage in true dialogue with workers' organizations. The members of the original ETA should be released immediately and the original organization should once again be allowed to defend the trade union rights of teachers without any interference. That implied that its property and assets should be returned. As the Government did not seem to recognize the current situation as described in the letter of the Secretary-General of Education International, the Worker members proposed that a direct contacts mission should be carried out in the country and hoped that the Government would accept such a mission.

The Government representative, in response to allegations that new arrests had occurred the previous week, said that he was unaware of the basis of such allegations.

Those making the allegations had not provided any details about the events, such as the names of those concerned and the places of detention. He requested time to be able to consult his capital so as to be able to respond, and reiterated his Government's willingness to engage in dialogue with the ILO supervisory bodies.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee recalled that the comments of the Committee of Experts referred to comments emanating from international workers' organizations which alleged a number of serious violations of the Convention, in particular as regards the trade union rights of teachers and including limitations on their right to organize, creation of a government-controlled union, closing and occupation of offices and freezing of financial assets, sentencing and detention of union members. The Committee of Experts' comments also referred to legislation which still restricted the right to organize of public servants.

The Committee noted the information provided by the Government according to which the Federal High Court ruled in April 2007 that there was no case against Mr Kedebe, Chairperson of the ETA Addis Ababa Office, and others who had been brought before the court. According to the Government, following this decision, no teachers were presently being detained in Ethiopia.

While welcoming the news of acquittal and release of Mr Kedebe and his colleagues, the Committee expressed its deep concern over the new allegations made relating to recent arrests of trade unionists and continuing mistreatment, intimidation and interference. It called on the Government to look into these recent allegations and, if they prove to be true, to ensure the immediate release of any newly detained teachers.

The Committee expressed the firm hope that appropriate steps would be taken to ensure that teachers are fully guaranteed their right to organize and to carry out legitimate trade union activities both in law and in practice without government interference, and that they would no longer be subjected to detention or imprisonment for exercising their rights guaranteed under the Convention. Given that the Committee of Experts has been making comments concerning the non-application of the Convention over many years, and in light of the Government's expression of its desire to continue fully cooperating with the ILO, the Committee requested the Government to accept a direct contacts mission. It requested the Government to provide detailed information to the Committee of Experts on all steps taken in this regard in its report due in 2007 and expressed the firm hope that it would be in a position to note tangible progress in this regard next year.

PHILIPPINES (ratification: 1953)

A Government representative assured the Committee that her Government was deeply committed to the application of all the Conventions that it had ratified. Every effort was being made at all levels to establish the legislative and institutional framework for the exercise by workers of their right to organize. She emphasized, however, that in examining compliance with ILO standards, the context and circumstances unique in the Philippines needed to be considered, together with its history of membership and overall compliance with the many Conventions it had ratified. The Philippines was still a third world country struggling with poverty among 30 per cent of its people, while fighting an active rebellion. She added that it was a lead country in the promotion of the Decent Work Agenda in the region. It was also a country that had seen 480 strikes in 1986, falling to 12 in 2006, with only one recorded strike in the first five months of 2007. This was being achieved, not by curtailing trade union rights, but through advocacy of social dialogue, through labour education that targeted both labour and management and through conciliation and mediation, which had proven to be successful because of the increasing labour relations maturity of the workplace parties.

With regard to the comments made by the ICFTU, which referred to allegations of killings of trade unionists, she said that, in response to the alarming newspaper reports of the rising number of killings of trade unionists and journalists, the President had constituted an Independent Commission to Address Media and Activists Killings headed by a retired Supreme Court Justice, José Melo. The Commission had concluded in its report in January 2007 that "… there is no direct evidence, but only circumstantial evidence, linking some elements of the military to the killings". It had further concluded that: "Due to lack of cooperation from the activist groups, not enough evidence was presented before the Commission to allow it to pinpoint and eventually recommend prosecution of the persons ultimately responsible for the killings." Considering the recommendations of the Commission, the Supreme Court had designated 99 regional trial courts as special tribunals to resolve expeditiously or decide cases of extrajudicial killings. The special courts were mandated to: give priority to cases of activists and media personnel; conduct continuous trials to be terminated within 60 days from commencement; and render judgement within 30 days from submission for decision, among other measures.

She emphasized that these steps were concrete and conscious efforts by the Government to address the killings, including attempts to prosecute the guilty parties, whoever they were – the police, military, insurgents or ordinary murderers. The limitations imposed by the unavailability and refusal of witnesses to come forward, even when their welfare and safety were guaranteed under the Witness Protection Program, had however made it difficult, if not impossible, to arrest, prosecute and punish the culprits.

The findings of the Melo Commission clearly indicated that there was no evidence showing that the police and the military were the perpetrators of killings and other actions against trade unionists. The link to the police and the military appeared to be merely circumstantial. If and when the police and military committed the crime of killing trade unionists on the basis solely of their trade union activities, there was machinery to address these violations. In this respect, she drew a distinction between legitimate trade union activities, entitled to lawful protection, and the commission of crimes against the State, which needed to be prevented. The police and military only pursued trade unionists committing rebellion, not trade unionists exercising trade union rights. However, there was a thin line dividing some trade unionists from the illegal activities of certain rebel groups. Where a trade unionist crossed this line, there should be no question of the legitimacy of the police or military action, provided that such action was carried out in accordance with the Constitution and the law.

Turning to the issue of the suppression of trade union rights and the case of the Hacienda Luisita in 2004, she recalled that seven union members had been shot and killed during the strike by the workers of the Hacienda Luisita, while a composite team of police and military had been enforcing the assumption of jurisdiction order by the Secretary of Labour. Congressional hearings had been held on the incident and the Congressional Committees on Human Rights, Labor and Employment and Agriculture had concluded in part that human rights violations had been committed against the striking workers. However, this was not a pure case of police action against strikers. The dispersal of the strike had occurred several days after the strike, not immediately after its commencement. There were clear indications of provocation by the strik-

ers, which had compelled the police and military forces to use force to give effect to the order by the Department of Labor and Employment. Of course, the strikers could have actually contributed to the peaceful resolution of the dispute had they complied with the legal order issued by the lawfully constituted authority.

She emphasized that the exercise of the right to strike carried with it the correlative obligation to observe the limitations imposed by law, especially those essential to the maintenance of peace and order in the community. Under Filipino law, a strike should not result in the obstruction of entry to and exit from the enterprise. When this statutory limitation was violated by the strikers, it might be necessary to enforce the law. In the context of the Hacienda Luisita strike, the excesses committed by the strikers had dictated the intervention of law enforcement officers.

In relation to the suppression of trade union rights in export processing zones, she said that the Labor Code also applied to these zones. Labour unions organized in these zones were increasing. Based on Bureau of Labor Relations data, the number of unions in special economic zones had grown from 251 in 2000 to 341 as of September 2005. The workers covered had increased from 23,000 in 2000 to nearly 34,000 in 2005. This development followed efforts to educate both the locators and the local officials on the country's labour laws and disproved the alleged harassment and intimidation of trade unionists in the zones.

With regard to the recommendation to amend article 234(c) of the Labor Code to lower the 20 per cent membership requirement for union registration, she expressed support for the removal of the minimum threshold of support signatures required for the registration of independent labour unions. She indicated that an Act had been adopted in May 2007 strengthening the right of workers to self-organization. The Act sought to expand the capacity of legitimate federations and national unions to organize and to help their local chapters acquire representation status for the purposes of collective bargaining. Any legitimate labour federation or national union could now create a local chapter which could in turn file a petition for the certification of an election without the minimum 20 per cent membership and without revealing the names of the officers and members of the local chapter. This was a positive development and a significant step towards the attainment of the change suggested by the Committee of Experts. However, the 20 per cent membership requirement was still relevant in the case of unions seeking independent registration. The Committee should note that the membership requirement served the purpose of protecting the majority from being dictated to by an extreme minority.

Turning to the recommendation to amend articles 269 and 272(b) of the Philippines Labor Code, she recalled that the Convention requested that anyone legally residing in the territory of a given State should benefit from trade union rights without distinction based on nationality. The law in her country effectively granted trade union rights to foreign nationals who were lawfully residing and working in the Philippines, and whose country of origin either extended the right to the citizens of the Philippines to join or assist labour unions or which had ratified ILO Conventions Nos 87 or 98. The exclusion from trade union rights concerned foreign nationals whose residence or employment in the Philippines was not legal, whose country of origin discriminated against foreign workers exercising trade union rights in their territory, or did not subscribe to Conventions Nos 87 or 98. She added that such exclusion was not based on the nationality or citizenship of the foreign worker, but on the lack of willingness of the country of origin to be bound by Conventions Nos 87 or 98, or to extend similar trade union rights to foreign nationals in their territory, including Filipino nationals. The exclusion therefore gave effect to the constitutional responsibility of the State to protect its citizens through lawful measures, including those intended to promote reciprocal or fair treatment of Filipino nationals in foreign countries.

With regard to the suggested amendment of articles 263(g), 264(a), 272(a), 237(a) and 270 of the Labor Code, she noted that the proposal to amend article 263(g) to limit the powers of the Secretary of Labor to intervene in labour disputes to activities or undertakings involving essential services had not become law. She recalled in this respect that the legislative process rested entirely on the judgement of the legislature, and that the Executive could only propose legislation. She added that under articles 264(a) and 272(a) of the Labor Code, the conduct of a strike per se was not criminally punishable. Mere participation in an illegal strike did not result in dismissal from work. Only union officers who knowingly participated in an illegal strike or workers who knowingly participated in the commission of illegal acts during a strike could be dismissed. Non-compliance with the substantive or procedural requirements for a valid strike could result in the strike being declared illegal. However, a strike without valid grounds was not tantamount to an illegal strike if the workers believed in good faith that an unfair labour practice had been committed against them by the employer, where such belief was based on actual circumstances. Nor did the mere participation in an illegal strike or defiance of a return to work order necessarily result in the imprisonment of strikers. However, a penalty of imprisonment could be imposed if acts of violence, force, intimidation, threat or coercion were committed during a strike. A union officer who knowingly and deliberately participated in a strike which failed to observe the requirements of the law forfeited her or his employment. Any worker who knowingly and deliberately participated in acts of violence, force, intimidation or coercion upon persons or things was liable to criminal action for her or his personal acts.

She said that the suggested amendment to article 237(a) had been discussed in the Tripartite Industrial Peace Council, but its members had decided to keep the requirement of ten member-unions for purposes only of the registration of federations or national unions. It was not required for the maintenance of legal personality, nor was it a ground for cancellation of registration. Finally, she noted that article 270 was still under consideration.

In conclusion, she said that the system was certainly not perfect, but great strides had been taken and she asked the Committee to take the small successes into account. It was the essence of democracy that people could decide for themselves the laws and policies that should govern them. It should therefore not be counted against the Government if the legislation had not yet reached the ideal standards of the ILO. She nevertheless reaffirmed her Government's intent to comply with the Convention.

The Employer members recalled that the last occasion on which the case had been discussed was in 1991. Before then it had regularly come before the Committee, including on five occasions during the 1980s. Despite the 16-year gap since the last discussion of the case, the problems were essentially the same. In this respect, it should be noted that Convention No. 87 was not an ideal, but a minimum standard. It was therefore not a promotional instrument, for which ratifying States had a certain time to bring their law and practice into conformity with its requirements. As a minimum standard, there was a requirement upon ratification to bring law and practice into line with the Convention. The 16-year gap also highlighted a problem with the present system for the selection of cases to be examined by the Committee; while certain cases were examined on an almost constant basis, it was to be regretted that cases such as that of the Philippines were not selected and discussed more frequently.

The Employer members emphasized the importance of the case, which involved allegations of murders, violence and death threats against workers. This suggested that civil liberties might not be fully protected in the country and that the investigations undertaken were not adequate. The main issue involved was not therefore that focused on by the Government representative, but the question of the extent to which life in general was protected. The Employer members recalled in this respect that a climate free of violence and intimidation was a prerequisite for the exercise of freedom of association in any country.

Of the issues raised by the Committee of Experts, with regard to the limitation on the registration of trade unions, the Employer members noted that there had been some legislative changes which would have to be examined by the Committee of Experts. In relation to the right to organize of foreign nationals, the Government indicated that this right had been extended, but the Committee of Experts was calling for its extension to cover everyone. The Government representative had not really addressed the issue of the number of trade unions required to establish a federation. The provisions relating to the receipt of foreign assistance by trade unions also still appeared to be problematical. It was therefore important for the Government to provide a full report outlining all the amendments that had been made or were proposed to the legislation and other relevant measures, so that it could be examined by the Committee of Experts at its next session with a view to assessing the extent to which the Government was in compliance with its obligations under the Convention.

The Worker members noted that the latest observation by the Committee of Experts raised the same points as in 1991, including: the minimum membership requirement for registration of a trade union; the fact that the legislation did not grant the right to organize to all nationals lawfully residing in the country; and the excessively high requirement to form federations or national unions. They also noted the points raised by the Government representative and called for a report to be sent to the Committee of Experts for assessment.

The current situation in the country was a matter of concern. Only half of the population had a permanent job, and most of them were paid the minimum wage of around 350 pesos, or less than 5 dollars a day. Little progress had been made in terms of legislation over the past 16 years, but the situation of trade union rights was even more distressing in that over 800 people, about 80 of whom were trade unionists, had been killed in the last year alone. Thousands more suffered from intimidation and harassment, either due to their political affiliation, trade union activities or the exposure of graft or corruption cases. Under these circumstances, people lacked access to decent work, a living wage or essential services free from corruption.

The Worker members recalled that the Government representative had referred to "isolated incidents" of extrajudicial killings. They indicated that the number of such cases was much too high to be called isolated and they were therefore worried that the Government was failing to recognize the gravity of the problem. The Committee of Experts had raised the issue of violence, including: the murder of four trade union leaders in 2005; anti-union violence in the sugar sector; death threats to discourage unions in the EPZ in Cavite; and the impunity of the authors of killings of seven strikers. But these were far from giving a full picture. The United Nations Special Rapporteur, who had visited the country earlier in the year, had emphasized the serious impact of extrajudicial killings and that the mere existence of such killings had an effect on society and undermined political discourse, which was essential to the resolution of the country's problems.

The Government had established the Melo Commission, thereby showing that the President acknowledged the seriousness of the problem. But its findings had not yet been made public. The Government had also introduced a witness protection programme, but few witnesses had come forward as they feared for their lives and those of their families. Furthermore, not a single perpetrator had been apprehended, and there were strong indications that the abductions, disappearances and killings were connected to members of the police or the military. The Worker members warned that impunity led to trade union rights violations and contempt of the law.

The Worker members also referred to the case of Crispin Beltran, a labour leader and member of Congress, who had been detained for 15 months, along with five other politicians. On 1 June 2007, the Supreme Court had dropped the rebellion charges against him and the other politicians. They were delighted with this ruling and hoped that he would be released in the near future.

The Worker members said that another serious violation of freedom of association consisted of the deployment of military or police forces in companies that were strike bound, where there were disputes between the management and the workers, where unions existed or were being organized. The intention of such militarization was to oppose union organization and harass and intimidate workers. They added that certain employers ignored decisions by the Supreme Court on labour matters and they therefore urged the Government to take action to implement the law and the fundamental Conventions.

In June 2007, the Anti-Terrorism Act would enter into force. The Worker members feared that this instrument would be used to silence critics of the Government, including trade unionists, lawyers and judges calling for the protection of human rights. They therefore urged the Government to: recognize the seriousness of the problem; take effective steps to end extrajudicial killings; conduct independent and impartial investigations; put into place transparent social dialogue; establish permanent independent monitoring mechanisms for trade union and human rights abuses; and restore a climate of complete freedom and security from violence and threats as a basis for the full exercise of freedom of association.

The Worker member of the Philippines expressed his support for the comments of the Committee of Experts recommending the amendment of section 270 of the Labor Code (prior permission of the Secretary of Labor for the receipt of foreign assistance by trade unions), section 234(c) (requirement of the names of 20 per cent of all employees in a bargaining unit in which a trade union seeks to operate), section 263(g) (intervention of the Government resulting in compulsory arbitration) and sections 264(a) and 272(a) (dismissal of trade union officers and penal liability for participation in illegal strikes). He urged the Government to make the recommended amendments so as to comply with Convention No. 87.

However, he expressed sadness at the perception that trade union leaders had been killed because of their exercise of the right to organize. He said such view was inaccurate and indicated that the Federation of Free Workers (FFW) and the Trade Union Congress of the Philippines (TUCP) had no such experience since the 1990s. Such killings were motivated by reasons other than the exercise of the right to organize. He emphasized that all killings had to be condemned, whatever the circumstances, and he called on the Government to conduct thorough, impartial and meaningful investigations and hold those responsible accountable.

He finally urged the social partners to: stop all killings; support all efforts to create an environment conducive to investment so as to eradicate poverty; uphold the rule of the law; and create an environment that promoted observance of, at the very least, the ILO's fundamental Conventions.

The Employer member of the Philippines agreed that the case of the Philippines was a reprise of 1991, when it had last been discussed. He also agreed with most of the

points made by the Government representative. However, certain other speakers had seemed to view the Philippines as a totalitarian State, which was totally untrue. In relation to the issue of the country's compliance with international instruments, he expressed his dismay that complaints of a political nature were being brought before the Committee, when they should be dealt with by other United Nations bodies. It was important for the Committee to focus on the issue of freedom of association.

With regard to the so-called extrajudicial killings, he said it was not correct that people had been killed because of their membership to trade unions. Such a view, which tended to imply a certain responsibility of employers, was unfair. Employers, as well as workers, condemned all killings, which were a matter for the police and should be handled by public prosecutors. The discussion of such matters in the present forum might constitute interference in the internal affairs of a sovereign State.

He said that employers in the Philippines felt harassed by some recent legislative developments. For example, Act No. 9481, which strengthened the workers' right to self-organization, allowed any legitimate workers' unions or federations to establish local chapters, even if they had very few members. This Act, by giving greater freedom, was likely to increase uncertainty.

With reference to the decision by the Supreme Court concerning Mr Crispin Beltran, he said that the decision should be respected, as it had been reached through due process and on the basis of the facts.

The Worker member of Indonesia regretted, despite national and international calls for convincing measures to guarantee the safety of trade unionists and journalists in the country, that the Government had not conducted prompt, thorough, impartial and effective investigations to prosecute the perpetrators of anti-union crimes. Reports from organizations such as the International Federation of Journalists (IFJ), Amnesty International, the Center for Trade Union and Human Rights and the International Trade Union Confederation (ITUC) confirmed that the situation seemed to be getting out of control, with an increase in anti-union violence and killings.

He referred to the killing on 21 May 2007 of the journalist Dodie Nunez as an example of the continued killings and disappearances since President Arroyo had taken office. As indicated in the letter from the ITUC to the President, the high number of assassinations of trade unionists placed the country in the second place after Colombia in this respect. He also referred to the report of the IFJ indicating that the country had the second highest rate of murders of professional journalists after Iraq. He emphasized that violence against journalists was contrary to fundamental principles of civil liberties, which were essential for the exercise of freedom of association. He therefore urged the Government to redouble its efforts to investigate those responsible for the deaths of trade union leaders, to bring them to justice and to stop targeting unionists by linking them with opposition groups.

He expressed full support for all journalists and workers in the country in their struggle for a safe and free working environment. He called on the Government to act now to end the culture of impunity and to show the world that the country protected its citizens, punished criminals and valued freedom of the press and democracy.

The Worker member of the Republic of Korea, focusing on the violation of the right to freedom of association in the export processing zone (EPZ) in Cavite, in which there were 254 companies, said that trade union activities were seriously discouraged and suppressed in practice, even though the Labour Code could in principle be applied equally to EPZs. He indicated that many workers had been dismissed merely because they had formed or joined a union, or had taken part in union activities. Employers had refused to recognize or negotiate with unions, or had set up their own "yellow" unions. In the EPZ in Cavite, many of the unions that had been set up had succumbed to employer pressure, and no fewer than 11,000 workers had lost their jobs, had been forced to take leave of absence, harassed, charged or arrested as a means of denying their right to organize.

He referred to the example of the Chong Won Fashion Trade Union. The workers had voted in August 2004 to support the trade union as their sole bargaining agent. The management, however, had harassed, intimidated and taken retaliatory action against the leaders and members of the union. When the workers had formed a peaceful picket in front of the company in September 2006, the production manager had brought in police officers from the Philippines Export Zone Authority (PEZA) and security guards. In contravention of the existing guidelines on strikes, which prohibited police officers and security guards from positioning themselves within 50 metres of the picket line, the picketing workers had been dispersed forcibly, resulting in 40 workers being injured. As the union had fulfilled the legal procedures for a strike, the management had no legal basis or justification for its action.

He emphasized that it was the responsibility of the Government to promote an environment favourable to the exercise of trade union rights. Yet, instead, it had tried to prevent the organization and exercise of trade union rights by maintaining a "union free, strike free" policy in EPZs. In accordance with the OECD Guidelines for Multinational Enterprises (2000) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), the Government should not restrict the right of workers to organize in order to attract foreign investment.

He indicated that the Committee of Experts had made the same recommendations in all cases in which there were alleged killings of workers, emphasizing the interdependence between civil liberties and trade union rights and recalling that workers, without distinction whatsoever, should be able to enjoy the right to freedom of association in a climate free from violence. He very much hoped that Filipino workers would be able to enjoy this right soon.

In view of the number of killings of trade unionists, he urged the Government to take immediate action to bring an end to extrajudicial killings and all forms of violence against trade unionists and to take concrete measures to launch immediate impartial and independent investigations of such killings. He also called on the Government to show its commitment to ILO principle through the immediate release of Mr Crispin Beltran of the Kilusang Mayo Uno Labour Center (KMU) and other trade union leaders.

The Worker member of Germany expressed her concern over the deterioration of the situation with regard to freedom of association in the Philippines, as indicated in the report of the Committee of Experts, including the severe obstacles to establishing and joining trade unions, compulsory arbitration by the Government and increasing anti-union violence, even involving killings of trade unionists, for which investigation and judicial proceedings had been pending for several years, which constituted clear evidence of impunity.

She also expressed concern at other matters. She referred to the issue of the lack of legal security in the country, citing for example the decision by the Supreme Court of March 2006 concerning the University of San Augustin, in which it had declared a strike illegal that had previously been ruled legal. Under such circumstances, it was difficult to trust the judicial system. Trade unionists could be arrested, as seen in the case of Crispin Beltran, and were under threat of disappearance or murder. The activities of trade unions were often limited by legally supported anti-union discrimination exercised by important private and public employers. Trade union leaders ran

the risk of facing fabricated criminal charges and of being sent to jail, and were not sure of a fair trial. They had to operate in a country where 70 unionists had already been killed in 2007 and to survive they had to change their locations frequently, as had been the experience of the president of Toyota Motors Philippines Corporation Workers Association. The effective exercise of trade union activities was made difficult where an employer supported the establishment of a "yellow" trade union and restricted independent trade unions. This was the case of Bayer Philippines, where a solution had been found through an agreement for coexistence in collective bargaining between the company and the independent trade union.

Against this background, she urged the Government to revise its legislation and improve its court system so as to provide better protection for the population in general, including trade union members, thereby giving effect in practice to the principles of Conventions Nos 87 and 98.

The Government member of Colombia indicated that the Philippines was a democratic developing country, endeavouring to combat poverty and improve the living conditions of its citizens. She referred to the Government's efforts to encourage social dialogue and make progress in the application of the Decent Work Country Programme. She emphasized that the Government was willing to provide clarifications with regard to the acts of violence against trade unionists and on the creation of special courts to investigate these matters. Finally, she said that the international community should encourage and appreciate the efforts made by the judiciary.

The Government representative expressed sadness at the manner in which the present issues were being discussed in this forum. Her Government had never denied the existence of killings and the President had appointed an impartial commission to investigate the problem and bring the authors to court. However, the figures mentioned during the discussion were very doubtful, and there had been little agreement on the figures provided to the Melo Commission. Moreover, there was no evidence that the killings were based merely on trade union activism or the exercise of trade union rights. She recalled that trade union rights were protected by the Constitution. She also expressed sadness that the discussion had moved away from the provisions of the Convention and had turned to political issues.

She recalled that measures were being taken to address the problem of the killings. The President had given instructions and had asked the Melo Commission to continue its work to produce a supplementary report. The Government had sought cooperation from European Union countries, investigated the alleged involvement of the military, expanded the witness protection programme and established 99 special courts. Amendments had been made to the legislation as an initial step setting out the requirement of 20 per cent membership for the creation of a local chapter of a trade union and copies of the new legislation would be provided to the Committee of Experts. The Tripartite Industrial Peace Council had decided to retain the requirement of ten members for the establishment of federations or national unions, but only for registration of a federation or a national union, not for maintenance of legal personality or as a ground for cancellation of registration. In relation to the allegations of harassment and intimidation in EPZs, she said that the Labour Code applied equally in such zones, which were not considered to be union free, as demonstrated by the number of unions operating in the zones with the agreement of employers. She strongly rejected the allegation that a culture of impunity prevailed in her country and emphasized that it was the strong desire of the President to bring an end to the killings. In the case of Crispin Beltran, she recalled that the Supreme Court had found that there were no grounds for his continued detention and that the release order would be issued in due time. She added that his detention had had nothing to do with his trade union leadership or activities.

The Employer members emphasized the significance of the case in view of the important issue of whether civil liberties were adequately protected in the country. The Committee had been informed of legislative changes, but there were still certain matters that had not been addressed. A report should be provided in good time reflecting the amendments that had been made so that the Committee of Experts could examine the situation more closely. The conclusions should propose that a high-level mission visit the country to make a fuller assessment of all the aspects of the case.

The Worker members encouraged the Government to involve the social partners in the continued process of revising the Labour Code with a view to bringing it into conformity with this and other ILO Conventions. The Government should send copies of the amended texts to the Committee of Experts for examination. With regard to the killings, it was the responsibility of the Government to take all the necessary measures to protect witnesses and to ensure that thorough and impartial investigations were carried out. Although other United Nations bodies had their responsibilities, it should be emphasized that it was necessary to guarantee other basic human rights if labour rights were to be exercised effectively. The conclusions should call for a high-level mission to visit the country.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comments referred to serious allegations of the murder of trade unionists, anti-union violence in the sugar sector, death threats to discourage union formation in an economic zone and impunity relating to the killings of workers. The Committee also noted that the Committee of Experts had been referring for many years to the need to amend the current Labour Code to bring it into conformity with the Convention.

The Committee noted the Government's statement according to which, following recommendations of the Melo Commission established to investigate the rising number of extra-judicial killings, 99 regional tribunals have been designated to expeditiously resolve these cases. The Government also referred to the increasing numbers of unions in special economic zones and the recent passage of an Act strengthening the workers' right to self-organization.

Deeply concerned at the allegations of the murders of trade unionists, the Committee emphasized that respect for basic civil liberties is essential for the exercise of freedom of association. While noting the initial steps taken by the Government to address this serious situation through the establishment of the Melo Commission and the subsequent creation of special regional tribunals, the Committee, concerned at the absence of judgements against the perpetrators and instigators of these crimes, stressed the importance of ensuring that all instances of violence against trade union members are properly investigated and that any evidence of impunity is firmly combated to ensure the full and free exercise of trade union rights and their accompanying civil liberties. The Committee urged the Government to ensure that all necessary measures are taken, including through the creation of independent and impartial investigations, so as to restore a climate of complete freedom and security from violence and threats thus enabling workers and employers to fully exercise their freedom of association rights.

While noting with interest the information provided by the Government on certain recently adopted amendments to the Labour Code, the Committee urged the Government to take measures to ensure, in full consultation with the social partners concerned, that further amendments are adopted

in the very near future taking into account the comments made by the Committee of Experts for many years. It requested the Government to provide precise information on all the points raised, including as regards the impact of the Anti-Terrorism Act upon the application of the provisions of the Convention, and copies of all relevant legislative texts, in a report to the Committee of Experts. The Committee requested the Government to accept a high-level ILO mission so as to obtain a greater understanding of all aspects of this case. The Committee expressed the firm hope that it would be in a position to note tangible progress in the application of the Convention both in law and in practice in the near future.

ROMANIA (ratification: 1957)

A Government representative recalled that in her country collective agreements were regulated in the Labour Code, as well as in Act No. 130/1996 on bargaining agreements. Collective bargaining agreements were concluded between an employer or employers' organizations and workers, either represented by unions or otherwise, and covered working conditions, wages, as well as other rights and obligations that fell within the sphere of an employment relationship. In accordance with Act No. 130/1996, these agreements were concluded for a specified period of at least 12 months. The parties concerned could also decide to prolong the duration of the agreement according to conditions previously agreed. The legislation established mandatory annual collective bargaining for all enterprises, with the exception of enterprises employing less than 21 workers, with the negotiations being initiated by the employer. If this did not take place, negotiations were undertaken at the request of the trade union, or representatives of the trade unions, within 15 days from the request being presented. Labour disputes were defined as all conflicts between the social partners with respect to employment relations and were regulated by Act No. 168/1999 on the settlement of labour disputes. This Act made a clear distinction between conflicts of rights and conflicts of interests. Labour disputes concerned the right to exercise certain rights, or the establishment of certain obligations, arising out of laws, as well as collective agreements or individual employment contracts, which were considered by the Act as conflict of rights. On the other hand, labour disputes related to the establishment of employment conditions during the negotiation of a collective agreement, were disputes that concerned professional, social or economic interests of workers, and thus were considered conflicts of interest.

The Act also established the legal framework for declaring conflicts of interest. Such conflicts were possible, particularly when an enterprise refused to bargain collectively; did not accept the workers' claims; refused without a reason to sign a collective agreement even though negotiations were completed; or did not fulfil the legal obligation to call for the mandatory annual negotiations. Within the scope of Act No. 168/1999, workers did not have the right to declare a conflict of interests during the terms of a collective agreement, unless the enterprise did not fulfil its obligation to initiate annual negotiations concerning wages, hours of work, work programme or working conditions.

The speaker pointed out that the observations of the National Confederation of Trade Unions (CARTEL ALFA), the National Trade Union Bloc (BSN) and the Democratic Confederation of Trade Unions of Romania (CSDR) were not justified in that the Ministry of Labour respected the provisions in Act No. 168/1999 on the settlement of labour disputes and had proceeded to nominate the delegates to conciliate conflicts of interest, after the regional Directorates of labour and social protection had received complaints from representative trade unions or the workers' representatives. In addition, the Romanian Senate approved in May 2007 amendments to sections 12 and 13 of Act No. 168/1999 that permitted workers to initiate a procedure for the resolution of conflict of interests during the term of a collective agreement. The Government undertook to continue its efforts to improve the legislative framework in accordance with the Conventions and Recommendations of the ILO.

The Employer members noted that the case was legislative and wholly concerned the right to strike, in particular regarding three aspects: (1) suspending a strike if it endangered human life; (2) ending a prolonged strike by arbitration if it affected humanitarian interests; and (3) the procedure by which unions could seek conciliation of labour disputes prior to calling a strike.

They noted that the Government and the complainant unions had provided reports since the Committee of Experts had last considered the case. The case was not new, going back to 1991. The legislation in question was Act No. 168/1999 of the year 2000, which replaced 1991 legislation on the settlement of labour disputes. Since Romania had entered a new political era, it had been in dialogue with the ILO on the structure of legislation regarding labour disputes. The legislation was a positive response to observations by the Committee of Experts. In its 2000 report the Committee of Experts "noted with satisfaction that the new legislation introduces provisions which respond to several of the concerns expressed in previous comments on the previous legislation". Since that time, progress had been demonstrated by the Government. It had responded to the Committee's observations of 2006 in each of the three areas of contention, and the Government spokesperson had, at the present sitting, refuted assertions made by union complainants that the relevant administrative authorities were refusing to receive union applications for conciliation prior to strike action. The Government had replied that orders had been issued to this effect and that some disputes had been registered. The Committee of Experts had noted this information and made no observation. This fact did not need to be taken further, he said.

The speaker stated that the legislative aspects of the case were more difficult. The Committee of Experts had requested the Government to provide copies of decisions made in the exercise of arbitration powers to bring prolonged strikes to an end, which, he claimed, was a reasonable request. However, the Committee of Experts had also called for the legislation to be brought in line with Convention No. 87 in so far as it concerned the right to suspend or end strikes. The Committee had asserted that arbitration to end a collective dispute was only acceptable in three circumstances. In doing so, the Committee inferred, but did not expressly state, that the current legislative references in Romanian legislation to "humanitarian interests" or the "life or health of individuals" fell outside the strict definition adopted by the Committee of Experts as regarded the ending of labour disputes. This was not an issue that the Employer members wished to debate in the present forum. Anything the Committee observed at the present hearing should take into account the fact that in 2000 it had noted certain aspects of Act No. 168 "with satisfaction". Indeed the arbitration provisions were specially identified both in 2000 and in the current report.

The Committee of Experts' report also made mention of some disagreement between the complainant unions and the Government over disputes that were conflicts of rights rather than conflicts of interest. The Government had also noted this in its remarks. The 2002 observation of the Committee of Experts specifically "noted with interest that the new Act clarifies the distinction between the disputes of rights and disputes of interest". The Employer members therefore considered that the Committee of Experts had acted appropriately in not calling for legislative amendment in this respect, but believed that technical assistance could be provided by the ILO to the tripartite constituents.

The Worker members noted that this was not the first time that the Committee of Experts had examined cases concerning labour disputes in Romania. It had in fact come to the conclusion that the legislation on labour disputes that came into force in 2000 was to some extent incompatible with the Convention – as had been stressed by the unions in their comments and complaints before the Committee on Freedom of Association.

There were several reasons justifying the Conference Committee dealing with this case for the first time. Firstly, section 62 of the Act on the settlement of labour disputes allowed the management of an establishment to submit unilaterally a dispute to an arbitration committee if the continuation of the strike risked affecting humanitarian interests. The Committee of Experts decided that such a condition was too vague and went beyond the limits of the right to strike as permitted by ILO standards as far as certain public servants and essential services in the strict sense of the term were concerned, namely, those services the interruption of which would endanger the life, personal safety or health of the whole or part of the population. The Committee of Experts' request, made in 2005, that the provision be repealed, had not been acted on.

In addition, legal texts obliged the social partners to resolve conflicts of interest through prior conciliation procedures; a strike became unlawful if it concerned a conflict of rights or if the conciliation procedure had not been respected. Strict regulation therefore endangered the right to strike and created situations in which a strike could be considered unlawful by employers, the public authorities and the courts. The refusal by regional labour offices to register requests for conciliation submitted by the unions in case of a breakdown in negotiations also had the effect of preventing conciliation and also all strikes. The Committee of Experts seemed to have been satisfied by the Government's reply that trade unions had not lodged a complaint with the relevant judicial bodies, though the Romanian Worker members would demonstrate that this did not correspond to the reality. The observation made to Romania could have dwelt more on the distinction that the Act on the settlement of labour disputes made between conflicts of interest and conflicts of rights. As a member of the European Union since January 2007, Romania had rights and duties, one of which was to respect the right to strike, guaranteed by the Charter of Fundamental Rights, without making a distinction between conflicts of interest and conflicts of rights.

The Romanian authorities had encountered many problems in the recognition of freedom of association, including the right to strike, and had subjected the fundamental rights of workers to a range of procedural constraints. The Committee on Freedom of Association had regularly received complaints from Romanian trade unions and had recalled the fundamental importance of the right to strike. Conflicts of rights represented legitimate interests that a trade union organization should be able to defend. Next October, the Committee would be investigating new complaints on the issue.

In conclusion, the Worker members recalled that the compulsory arbitration procedure foreseen by section 62 of the 1999 Act should be repealed, as the Committee of Experts had already proposed for a second time. In addition, the distinction between conflicts of interest and conflicts of rights, on which the entire legislation was founded, was contrary to ILO principles, principally the right to strike. Finally, the prerequisite for conciliation procedures risked endangering the right to strike if regional labour offices refused to register requests for conciliation. In view of Romania's entry into the European Union and recent developments reported by Romanian Worker members both regarding the social partners and the courts, the Worker members were satisfied that, with ILO assistance, the Romanian authorities could be convinced to modify the 1999 Act in order to make it compatible with ILO standards.

The Worker member of Romania recalled that his country had ratified Convention No. 87 in 1957, a Convention whose principles were reflected in article 43 of the national constitution as well as the Labour Code and the Act on the settlement of labour disputes. The Ministry of Labour, however, had refused to register the requests for conciliation submitted by trade unions in the case of unjustified delays in commencing mandatory annual collective negotiations or the refusal by employers to accept trade union demands with regard to hours of work, wages or working conditions. Conciliation was a compulsory step without which striking was impossible. The authorities' attitude resulted in a restriction in workers' right to strike, as was evidenced by the 37 per cent reduction in the number of strikes according to official sources, and the increase in spontaneous social conflicts which were harmful for working relations and could have unexpected consequences. This refusal to register conflicts of interest constituted a violation of article 40 of the Romanian constitution, which provides for the right to strike, section 12 of the Act on the settlement of labour disputes, Articles 3 and 8 of Convention No. 87 and the amended European Social Charter despite its having been ratified in its entirety.

Contrary to the Government's assertions, it had officially prohibited regional bodies from applying conciliation procedures in practice in the case of conflicts of interest in such cities as Constanta, Prahova, Sibiu, Dolj, Gorj, Vilcea, Bucharest, etc. The trade unions had attempted to lodge an appeal against these measures and obtained final and binding decisions, obliging the authorities to register conflicts of interest.

The social partners, as well as the Committee of Experts on many occasions, had requested that the Act on the settlement of labour disputes be amended, both with regard to registering conflicts of interest involving collective agreements valid for multiple-year, as well as with regard to sections 55, 56, 60 and 62 concerning the suspension of strikes by judicial means and the use of arbitration. Nevertheless, last May the Parliament had rejected all the amendments proposed by the social partners and had also ignored the observations of the Committee of Experts. The Act therefore continued to be ambiguous and open to various interpretations.

In conclusion, the speaker noted that this was the second time that Romania had been included in the list of individual cases, and considered that it was time for a technical assistance mission to be sent to assess the manner in which the Government was carrying out its obligations.

The Worker member of Hungary, quoting the Committee of Experts, recalled that the law on the settlement of labour disputes in Romania did not provide in practice for the fundamental right of workers to organize collective action or strikes. The right to strike was one of the essential means for workers and their organizations to promote and defend their economic and social interests and was a corollary to the right to organize as protected by Convention No. 87.

She said that Romanian legislation set up a number of prerequisites that had to be met in order to make a strike lawful, e.g. issues regarding wages, working conditions and working time had to be negotiated on an annual basis. The law stipulated clearly that, to resolve conflicts, a conciliation stage was mandatory prior to taking strike action. In the absence of this prior conciliation process, a strike would be judged illegal. The consequences were that if an employer did not want to sit down at the conciliation table, he or she could unilaterally hinder a strike without reasonable cause or explanation. Even in those cases where workers could initiate strike action, an employer could demand the suspension of the strike in court or go

to arbitration on humanitarian grounds after a strike had begun. These regulations showed that the law was very complicated and left many openings for a strike to be declared illegal. The Committee on Freedom of Association had declared that the legal procedure for declaring a strike should not be so complicated as to make it practically impossible to declare a legal strike. Romanian legislation, she declared, was not in line with this rule. The CFA had emphasized that although a strike may be temporarily restricted, such a restriction should be accompanied by adequate, impartial and speedy conciliation and arbitration proceedings in which parties concerned could take part at every stage. The suspension of a strike and its termination by an irrevocable court decision or compulsory arbitration process could not be seen as being in compliance with the principles of Convention No. 87.

Collective action was the essence of the trade union movement and the limitation of industrial action through complicated and controversial legislation was a serious violation of the principles of freedom of association. The speaker therefore urged the Government to change the law so as to be fully in line with the principles and rules of Convention No. 87.

The Government representative, having taken note of the discussion, concluded by reiterating her Government's willingness to resolve this matter. In this respect, the Government accepted a technical assistance mission to facilitate bringing the legislation into line with Convention No. 87.

The Employer members declared that, while considerable legislative progress had been made in Romania, there were problems of interpretation or application that might exist in the current legislation and this could only be resolved at the national level. The Employer members believed that the matter could be assisted by a process of a technical nature at national level, designed to achieve consensus, which would focus on the interpretation of the national law. They suggested that a specialist, who had the support of the tripartite stakeholders and the ILO, could be tasked to work with employers, unions and the Government in the light of the conclusions and observations of the present Committee. This would be a practical approach which would remove the need for the case to be studied again by the Committee.

The Worker members noted the reactions of the different speakers and asked the Government to thoroughly review the legislative framework concerning collective conflicts, and Act No. 168 of 12 November 1999 in particular. Indeed, the reports of the Committee of Experts as well as those of the Committee on Freedom of Association noted that section 62 of the Act, which obliged workers to initiate arbitration procedures, did not comply with Convention No. 87. It was unacceptable to use concepts as vague as the concern for humanitarian interests to justify the prohibition of the right to maintain a strike for longer than the first 20 days. This provision should, therefore, be repealed.

Furthermore, the distinction the legislation made between conflicts of interest and conflicts of rights was problematic as was the functioning of the conciliation procedures, particularly where regional administrative offices refused to register conciliation requests from trade unions, which was tantamount to prohibiting the exercise of the right to strike. An agreement made between Romanian employers and trade unions, which envisaged the amendment of the Act of 1999, was being blocked by the public authorities. Those authorities had to be encouraged by the Committee to take these proposals into consideration and open up a frank dialogue between the social partners with a view to adapting the abovementioned legislation. Indeed, so long as the right to strike was rigidly regulated, it was likely that a multitude of spontaneous strikes would occur that would be harmful to working relations.

The Worker members noted that the Government had indicated that it was open to the idea of receiving a technical mission so as to benefit from the assistance and experience of the Office in the matter. They invited the Committee of Experts to follow carefully the development of the situation, both in law and in practice, so as to be able to evaluate the progress made next year.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee recalled that the Committee of Experts has been referring for some time to legislative restrictions relating to the rights of workers' organizations to organize their administration and activities and to formulate their programmes and organize collective action. The Committee also noted previous observations made, and the legislative history of this matter.

The Committee noted the information provided by the Government according to which certain amendments to the Act on the Settlement of Labour Disputes were currently before the Romanian Parliament.

The Committee requested the Government to take the necessary measures, in full consultation with the social partners concerned and with a view to reaching a consensual solution, to ensure that its law and practice was in conformity with the Convention. It noted the Government's acceptance of an ILO technical assistance mission in this regard. It requested the Government to provide detailed information concerning the distinction made between disputes of rights and disputes of interest and the registering of disputes for conciliation, including any relevant statistics, administrative decisions and court judgements, in its next report to the Committee of Experts. It hoped that the Committee of Experts would be in a position in the near future to note the progress made on the pending matters.

TURKEY (ratification: 1993)

A Government representative informed the Committee that his presentation would be confined to the seven main points raised by the Committee of Experts in its observation. The first point concerned the exclusion of a number of public employees from the right to organize (sections 3(a) and 15 of Act No. 4688). The Committee of Experts had noted that the definition of "public servant" in section 3(a) of Act No. 4688 referred only to those who were permanently employed or had completed their probation period, which was contrary to Article 2 of the Convention. Moreover, the exceptions provided in section 15 of Act No. 4688 led, according to the Committee of Experts, to the denial of the right to organize of the judiciary, public officials in high administrative ranks and those in "positions of trust". He announced that section 4(2) of Act No. 5620 of 4 April 2007 had already amended section 3(a) of Act No. 4688 so as to allow public employees working under fixed-term contracts (referred to as "contract personnel") to join public servants' unions. Therefore, permanent employment was no longer a requirement for membership to public servants' unions. Furthermore the Tripartite Consultation Board had unanimously agreed at its meeting of 10 May 2005 to recommend the amendment of section 3(a) of Act No. 4688 so as to allow public employees to form and join unions during their probation periods.

The second point raised by the Committee of Experts concerned the criteria under which the Ministry of Labour determined the branch of activity covering a worksite, and the implications of that determination on the workers' right to form and join organizations of their own choosing. In order to deal with inter-union disputes effectively, section 60 of Act No. 2821 envisaged careful demarcations of branches of activity by taking account of the opinions of labour and employer confederations and in-

ternational standards. Should a dispute arise as to which branch an establishment belonged to, the Ministry of Labour was empowered by section 4 to make the said determination upon the request of the party concerned. Therefore, the Ministry was called upon only in cases where an inter-union dispute arose, and it was possible in any case to appeal against the Ministry's decision before the courts. The draft bill on trade unions merged some branches in order to make a more rational classification and facilitate the establishment of stronger unions. As the Committee of Experts had pointed out, the establishment of broad bands of classification for the purpose of clarifying the scope of industrial level unions was not in itself incompatible with the Convention. Following the proposed broad-banding of some branches, workers would still be free to join any union established in the respective branch. Further, the criterion used by the Ministry in making the said determination was the main activity performed in the establishment and "other activities auxiliary to the main activity" were deemed to fall within the branch to which the main activity belonged.

The third point raised by the Committee of Experts concerned the overly detailed nature of the provisions of Acts Nos 2821, 2822 and 4688 on internal union affairs. In the Government's view, these provisions did not hinder the autonomy of unions, but rather were aimed at ensuring the democratic functioning of unions, protecting the rights of members and maintaining transparency in union activities. With a view to better protecting the freedom to form and join unions and simplifying and speeding up the collective bargaining process, various improvements had been envisaged in the draft bills amending Acts Nos 2821 and 2822. The Committee of Experts had noted these reform proposals with interest. Among positive developments which had already materialized, reference shall be made to the adoption in 2004 of a more liberal Associations Act No. 5253 and the replacement of Act No. 2908, as well as the enactment of a new Penal Code No. 5237 in 2005, which introduced strong penal sanctions against acts of anti-union discrimination.

The fourth point raised by the Committee of Experts concerned the removal of union executive bodies from office in case of non-observance of legal requirements and the suspension of union officers' term during candidacy in local or general elections, as well as the termination of their status of union official in case of election. Section 10 of Act No. 4688 empowered the Ministry as well as any trade union member to apply to the courts with a request to remove from office union executive bodies who had avoided holding the general congress. It should be emphasized that the Ministry's role was simply to draw attention to a possible discrepancy or contravention and that the final judgement belonged to the independent court. The rationale behind this provision was again, to protect members' rights and to safeguard democratic processes in unions. Concerning the termination of the mandate of union leaders who won in general or local elections, an amendment to article 82 of the Constitution would be required in order to enact relevant legislation on this matter.

The fifth point raised by the Committee of Experts concerned the right to strike in the public sector. Workers engaged in public services under employment contracts enjoyed the right to strike just like workers in the private sector. With respect to public servants in general however, there was no ongoing work at present on this matter. In fact, recognition of the right to strike for public servants required an amendment to the Constitution. In line with the views expressed by the Committee of the Experts, the Government was planning to launch a personnel reform in the public sector whereby "public servants" in the narrow sense of the term, i.e. those exercising authority in the name of the State, would be defined first and then carefully distinguished from other public employees. Work on this reform programme was continuing as a priority.

The sixth point concerned the restrictions on the right to strike under Act No. 2822. The draft Bill which aimed to amend Act No. 2822 envisaged the deletion from the text of certain occupations or services where strike action was not permissible. Examples were the exploration, drilling, production and distribution of petroleum, production of lignite feeding thermal power plants, urban transportation by land, rail and sea, etc. Further, the question of how a collective agreement could be reached in cases where strikes were banned in some of the establishments which would be covered by an enterprise-level collective agreement, was a disputed matter. The draft provided that an agreement reached subsequent to strike action in certain establishments would also apply to the workers of the establishment where strikes were prohibited. Limits on the number of strike pickets had been brought into the Turkish industrial relations system because the legislation strictly prohibited the use of strike replacements by the employer. On the excessively long waiting and notice period before a strike could be called, the draft Bill foresaw a simpler, faster and more flexible mediation mechanism and shortened the negotiation time considerably. The Constitution of Turkey recognized strike action only for disputes arising during the collective bargaining process and restricted certain types of actions such as strikes for political purposes and sympathy strikes; these restrictions emanated from article 54 of the Constitution, which banned such forms of industrial action.

The seventh point concerned the lawsuit against the Confederation of Progressive Trade Unions of Turkey (DISK), one of several confederations, in respect of the election of its representatives. The lawsuit had been filed against DISK on 21 June 2001. The 5th Labour Court of Istanbul had rejected the request to suspend the activities of DISK or dissolve the organization. This decision in favour of DISK had been upheld by the Court of Cassation on 22 December 2004. So a final decision had been handed down in this case.

The constitutional basis of the requirement of "ten years of active employment" in order to be elected to trade union office had already been removed in 2001. The remaining provision in section 14 of Act No. 2821 had been repealed through the adoption of Act No. 5675 of 26 May 2007.

On the progress made with regard to the draft bills, the Government representative indicated that in the meeting of the Tripartite Consultation Board held on 28 December 2006, it had been decided to carry on further work in order to identify the agreed-upon provisions as well as the items on which there was no agreement as yet between the social partners. The latest meeting was held on 29 May 2007 with the participation of the main labour and employer confederations: TISK, TÜRK-IS, HAK-IS, DISK, KAMU-SEN, KESK, MEMUR-SEN and BASK. The Minister had proposed to carry out further work jointly with the social partners in order to give the draft bills their final form before holding the general parliamentary elections in July. The proposal had not been accepted by the presidents of the confederations, who had claimed that the process of general elections, which had already begun, did not make it feasible to conduct such work. Therefore, submission of the draft bills to the Grand National Assembly would be postponed until after the finalization of the general elections. The Government representative finally thanked the ILO for its continuing support in raising labour standards in the world and in Turkey.

The Employer members recalled that this case had been discussed fairly regularly in the 1990s until 1997. After a nine year gap, it had been discussed again in 2005. The Committee of Experts had on a number of occasions noted developments in this case with satisfaction or inter-

est, and this year again it noted with interest the draft bills amending Acts Nos 2821 and 2822. In trying to appreciate the comments of the Committee of Experts, the degree of change that constituted progress in a certain case was not always clear. While the information provided by the Government representative indicated some change, the essence of it was similar to what had already been presented before the Committee in 2005. Furthermore, the Employer members were surprised that the Government had not addressed first and foremost the comments of the Committee of Experts calling for investigations on allegations of acts of violence. They underlined in this respect that respect for civil liberties was a necessary prerequisite to the effective implementation of the Convention. They hoped and expected that the Government would provide a report to the Committee of Experts on the issues of violence. As for the draft legislation covering specific areas, it was up to the Committee of Experts to provide an appraisal. Overall, the Government seemed to be gradually heading to implementation of the Convention. It seemed however that the rhythm of reform had slowed down compared to the information provided in 2005 and there was a need for greater urgency to be placed on measures to implement the Convention because of its fundamental nature.

The Worker members thanked the Committee of Experts for their detailed analysis of the situation of freedom of association in Turkey, which was being examined this year for the tenth time since 1990. The Government was either taking its time to take action or hiding behind meaningless excuses, so as not to take effective measures to address the numerous requests made by the Committee, and it was not interested in the technical assistance of the Office. In 2006, three Turkish trade union organizations as well as the ICFTU had sent their observations to the Committee of Experts reporting interference by the authorities in internal trade union matters, repeated violations of national legislation respecting the right to strike and interference by the authorities in the formulation of trade union statutes, as well as violence by the police and further arrests of unionists during peaceful demonstrations. The Committee of Experts, however, had not examined all these issues despite the precise information provided, demonstrating how the legislative arsenal was being used to harass, threaten and imprison trade unionists. On the other hand, it had made comments on many legal questions. For example, the information sent once again by the Government on the adoption in 2004 of a new Associations Act and a new Penal Code could not be examined for lack of a translation of these new provisions. The Government had also referred once again some of the progress made in the various bills that had already been supplied to the Committee of Experts. It had nevertheless been holding consultations with the social partners on these matters for years, and the lack of real progress could only be due to either the employers or the Government. Certain problems that had been clearly identified, such as the denial of the right to establish and join trade unions of their own choosing for a number of workers in the public sector, in particular those of the Department of Justice and Security, were being ignored by the Government. The Convention, however, provided for the right of workers, without any distinction whatsoever, to establish and join organizations of their own choosing, with the sole exception being allowed for members of the armed forces and the police. Therefore, the announced legislative reform needed to conform strictly without delay to this essential principle. Furthermore, the Committee of Experts noted that the exercise of the right to strike was restricted or prohibited for public service employees; that general strikes and sympathy strikes were forbidden; that the concept of essential services was interpreted in an excessively broad manner; and that the period of notification of strikes was excessive and continued to be so in the new bill, since the envisaged reduction to 30 days was totally unsatisfactory taking into account the pressure to which workers were subjected during such periods.

It was important to analyse the numerous legal breaches in the light of the situation in the field, which had been denounced by the trade union movement, and which deserved more attention in the report of the Committee of Experts. In this respect, this year, the International Trade Union Confederation (ITUC) was considering the possibility of informing the Committee of Experts of the fact that in February 2006, 35 members of the Tekstil-DISK trade union had been dismissed by the administration of a textile factory because the union was on the verge of achieving a majority of unionized workers in the enterprise; and in September of the same year, 22 workers of a British packaging enterprise had been dismissed because of their union activities; furthermore, judicial inquiries were on some occasions conducted against trade unionists accused of having posted a union calendar. In Tuzla, in May 2006, the police had seriously injured and imprisoned a group of dockers whose contracts had been breached by a large Turkish employer who had refused to pay their wage arrears. This was a brief overview of the kinds of issues that were submitted to the Committee of Experts every year and made the case of Turkey look like a compilation of case-law by the Committee on Freedom of Association and the Committee of Experts.

The Worker member of Turkey stated that the draft bill amending the Collective Labour Agreements, Strikes and Lock-outs Act No. 2822 aimed at complying with the Convention and European Union regulations. However, the provisions in Act No. 2822 which restricted the right to bargain collectively and raised obstacles to the right to strike, continued to be in force. Under article 54 of the Constitution, political strikes, sympathy strikes, general strikes, workplace occupations, go-slow strikes, actions aiming to decrease workplace productivity and any other type of resistance were forbidden. In the new draft bill, the penalties for illegal strike action were excessive.

The right to organize and bargain collectively was a fundamental right. By virtue of Act No. 5170 of 7 May 2004 a provision was inserted in article 90 of the Constitution to the effect that in case of conflict between international treaties on fundamental rights and freedoms and domestic laws, the provisions of international treaties were to prevail. Thus, Act No. 2822 should be amended so as to be brought in line with the Convention.

Employees in the banking sector were also deprived of the right to strike on the basis of Act No. 2822 on the ground that such strikes would paralyse social life and have long-term irremediable repercussions. Unfortunately, the Government still proposed to maintain this provision in the draft bill. The Committee on Freedom of Association had made clear that the banking sector was not an essential service in the strict sense of the term and strikes in this sector should not be subject to restrictions. Moreover, the bans on strikes in the water, electricity and natural gas sectors were no longer justified as these public enterprises had been privatized due to the economic policies implemented by the Government. Thus, the definition of essential services should be reviewed and narrowed as much as possible.

The Employer member of Turkey noted that the Act of 4 April 2007 providing for the prohibition on establishing trade unions for public sector employees had been abolished, and that workers were entitled to affiliate with trade unions in the public sector. Progress had also been made via the adoption of the Act of 26 May 2007, which repealed the condition that a public official had to be employed for ten years in order to become a founding member of a trade union. The Government had also indicated to the European Union on 17 April 2007 that it undertook, in the framework of the alignment of legislation to Euro-

pean standards, to carry out legal amendments regarding the right to collective bargaining by the end of 2007.

He noted that, in order to realize a timely alignment of national legislation, the Government had already prepared two draft laws, on which consensus had not yet been reached; discussions were continuing on this issue. He hoped that the Government would fulfil its undertaking to the European Union and stated that the employers of Turkey were willing to assist in this respect.

Another Worker member of Turkey, as a representative of public servants' trade unions in Turkey, wished to inform the Committee about the situation of trade union rights in the public sector. Despite the ratification of several Conventions, there were many problems in law and practice. Up to 2001, public service trade unions had claimed the rights set out in ILO Conventions and had carried their activities in the absence of any legislative provisions in that respect. As a result of their struggles, limited rights had been recognized in 2001. However, there remained five main problems. Firstly, although Act No. 4688 recognized certain aspects of the right to organize of public employees, it contained many restrictions on the administration of trade unions, the right to organize protection of trade union members, the right to strike and the right to collective bargaining. Since 2002, collective bargaining between public employees' trade unions and the Public Employers' Committee had been undertaken on five occasions, but only one agreement had been concluded. The protocol signed in 2005 had not been applied in its entirety and 26 out its 34 articles, including provisions on socio-economic benefits (such as reinstatement in the case of anti-union discrimination) were not implemented by the Government. Moreover, in accordance with section 34 of Act No. 4688, the protocol did not have binding force. Secondly, the Reconciliation Board did not have any power, as its recommendations did not have legal force and had never been implemented. Thirdly, many public employees were banned from establishing or joining trade unions. Fourthly, trade union representatives suffered anti-union discrimination and although some were reinstated on the basis of court decisions, most suffered prejudice due to court delays (three to seven years). Thus, it was not enough for the Government to say that the enactment of a new Penal Code in 2005 had introduced strong penal sanctions against acts of anti-union discrimination, as it was ineffective in practice. Finally, the tripartite system established by the Economic and Social Council Act in 2001 was not working properly. The Council was supposed to meet yearly at the invitation of the Government, but the social partners had not been invited to meet since 2005. Furthermore, the decisions of the Council had not been taken seriously. He appealed for support in overcoming these serious problems and reaching a solution.

An observer representing the International Trade Union Confederation (ITUC) stated that the requirement that unions meet two membership thresholds – 10 per cent of all workers in a given branch of economic activity, and 50 per cent of all workers in a given workplace – violated the principle of freedom of association. Unions were not able to represent the interests of workers without satisfying these two prohibitive criteria. Moreover, the latter requirement meant that, in practice, 49 per cent of the workers in a given workplace could not be represented by the union of their choice.

Even where unions were able to meet these restrictive requirements, she observed that, they were further hindered by the fact that 50 per cent of the country's total economic activity was informal. As unions were required to register their members using their social insurance numbers, and most informal workers lacked such numbers, the result was the denial – to over half of the country's workforce – of the fundamental right to organize and join organizations of their choosing. The requirement that workers register their union membership in public notaries was also unduly burdensome; registration was difficult, as public notaries worked only during official working hours, and placed a financial burden on trade unions.

With respect to the right to strike, she noted that unions were prohibited from organizing sympathy strikes and that the Council of Ministers could also ban strikes in certain sectors and in certain cases. Public employees were also denied the right to strike and to collective bargaining and public service union leaders were liable to criminal charges for organizing peaceful demonstrations calling for trade union rights.

Many other violations of trade union rights persisted. For instance, the fact that the branches of activity were determined by the Labour Ministry and the fact that, although unions could take legal action against the decisions of the Ministry, court processes were very lengthy, taking between three and seven years, during which time their activities often collapsed. Despite the promises to change the trade union laws made by several Turkish governments since 1980, around one-fifth of the total members of DISK unions who had joined in the last three years had lost their jobs in the initial phase of their organizing campaigns. She expressed gratitude to DISK's brother organizations for their solidarity and support and indicated that brochures on the trade union situation in Turkey, prepared by DISK, were available for distribution to the members of the Committee.

The Worker member of Singapore observed that this was a long-standing case involving serious violations of the Convention. The basic right to organize and to bargain collectively of Turkey's workers were severely curtailed, and they had been suffering for a long time. She said that it was time for the Committee to take a long, hard look at the case and issue clear recommendations on what it wished the Turkish Government to do in order to fulfil its obligations under the Convention. It was not for lack of support that the Government was not making the necessary changes. Indeed, Turkey had received ILO technical assistance on several occasions. A report had also been prepared by the EU-Turkey Joint Consultation Committee containing many useful recommendations, none of which had been followed up. The question in essence was whether there was sufficient political will to bring about those changes; the indications up to now suggested that the political will was weak.

She observed that several Turkish laws – the Trade Unions Act, the Collective Labour Agreements, Strikes and Lock-outs, and the Public Employees' Trade Union Act – were in serious violation of the Convention. The Government had informed the Committee of Experts that draft amendments to these laws were being prepared. The Committee of Experts had in turn observed that the draft amendments contained improvements which addressed some of the questions it had raised previously. In this respect, she warned that it was too early to celebrate as she did not share the optimism of the Committee of Experts. Governments had too often indicated in the past that amendments had been submitted to the social partners for consultation, or to the legislature, only to state one or two years later, that the bills had been withdrawn as they required further consideration. She hoped that the present draft amendments would not suffer the same fate.

She noted the persistence of numerous violations of workers' rights and interference in the internal affairs of unions. The teachers' union Egitim-Sen, for instance, had been forced to delete an objective in its statutes providing for "education in the mother tongue". The union had taken this issues to the courts, and the case was now pending before the European courts. She found this requirement particularly ridiculous, as in her country it was compulsory for primary school children to learn their own mother tongues in order to preserve the nation's cultural diversity.

She stated that there were also cases pending against the DISK and some of its affiliates for allegedly violating legislation forbidding organizations to elect officials who had worked for less than ten years in the relevant sector. The right of unions to elect their officials in full freedom was a fundamental one; if the Government did not interfere with the right of employers' organizations to elect their officials, why should it interfere with the right of unions to do the same? In this regard, she called upon the Committee of Experts to request further information on the lawsuit against DISK over the election of its representatives.

Another restriction was the requirement for workers to join or resign from unions by registering with the public notary. Although this requirement had been removed for those wishing to join trade unions, it remained in place for resignation from a trade union and was therefore and obstacle for workers wishing to change and join other unions. With regard to the requirement of the presence of a Government observer at the general congresses of unions, she stated that this restriction was puzzling, as government officials ought to be occupying themselves with the challenges of economic growth. Other infringements of the Convention included the prohibition upon union officials from continuing their union work if they stood as candidates in political elections; requiring public servants to complete a "trial period" before joining a public servants' trade union; the removal of trade union leaders considered to have breached the law on union elections; and the determination of branches of economic activity by the Labour Ministry. All of these constituted serious violations and interference in union democracy.

She noted that the Government was capable of instituting changes when it so wished, as demonstrated by the reforms – including reforms on difficult and sensitive issues – it had undertaken to comply with the demands of accession to the European Union. The Government also enjoyed a majority in Parliament and was therefore in a strong position to effect change; whether it possessed the political will to implement its obligations remained to be seen.

As the Government had indicated that it intended to change the law, it would not be too difficult to declare a moratorium on the prosecution of union officials under the above laws. Such a moratorium would go a long way towards demonstrating seriousness and sincerity in wishing to comply with the Convention; she urged the Government to seriously consider this proposal. The proposed moratorium would only be a first step towards compliance. To fully comply with the Convention, the Government needed to seriously review its laws in line with the Committee of Experts' recommendations. She urged the Government to do so immediately.

The Government representative stated, with respect to the issue of anti-union violence, that Turkey possessed a law on demonstrations and marches that set out limits for such action. The country sometimes experienced political unrest, and sometimes those limits were breached; all who violated the law were subject to the same treatment, whether they were union members or not.

With regard to the draft laws, which had yet to be adopted, he stated that in their drafting the Government had sought the participation of the social partners. The Government was seeking to reach a consensus among the social partners, even in areas where they disagreed; the Ministry was in the process of tabling these laws before Parliament.

With regard to the interference in union statutes referred to by certain speakers, he stated that the model provisions existed to foster harmony and transparency in union statutes, and merely specified such matters as a union's address or the number of members; otherwise, the Government did not dictate the contents of union statutes. He stated that he had earlier addressed the other matters that were raised by certain speakers. For instance, the requirement of ten years' employment to be eligible for union office had been removed both from the Constitution and the legislation. As for the Associations Act, it had been liberalized. Under the provisions of the new Act, the requirement that a Government observer be present at unions' general assemblies had been repealed. The new Associations Act also allowed unions greater freedom to engage in international activities, such as establishing offices abroad and affiliating with international organizations. The only requirement in this respect was that due notification had to be given to provincial and district governors for the receipt of foreign aid. With regard to the prohibition on union officials seeking political office, he remarked that this stemmed from article 82 of the Constitution, which provided that trade union work was one of several types of work incompatible with the holding of political office.

With respect to the right to strike in the public sector, he stated that a significant number of public employees were working under contracts, and therefore had the same rights as employees in the private sector, including the exercise of the right to strike; the case of Turkish Airways was one such example. With regard to strike bans, he maintained that where the right to strike was denied alternative arrangements were in place, as demonstrated by the compulsory arbitration procedure that was available to such classes of workers as firefighters. The compulsory collective bargaining period with which the parties were required to comply before the right to strike could be exercised was also being shortened – the 60-day negotiation period would be shortened to 30.

Information regarding the draft laws had already been sent to the Committee of Experts. With regard to the comments of DISK on the double criteria requirement for gaining authorization to engage in collective bargaining, the Government had been willing to modify the 10 per cent requirement. However, the Turkish labour movement had refused to support the repeal of this provision, so that no consensus had been reached on this issue. Nevertheless, the draft laws lifted this requirement and would hopefully soon become law.

With respect to the informal sector, all workers working under an employment contract, whether in the informal sector or otherwise, were entitled to join trade unions; the law did not require social insurance numbers as a prerequisite for union membership. The problem was simply logistic, as the computer system used by the Labour Ministry to determine the majority status of a union could only register trade union members with their social insurance numbers. To address this matter, he urged trade unions to organize workers in the informal sector and aid them in obtaining social insurance numbers until the Ministry could modify the computer system presently in place. In addition, the requirement of registering through a public notary was in the process of being removed. He hoped that consensus would be obtained on this issue.

He asserted that the notion that branches of economic activity were determined by the Ministry was false. The process for determining such branches was provided for by law, taking into account such factors as international labour standards. With regard to the manner in which the Ministry determined which unions belonged to which branch of activity, this was explained in the Government's report and the possibility of judicial appeal against the Ministry's decision was also provided for.

On the subject of lengthy court procedures, to say that court decision took between three and seven years to be handed down was an exaggeration. Some laws set out specific periods of time for each stage of litigation, from trial to appeal. A more accurate estimate of the duration of the legal process was six to seven months.

Finally, in respect of the Egitim-Sen case mentioned by one speaker, he stated that the union concerned, against

whose status a lawsuit for dissolution was filed due to a provision in its statutes regarding "education in the mother tongue", had the case dropped after having amended its statutes.

The Employer members said that the Government had confirmed the impression they had expressed at the beginning of the session that this was going to be a complicated case. A report was of course needed on the final comments that the Government representative had just made; but more was required. The Government had indicated in its final comments that if social consensus were achieved, many of the problems could be solved. The speaker emphasized, however, that social consensus did not necessarily imply compliance with international labour standards. It was urgent for the Government to clarify the provisions of the legislation, so that the Committee of Experts could clearly assess where the gaps were in the Turkish legislation in relation to the requirements of the Convention.

The Worker members expressed their frustration with the statements of the Government representative. The lack of tangible progress in this case was as obvious as it was unacceptable. The Government had announced a series of amendments to the legislation as a sign of progress. It referred to a legislative amendment, for example, under which trade union members would no longer be subject to the requirement of a minimum of ten years of employment in the same branch of activity to be eligible for management positions in the executive bodies of their trade union. This provision, which had been contained in the Constitution had been repealed, but had been maintained in the Trade Union Act on which the lawsuit against DISK was based. The exact status of these amendments was not clear, and the Committee should not simply take note of these changes. The Government needed to provide these texts for examination by the Committee of Experts so that next year the Conference Committee could assess whether any real progress had been made. The legislation that was criticized was still in force and it was incomprehensible that this case had been mentioned in the report of the Committee of Experts as a case of progress.

The Worker members said that in the absence of real progress next year they would propose that the conclusions adopted by this Committee be included in a special paragraph of its report. Furthermore, the Government should invite a high-level mission of the Office to help it take the measures necessary to rapidly bring its legislation into conformity with the Convention.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comments referred to a certain number of discrepancies between the legislation and the Convention regarding the rights of workers and employers in the public and private sectors without distinction whatsoever to establish and join organizations of their own choosing, and the right of workers' organizations to draw up their constitutions and rules, to elect their representatives in full freedom and to organize their activities without interference by the authorities. The Committee noted that several national workers' organizations had also presented comments on the application of the Convention, including allegations of Government interference in trade union activities, police violence and arrests of trade unionists.

The Committee took note of the Government's statements according to which: section 3(a) of Act No. 4688 had been amended on 4 April 2007 so as to allow public employees working under fixed-term contracts (referred to as "contract personnel") to join public servants unions; it was launching, as a matter of priority, a personnel reform in the public sector whereby public servants in the narrow sense of the term would be defined and carefully distinguished from other public employees in respect of restrictions on the right to strike; a draft bill aimed to amend Act No. 2822 by envisaging the deletion altogether of certain occupations or services where strike action was not permissible; the lawsuit against DISK had been resolved with the final verdict issued by the Court of Cassation on 22 December 2004; the requirement of ten years of active employment as a worker in order to be elected to union executive bodies had finally been repealed by Act No. 5675 of 26 May 2007; it was proposed to continue joint work with the social partners in the Tripartite Consultation Board.

While noting the information provided by the Government concerning certain steps taken towards the fuller application of the Convention, the Committee was not clear as to the actual status or content of the recent laws to which the Government had referred. It regretted, however, that these steps were insufficient in light of the numerous occasions on which this Committee and the Committee of Experts had urged the Government to take rapid steps to bring its law and practice into harmony with the Convention.

The Committee deeply regretted that the Government had still not provided any information in reply to the serious allegations made to the Committee of Experts relating to police violence and arrests of trade unionists and government interference in trade union activities, including the banning of union-related booklets, posters, etc. The Committee emphasized that respect for basic civil liberties was an essential prerequisite to the exercise of freedom of association and requested the Government to take all necessary measures to ensure a climate free from violence, pressure or threats of any kind so that workers and employers could fully and freely exercise their rights under the Convention. It urged the Government to reply in detail to these allegations and to report back to the Committee of Experts this year on all steps taken to ensure respect for the abovementioned fundamental principles.

The Committee urged the Government to provide detailed and complete information on all pending issues, as well as all relevant legislative texts, in its next report to the Committee of Experts and expressed the hope that it would be in a position to note in the very near future that significant progress had been made in ensuring full conformity with the Convention. The Committee requested the Government to accept a high-level ILO mission with a view to assisting it in rapidly taking the necessary measures to bring its legislation into conformity with the Convention.

UNITED KINGDOM (ratification: 1949)

A Government representative said that the Committee of Experts had raised two issues concerning the United Kingdom's application of Convention No. 87. The first concerned section 174 of the Trade Union and Labour Relations (Consolidation) Act 1992, which limited the ability of trade unions to exclude or expel an individual from membership on the grounds of his or her membership of a political party.

Section 174 had been significantly amended by the Employment Relations Act 2004, which had had the effect of increasing the ability of trade unions to lawfully expel or exclude individuals on the grounds of their political party activities. However, the amendments retained the restrictions on the ability of trade unions to expel or exclude individuals simply on the grounds of political party membership. That distinction was important as it protected the basic right of a person to belong to a political party, while also enabling trade unions to ensure that those who actively articulated political views contrary to the unions' objectives and principles were denied membership. The 2004 Act also changed the compensation regime that applied when an individual was unlawfully excluded or expelled. The minimum level of compensation (currently set at £6,600) no longer applied in many

situations of a person being unlawfully excluded or expelled on the grounds of political party membership.

The changes were intended to address the concerns of trade unions regarding the activities of far-right political parties and their desire to infiltrate union ranks. The changes had been introduced following detailed discussions with the Trades Union Congress (TUC). Although the changes did not go as far as the TUC had wished, there was general consensus that they were welcome and greatly helped trade unions in dealing with political extremists.

When making the above changes to section 174, the Government had been extremely conscious of the need to maintain a balance between different human rights: on the one hand, the rights of trade union members to design their own rules of membership and association, and on the other, the rights of individuals to belong to lawful political parties and to participate in political activities without suffering any sanctions as a result. Trade union membership was important in the United Kingdom, and the loss of the entitlement to belong to a trade union was detrimental to people who wished to exercise their democratic rights by engaging in political activities.

Although the TUC referred to the activities of certain extreme political parties, most of the country's political parties belonged to the mainstream and the law had to apply equally to all lawful political parties. Nevertheless, the Government was considering whether the present law struck the correct balance. In May 2007, it had issued a consultation document that it had circulated widely to all trade unions and employers' organizations, asking for their views on the matter. The consultation period would end in August 2007.

The initiative had been prompted by a recent judgement by the European Court of Human Rights in the case of *ASLEF v. The United Kingdom*. While the Court had recognized that United Kingdom law aimed to protect the rights of individuals to exercise their political freedoms without hindrance, it had ruled that aspects of section 174 had violated Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights). The Government had therefore concluded that section 174 needed to be amended. Its consultation document suggested two ways in which that could be achieved. One option was to remove all statutory limitations on trade unions regarding their ability to expel or exclude an individual on the grounds of his or her political party membership or activities. Once it had considered the responses to the consultation, the Government would change the law at the earliest opportunity.

He said that the consultation was a major development. The Government's swift response to the Court's judgement indicated the seriousness with which it considered the issue and the importance that it attached to human rights. The Government would keep the Committee informed of subsequent developments through the usual reporting arrangements.

The second issue raised by the Committee of Experts concerned section 224 of the same 1992 Act, which in effect made it unlawful for trade unions to organize secondary industrial action. The Committee of Experts was of the opinion that trade unions should be free to organize sympathy strikes in situations where the initial strike was organized lawfully. However, his Government was of the view that that Convention No. 87 permitted member States to set legal restrictions on the taking of industrial action. Virtually all member States had enacted legislation in this area that reflected their domestic arrangements and industrial relations traditions. For example, some member States limited the ability of trade unions to undertake industrial action during the life of a collective agreement. His country did not impose such a limitation as its collective agreements were not legally enforceable.

Nevertheless, in the United Kingdom, it was unlawful for trade unions to organize any form of secondary action and the Government believed that there were good reasons why this should be so. The United Kingdom had historically operated a highly decentralized system of industrial relations, with many thousands of separate bargaining arrangements. The Government believed that such a system had its advantages. However, without the right legal framework, it could easily become anarchic and grossly inefficient. Throughout much of the post-war period, secondary action had been widespread in the country and it had had an extremely damaging impact on national prosperity. It had undermined the livelihoods of businesses and their employees.

Secondary action was particularly disruptive. It drew in employers and employees that had nothing to do with the original industrial dispute. It spread industrial conflict far and wide. In the United Kingdom, it made sense for such types of industrial action to be strongly discouraged. That had been done by removing the immunity from civil liability from trade unions that organized this type of action. In the Government's view, that restriction was necessary in the United Kingdom and struck the correct balance. In general, trade unions had fully adjusted to the law. They retained a strong bargaining presence, and the threat of taking primary industrial action had major force in the country. Thus, the strike weapon remained potent and effective, when used responsibly.

He added that there was no legal prohibition on individual workers taking sympathy action. Indeed, the law explicitly prevented courts from compelling any worker to work. However, the standard protections against dismissal for taking strike action did not apply in such circumstances, which ensured that unofficial industrial action was discouraged.

The Government believed that Convention No. 87 needed to be applied flexibly to take account of national conditions and traditions. The Convention did not deal explicitly with industrial action and did not therefore prohibit the regulation of strike activity. It was appropriate for the health of the United Kingdom economy and the stability of the country's complex system of industrial relations to deter sympathy and secondary strikes. The Government therefore had no plans to change the law in that area.

The Worker members indicated that the United Kingdom, like Romania, had not been able to resist the temptation to subject the right to strike and the right to bargain collectively to strict and detailed regulations. For that reason, both the Conference Committee and the Committee on Freedom of Association had frequently examined the incompatibility of certain provisions of United Kingdom legislation and certain national practices with the principles of Conventions Nos 87 and 98. In that respect, it was necessary to highlight the current trend towards deregulation, a trend that could be observed in almost all areas except that of industrial relations, where the rule seemed to be over regulation. The present case concerned the right of trade unions to draw up their own constitutions, elect their representatives in full freedom, organize their administration and activities and to formulate their programmes, as provided for in Article 3 of Convention No. 87. The provision also placed the obligation on the authorities to refrain from any action that might limit that right or hinder its lawful exercise.

One of the essential elements of the right to freedom of association was the power to freely define the criteria for the admission of new members and to freely exclude certain members from the trade union. Taking into account the frequent moves by far-right political parties to infiltrate free and democratic trade unions with a view to corrupting their structures and actions with intolerable ideologies, these two aspects were even more important for workers' organizations. Infiltration was not only to be

observed in the United Kingdom, but also in other European countries. In order to defend themselves against the risk of infiltration, it was extremely important for workers' organizations to have at their disposal tools and guarantees that could also be used in court. National policies that jeopardized the ability of organizations to defend themselves before the courts were unacceptable.

However, in the United Kingdom, the current legislation did not offer sufficient protection against the attempts by the British National Party (BNP) to infiltrate trade unions. Moreover, the Associated Society of Locomotive Engineers and Firemen (ASLEF), a union affiliated to the Trades Union Congress (TUC), had been obliged by the courts to reverse its exclusion of a BNP militant on the basis of the national legislation, notably the Trade Union and Labour Relations (Consolidation) Act 1992. It had to be stressed that the BNP's ideology was purely neofascist and racist and that ASLEF had expelled a well-known party militant following allegations that he had threatened and harassed people distributing anti-Nazi leaflets and anti-Islamist brochures. It was extremely regrettable that ASLEF had finally been forced to refer the matter to the European Court of Human Rights to obtain justice and recognition of the union's right to expel such people. In a recent and very important ruling of 27 February 2007, the European Court of Human Rights, citing Convention No. 87, had clearly stated that trade unions were free to choose their members:

> Where associations are formed by people, who, espousing particular values or ideals, intend to pursue common goals, it would run counter to the very effectiveness of the freedom at stake if they had no control over their membership (…). Unions must remain free to decide, in accordance with union rules, questions concerning admission to and expulsion from the union (…) Trade unions (…) are not bodies solely devoted to politically-neutral aspects of the well-being of their members, but are often ideological, with strongly held views on social and political issues.

In view of the ruling of the European Court of Human Rights and its interpretation of Convention No. 87, the United Kingdom had no choice but to amend its legislation. And that was the hope of the British trade unions, of all the workers present in the Conference Committee and of the Committee of Experts. It also appeared to be the intention of the Government to do so, as it had admitted that the amendments made in 2004 were insufficient. Although it was not up to the Conference Committee to discuss the details of these amendments, they should be negotiated with national trade unions. It was essential for the Committee to urge the Government, in consultation with the national social partners and with the support of the ILO if necessary, to bring its legislation into line with the letter and spirit of Convention No. 87, and with the ruling of the European Court of Human Rights as soon as possible. The struggle against the far right, racism and xenophobia also made it necessary for trade unions to have the right to protect themselves against ideologies reminiscent of the darkest periods of the twentieth century.

The Worker members also noted that, although the Committee of Experts had not taken into account in its observations the right of trade unions to be able to take disciplinary measures against their members, it was still an important point. It was vital, in a situation where a member refused to respect the democratic decisions of his or her organization concerning industrial action, for the trade union to be in a position to take the measures needed to prevent individuals from damaging the collective interest.

Regarding the second point dealt with by the Committee of Experts – the right of workers to take part in strikes that affected them even if, in certain instances, the strikes did not concern their direct employer, and the amendment of sections 223 and 224 of the Trade Union and Labour Relations (Consolidation) Act – the Worker members requested that the issue be included in the conclusions of the Conference Committee. Trade unions were increasingly confronted with situations in which workers had different employers but worked in the same place. Depriving trade unions of the right to undertake joint industrial action on the basis of common interests or for reasons of solidarity, even if the action did not concern a dispute with their direct employer, ran counter to the right to strike and the right of freedom of association. On that point, they expressed their disappointment at the position of the Government, which was in contradiction with that of the Committee of Experts.

The Employer members said that this was an old case that had been debated on numerous occasions and concerned two points.

With regard to Article 3 of Convention No. 87 on the right of workers' organizations to draw up their constitutions and rules without interference by the public authorities, they reiterated that the 2004 amendment to section 174 of the Trade Union and Labour Relations (Consolidation) Act allowed unions to exclude or expel individuals on account of conduct which consisted of activities undertaken by an individual as a member of a political party. It did not allow for expulsion relating solely to membership and brought into play automatic compensation if a member was indeed expelled for being a member of a political party. They referred to the case of *ASLEF v. The United Kingdom*, in which the European Court of Human Rights had recently ruled that the Government was in contravention of Article 11 of the European Convention on Human Rights. In view of these recent developments, they noted the information provided by the Government representative and welcomed the process of consultation that was under way with the relevant parties, which constituted a major development.

In relation to immunities in respect of civil liability for strikes and other industrial action, they said that the matter had been considered on numerous occasions since 1989 and had resulted in the same outcome each time. In the view of the employers nothing had happened to warrant any change this time. They recalled that in 1991 the Committee of Experts had acknowledged that British legislation provided a significant measure of protection against common law liability for individuals and trade unions that organized and participated in certain forms of industrial action, and that those workers could not be ordered to return to or remain at work. Nevertheless, the Committee of Experts had continued to question the lack of protection for secondary industrial action and had repeatedly requested the Government to introduce legislation to enable workers and their unions to engage in industrial action such as protests and sympathy strikes.

In response to previous observations, the Government had continually raised the following points. First, United Kingdom law still provided protection against civil law liability that would otherwise arise wherever a trade union or any other person called on workers to break contracts in the contemplation or furtherance of a trade dispute with their employer, and it provided a wide-ranging definition of "trade dispute" for that purpose. Second, no change since 1979 to the law relating to the organization of industrial action had in any way affected the position of workers, who remained free to engage in industrial action, whether in relation to a trade union dispute with their employer or in support of other workers or of some other objective. Third, there was nothing in Convention No. 87 that indicated that there should be legal protection for sympathy strikes. The Government accordingly did not accept that there was any need for further legislation concerning protection against civil liability for acts of calling for, or otherwise organizing, industrial action on the grounds that this was necessary to ensure compliance with the Convention.

In later submissions, the Government had added that permitting forms of secondary action would be a retrogressive step and would risk taking the country back to the adversarial days of the 1960s and 1970s, when industrial action frequently involved employers and workers who had no direct connection with a dispute. The Employer members did not deem it necessary to comment on this hypothesis because, in their view, the current situation did not contravene Convention No. 87. They agreed that it was up to the Government to decide whether it wanted to provide civil protection for sympathy strikes and, until it did so, they believed that the status quo should be maintained.

The Worker member of the United Kingdom turned first to the way in which the right to associate was restricted by the law. Section 174 of the Trade Union and Labour Relations (Consolidation) Act forced trade unions to accept into their membership people who were members of extreme right political parties, whose views the majority found fundamentally abhorrent. Trade unions were not allowed to expel those people unless they had actively conducted themselves in a way which contravened union rules or policies. Moreover, any progress on the matter, as reported by the Government, had been forced by the ruling of the European Court of Human Rights. Indeed, the Government's proposals were for only limited change, which would not resolve the problem and would not meet the requirements of full compliance with Convention No. 87.

Article 3 of the Convention provided that unions could draw up their rules without interference from the public authorities. The Government was seeking to maintain the position that a trade union could not take disciplinary action against a member who refused to follow the democratic decision of the union to take industrial action. This was a grave and important breach of Convention No. 87 in that it attacked the primary purpose of any independent trade union – to promote and protect the collective interests of its members. Those collective interests were pursued following democratic decisions involving those affected. For a union not to be able to protect those decisions by discipline or expulsion of those who refused to abide by them was a fundamental attack on its powers to operate effectively.

Under United Kingdom law, no associations other than trade unions were required to admit into membership those who espoused views fundamentally contradictory to those of the association and its members. She gave an example of an animal charity with a policy against hunting that had decided to exclude from its membership all those who were in favour of hunting. The charity had been unsuccessfully challenged in the courts. There was no justification for treating trade unions differently under the law from any other membership organization.

One effect of the current law was to provide, albeit unintentionally, the far right with a weapon with which to attack trade unions. In January 2003, a far right magazine had urged its readers to infiltrate trade unions specifically in order to be thrown out and then sue for hefty compensation.

She added that the right to strike was particularly limited in the United Kingdom. It was not lawful for workers to take action in support of others if they had a different employer, and members of the same union could not call upon one another to take sympathy action unless they were employed by the same body. Even workers that had an interest in, and might be affected by, the outcome of a dispute could not lawfully be called upon to take supportive action. This was important not only in the private sector, but increasingly so in the public sector. Many central and local government functions were now subcontracted to private or tertiary-sector organizations.

Sympathy strikes were not the only limitations in respect of the right to organize. Unions needed to be able to prove that a dispute related to one of a defined list of workplace or contractual issues. Industrial action relating to something outside that list could never be lawful. In addition, there was a very complex set of laws that regulated calls for action by trade unions. A union first had to give notice to the employer that it intended to hold a ballot and provide the employer with a copy of the ballot paper that it would distribute. After the ballot, it had to inform the employer of the ballot result, and finally, at least seven days before calling on any members to take action, it was obliged to tell the employer the sort of action that it would be. Furthermore, the union had to supply employers with details regarding the numbers and categories of workers and the workplaces affected by the ballot or action. In the United Kingdom, a spontaneous walk-out was allowed only if the workers were in danger for health and safety reasons. Trade unions were prevented from taking action in furtherance of their members' interests owing to difficulties in meeting highly technical and complicated legal requirements. The attention of those involved in the dispute was therefore transferred from the injustice and breach of rights that prompted the dispute to the details of the formal legal requirements.

The Committee of Experts had previously asked the Government to keep it informed of developments regarding the right to take sympathy action. The Government had not been able to provide such information, as it had declined to take any steps. She said that the Government had delayed far too long in meeting its obligations under Convention No. 87. She therefore urged the Committee to call on the Government to take further action as a matter of urgency to ensure compliance with the Convention.

The Employer member of the United Kingdom said that, with regard to the right of workers' organizations to draw up their constitutions and rules without interference from the public authorities, he welcomed the decision by the Government to enter into a period of formal consultation regarding proposals to amend section 174 of the Trade Union and Labour Relations (Consolidation) Act in light of the decision of the European Court of Human Rights in the *ASLEF v. The United Kingdom* case. In relation to the issue of immunity in respect of civil liability for sympathy strikes and other industrial action, he said that there was nothing in Convention No. 87 that required special protection to be accorded in the case of proceedings that concerned the organization of industrial action among workers who had no dispute with their own employer. He therefore supported the position outlined by the Government representative on this matter.

The Worker member of Senegal said that the Committee of Experts had emphasized in its report that problems still remained as regards section 174 of the Trade Union and Labour Relations (Consolidation) Act (TULRA). Although amended in 2004, the Act still gave individuals the possibility of invalidating the basic provisions governing the protection of trade union rights. By authorizing the infiltration attempts of extremist political parties in the trade union movement, the offending legal provisions allowed individuals to damage the autonomy of the trade union movement. In that manner, the Act misrepresented the mission of the trade union movement.

The TUC denounced the automatic compensation of former members excluded by trade unions on account of their membership of an extremist political party. That system meant that trade unions could do little in relation to individuals whose practices were incompatible with trade union activism. The TUC should be able to protect itself against extremism. The statutes of trade unions were their constitution, and they should not be weakened. The freedom of an individual should not challenge that of trade union organizations. Obliging a trade union to pay compensation to an excluded member seemed to be the best means to encourage prejudicial action.

Referring to sections 223 and 224 of the TULRA, he said that they infringed the principle of solidarity, which constituted the basic foundation of trade unionism. The fact that workers could participate in sympathy strikes constituted their real means of resistance. The limitations contained in those sections were contrary to Convention No. 87 and to the right to organize. The Government should therefore take the necessary measures to ensure that the guarantees provided by Convention No. 87 were not rendered ineffective. The authority of Conventions was at stake. Real reforms were needed, as the status quo was not a viable solution. He concluded by calling on the Government to restore effective dialogue with the TUC.

The Worker member of the United States said that sympathy strikes were becoming an increasingly frequent and important tool because of economic globalization and delocalization. The Committee on Freedom of Association had found that the prohibition of sympathy strikes was abusive and that such strikes should be allowed if the original strike was lawful.

The Committee of Experts considered that the restrictions imposed by the Trade Union and Labour Relations (Consolidation) Act violated ILO standards and had repeatedly asked the Government to take the necessary measures to amend Sections 223 and 224 of the Act. However, the Government had refused to do so. According to the legislation, strikes were lawful only if they related to the primary employer, a term which had a narrow legal definition. It referred only to the work site, and did not extend even to subsidiaries of a parent company. The restrictions ignored the legitimate interests of workers and had led many British companies to divide their workforce artificially in order to create buffer companies.

The restrictions on sympathy strikes were having a documented negative effect on freedom of association in the United Kingdom. One such example was the case of 670 staff of Gate Gourmet, an airline catering company, who had been dismissed following a lawful strike relating to the employment of casual staff. Some 100 airline employees had embarked on a two-day strike in sympathy with their close industry colleagues, who had been employed by a different company but with whom they had shared the same workspace. The company had acknowledged that it had drawn up a plan to deliberately provoke industrial action so as to give itself an excuse to dismiss staff and replace them with cheaper labour. Although it also claimed that that plan had been rejected, the dismissals had occurred and the unions had not been able to negotiate the workers' reinstatement.

It was therefore clear that the law in the United Kingdom severely restricted the ability of workers to act collectively and to exercise the rights protected by Convention No. 87.

The Government representative thanked all those who had contributed to the debate, and particularly those who had expressed support for the Government's efforts regarding the future amendment of section 174 of the Trade Union and Labour Relations (Consolidation) Act, 1992, in relation to the ability of trade unions to exclude or expel an individual on the grounds of his or her membership of a political party.

In relation to the issue of the legality of secondary industrial action, he said that the case of Gate Gourmet was not a typical example. Dismissals for strike action were extremely rare and the situation in the country should not be judged on the basis of a single case. In view of the specific industrial relations situation in the United Kingdom which he had described earlier, it would be particularly harmful if there were to be a large number of sympathy strikes.

He said that the Government would respond to the issues raised by the Committee of Experts and the Conference Committee in its next report under the Convention.

The Employer members said that, in relation to the right of workers' organizations to draw up their constitutions and rules without interference by the public authorities, there should be due and proper recognition of the statement by the Government representative that a process of consultation was under way and that the Government intended to amend the law. The Committee could not ask for more than that.

With regard to sympathy strikes, although noting the comments that had been made, they said that those arguments should be taken up within national legal structures which was where they could be debated correctly. Nothing in Convention No. 87 required legal protection for sympathy strikes. Regarding the sympathy strike in the Gate Gourmet case, they pointed out that the courts had found that the industrial action had been unlawful.

The Worker members said that in their view four essential points had to be included in the Committee's conclusions. Firstly, the Committee had to recognize that the right to freely determine the membership criteria for new trade union members and to exclude members from the trade union, or take other disciplinary measures against members who refused to comply with decisions taken in a democratic manner, were essential elements of the right of workers to organize, particularly to protect trade unions against infiltration by members of associations whose ideas were incompatible with the values and social and democratic model espoused by the trade union movement.

Secondly, they noted that the Government had expressed its willingness to amend the legislation and admitted that the amendments made in 2004 did not fully address the concerns relating to freedom of association, and that further steps were necessary. It was essential for any further amendments made to the legislation to be discussed with the social partners so as to create a legislative framework that was in full conformity with Convention No. 87 and the jurisprudence of the European Court of Human Rights. That should be done in close collaboration with the ILO.

Thirdly, as had been emphasized by the Employer and Worker members of the United Kingdom, the current legislation did not respect the right of trade unions to take disciplinary measures against their members. The Worker members had requested the Committee of Experts to examine this issue, taking into account the additional information that the Government would provide, so as to ensure that the legislation was in full conformity with Convention No. 87.

Finally, they called on the Government to recognize the right to participate in sympathy strikes. Such recognition necessarily implied the amendment of sections 223 and 224 of the TULRA, which should be done in collaboration with the national social partners. Addressing the Government and the employers, the Worker members recalled the principle that the Committee on Freedom of Association had laid down on several occasions that the right to organize sympathy strikes was part of the right to strike.

Conclusions

The Committee took note of the statement made by the Government representative and the debate that followed. The Committee observed that the Committee of Experts' comments referred to several legislative provisions impacting upon the right of workers' organizations to draw up their constitutions and rules and to organize their activities without interference by the public authorities.

The Committee noted the Government's statement according to which it has issued consultation documents, widely circulated to all UK trade unions and employers' organizations, suggesting possible amendments to section 174 of the Trade Union and Labour Relations Act (TULRA), including the removal of all statutory limitations on trade unions regarding their ability to expel or exclude individuals

on the grounds of their political membership or activities. The Government indicated its intention to change the law in this respect at the earliest opportunity.

The Committee noted the recent judgement of the European Court of Human Rights which, making explicit reference to Articles 3 and 5 of ILO Convention No. 87, found the application of section 174 of the TULRA to be contrary to Article 11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. It welcomed the Government's commencement of a consultation process proposing possible approaches to the amendment of section 174 and expressed the hope in this regard that the TULRA would be amended in the near future so as to ensure that workers' organizations may draw up their constitutions and rules without interference by the public authorities.

The Committee further requested the Government to engage in full consultation with the national workers' and employers' organizations concerned with a view to reaching a consensus on the other matters raised in the debate. It requested the Government to provide detailed information on the progress made in the consultation process and on all proposed legislative changes in its next report to the Committee of Experts. The Committee trusted that the Committee of Experts would pay particular attention to the discussion that took place on this case.

BOLIVARIAN REPUBLIC OF VENEZUELA
(ratification: 1982)

A Government representative recalled that his Government had participated regularly in the discussion of individual cases by the Committee since 1999, even before the new Constitution had been approved. The Bolivarian Constitution enshrined workers' labour and trade union rights as few constitutional instruments had done in the past. The Government had been constructive and highly cooperative with the ILO. There were no technical reasons to justify a new discussion of the individual case, nor had the case been examined or monitored by the Committee on Freedom of Association in its most recent meetings. Some of the concerns raised in the Committee of Experts' observation had been answered in a timely fashion in the Government's communications to the Committee on Freedom of Association.

He observed that the Committee of Experts had not inserted a footnote in its observation to indicate that the Government would be invited to give information to this session. The Government therefore inferred that there could be a political issue involved in the further consideration of the application of Convention No. 87 by this Committee. The persecution and murder of trade union leaders did not exist in the Bolivarian Republic of Venezuela. Workers and employers could exercise their rights fully, particularly the right to strike, and peaceful solutions to disputes were promoted. The Bolivarian Republic of Venezuela facilitated the establishment of trade unions and there were no extensive or difficult formalities for their legalization. There was a progressive culture in terms of exercising collective labour rights and improving labour conditions through collective bargaining, in complete conformity with the democratic and pluralist principle of Convention No. 87. The minimum wage of US$286 was greater than that enjoyed by other South American workers.

Government policies promoted the inclusion of even the most underprivileged categories. The Bolivarian Republic of Venezuela was emerging from a period of economic dependency, backwardness and extreme poverty. There had been no complaints by the Venezuelan Federation of Chambers of Commerce and Manufacturers' Associations (FEDECAMARAS) or the Confederation of Workers of Venezuela (CTV) concerning breaches of freedom of association and a deterioration in living conditions for the population. Nevertheless, the attitude displayed by FEDECAMARAS and the CTV prevented in-depth, democratic, direct and effective social dialogue.

The Government would continue to work with the ILO, as demonstrated by the fact that it had welcomed two direct contact missions in 2002 and 2004, in addition to the high-level mission in 2006. The Government respected the pluralism of the social partners. There were some who, out of sheer bad faith, wished to create an atmosphere unfavourable to exchanging information and consultations. Some bodies participating in FEDECAMARAS did not understand the change that had swept the country despite the achievement of the Millennium Development Goals ahead of time, the sustained economic growth that had lasted more than 14 consecutive quarters and the repayment of all the debts to the International Monetary Fund and the World Bank.

He indicated that social dialogue was a flexible consultation and negotiation mechanism that should serve to achieve the common good of the majority in accordance with the ILO goal of social justice. If workers were subject to indecent and undignified labour conditions, there could be no social dialogue. Social dialogue could not serve as justification for labour deregulation, the loss of rights or non-compliance with labour inspections. The Government, through the Ministry of People's Power, Small Industry and Trade, had held meetings with workers and employers to consolidate the Framework Agreement on Shared Responsibility for Industrial Transformation, which involved the restarting of 1,011 companies since May 2005, benefiting 146,593 workers, with total state funding of US$592 million. Business round-tables were a further mechanism to administer state purchases with a view to involving small and medium-sized enterprises in the national productive process. Since 2002, 12 round-tables had been held, distributing US$2 billion among the goods, infrastructure and service sectors. That economic upturn was the fruit of direct, sincere and broad dialogue with employers, a case of inclusive and interpreted social dialogue. On 10 February 2007, a labour standards meeting was held for collective bargaining in the construction sector, with the active participation of the Construction Chamber, an affiliate of FEDECAMARAS, in addition to the participation of the Construction, Timber, Postal and Allied Workers' Federation of Venezuela (FETRACONSTRUCCION), and the Heavy Machinery Workers' Federation (FETRAMAQUIPE), both affiliates of the CTV. Social dialogue also included meetings with regional and sectoral chambers and national, regional and local authorities.

He recalled that a process for the reform of the Constitution was under way. Once the draft was approved by the National Assembly, it would be submitted to a public national debate and lastly, to a referendum, with direct and secret universal suffrage. The constitutional reform would enable the observations made by the national trade union movement concerning freedom of association and trade union elections to be taken into account.

As a consequence of information in some sections of the private sector media, he said that it would not accept the new high-level mission publicly proposed by the International Organization of Employers (IOE), since it could harm the country's democratic image and prejudice the efforts that were being undertaken in the country to strengthen direct, influential, democratic and effective social dialogue.

The Worker members indicated that the Workers' group had not agreed on the selection of the Bolivarian Republic of Venezuela in the list of individual cases. The Workers' group had wanted the case of Colombia to be retained. They were aware that the case of the Bolivarian Republic of Venezuela gave rise to controversies, both in the country and within the ILO, and in the various groups of social partners. Cognizant of the fact that they had not consolidated a common position, they had chosen to base their

statement on the observation by the Committee of Experts.

The Worker members recalled that the Government had accepted a high-level mission that had taken place in January 2006. Numerous questions remained unresolved: (i) the Bill to amend the Basic Labour Act had not yet been adopted; (ii) the issue of the interference of the National Electoral Council in union elections had not yet been addressed; (iii) the definition of genuine social dialogue and the assessment of the Venezuelan Government's will to put such dialogue into practice remained controversial within the Workers' group; (iv) the impartiality of the Government as regards workers' organizations also remained contentious within the Workers' group; and (v) the response of the Government for the proposals of ILO technical assistance in various areas was still awaited. They hoped that the Government would accept the technical assistance offered in these areas and that the expectations raised by the high-level mission would be given effect through the implementation of its conclusions.

The Employer members recalled that the case had been discussed in the Conference Committee since 1995, regardless of which government had been in power or whether or not the case had received a footnote. For the Employer members, there had been no case more important in the history of the ILO. Government interference in the affairs of employers' associations should be as important for the Worker members, as interference in the affairs of workers' organizations. When a case was discussed regularly, the Committee could examine the progress made. In the present case, the situation had deteriorated alarmingly. They said that the statement by the Worker members had included unclear arguments. However, the conclusions of the high-level mission and the observation by the Committee of Experts included questions that clearly justified discussion of the case.

The Employer members emphasized that the case involved issues of freedom of association, social dialogue and tripartism which were the most fundamental and sacred values of the ILO. However, to attain those values, the protection of civil liberties, freedom of speech and freedom of movement was crucial. Those conditions were not being met, in particular freedom of speech, which was in jeopardy, as reflected by the government control exercised over the media. Furthermore, there had been the recent vandalism and occupation of the premises of the most representative employers' organization, FEDECAMARAS. The perpetrators were well known, but there was no evidence of any investigation or prosecution.

The Employer members further emphasized that case involved a violation of Article 3 of Convention No. 87, which enshrined the principle of non-interference in the affairs of employers' and workers' organizations. Despite discussion of the case having begun in 1995, it was clear that the Government did not grasp the meaning of Article 3. The case involved government interference in the affairs of employer's organizations, in particular FEDECAMARAS, as well as interference in the work of the Conference Committee by restricting the travel of Ms Albis Muñoz outside the country. Since 1995, the Employer members had been complaining of interference in the affairs of employers' organizations, as well as in the composition of the Venezuelan Employer's delegation to the Conference. Since 2004, the ILO Credentials Committee had explicitly recognized FEDECAMARAS as the most representative employers' organization. However, the Government had created parallel employers' associations to replace and undermine FEDECAMARAS. That was contrary to tripartism and freedom of association and it undermined social dialogue.

The Employer members further indicated that there had been over 450 decrees adopted without consultation and that for many years the minimum wage had been revised without consulting the employers. The Government had recently decided to increase the minimum wage by 25 per cent and had informed FEDECAMARAS of that decision only the same day of the publication of the decision. The seriousness of the case was further shown by the fact that the former President of FEDECAMARAS, Mr Carlos Fernandez, had been arrested and was in exile. The principle of non-interference enshrined in Article 3 was clear and unambiguous. The Employer members considered that some tangible and specific progress had to be made. The Government should be prompted to take immediate steps to comply with Article 3 in all its aspects and should ensure that the conditions for freedom of association were met – protection of civil liberties, freedom of expression and compliance with genuine, free and independent tripartite consultation and social dialogue.

The Employer member of the Bolivarian Republic of Venezuela regretted that an international forum again had to consider the way in which freedom of association was hindered in his country. All Venezuelans identified with tripartite social dialogue and the values of freedom of expression, association and initiative. The social market economy that facilitated the generation of formal employment in private enterprises made a fundamental contribution to economic development and social progress. Without a constructive attitude, it would be impossible to resolve the problems affecting the 1.2 million unemployed Venezuelans. For the 400,000 new jobseekers who entered the labour market every year there was no prospect of finding formal employment and five million workers were not covered by the social security system. The ILO should continue supplying assistance for the effective observance of freedom of association by sending a new high-level mission.

The Worker member of the Bolivarian Republic of Venezuela, National Coordinator of the National Union of Workers (UNT), indicated that the observation of the Committee of Experts had been examined carefully. The UNT agreed on the need to move forward and conclude reform of the Basic Labour Act. Legislative reform should then enable issues other than those mentioned by the Committee of Experts to be considered, since a constitutional reform process was also under way. That reform would develop social justice, socialist participative democracy and the progressive handover of power to the people and the workers.

He recognized that the National Electoral Council (CNE) had too many powers to intervene in trade union electoral processes. In endeavouring to resolve the past situation in which electoral fraud had taken place, a situation of excess had been reached which could be reviewed in the current constitutional reform process. Nevertheless, he did not accept allegations of favouritism by the Government towards UNT. All those involved in the union movement were aware of the process of change sweeping across the country and were willing to be unconditional advocates of the working class, abandoning favourable attitudes to employers that had characterized the trade union movement in the past.

Social dialogue had a fundamental role to play in overcoming purely political rivalries and reaching agreements among those who genuinely wanted to make progress in the change process. Some employer sectors had a pro-coup mentality, which explained why the Committee was examining the application of the Convention in the Bolivarian Republic of Venezuela, while any mention of murders of union leaders committed elsewhere was avoided. Social dialogue could not function on such an ambiguous basis. The local media had already anticipated a high-level tripartite mission in order to bring about consensus and social peace in the Bolivarian Republic of Venezuela. The Committee should avoid such cynicism and not fall into a purely political game.

There was strict compliance with the Convention in the Bolivarian Republic of Venezuela and the fact that it was discussed each year by the Committee would change nothing in practice. Taking into account the situation in the past, the Bolivarian Republic of Venezuela was a genuine case of progress. In conclusion, he enumerated the progress made in achieving decent work: an increased minimum wage, rules requiring persons with disabilities to account for 5 per cent in a company's workforce, the promotion of gender equality, increased pensions for retirees and housewives, the creation of educational areas for children, efforts to combat outsourcing, the Labour Stability Act and the reduction of the working week to 36 hours and a maximum of six hours per day.

Another Worker member of the Bolivarian Republic of Venezuela of the Confederation of Workers of Venezuela (CTV), expressed concern at the fact that the National Electoral Council could interfere in union election procedures. The high-level mission and the observation by the Committee of Experts had demonstrated the failure to apply the Convention. Nevertheless, the ruling by the Constitutional Chamber of the High Court that the National Electoral Council was constitutional had generated an inconsistency with the international commitments deriving from the ratification of the Convention. Legislative reform should enable a better application of the ratified Conventions and avoid worsening the current situation in which application is unsatisfactory. The Committee of Experts' recommendations should therefore be given effect.

Salaries had been raised without social dialogue, as shown by the fact that only four days before the increase was published, a communication was sent to the unions. The favouritism and bias of the Government did not benefit any organization that genuinely represented workers and employers – which was further illustrated by the lack of respect for tripartism when appointing the Worker and Employer delegates to the Conference.

The President of the Bolivarian Republic of Venezuela had stated on 24 March 2007 that in the revolution, trade unions had to disappear. That had given rise to draft legislation to create workers' councils, the roles of which were very similar to those of trade unions. In that context, recognition should be given to the importance of the principles that the ILO had asserted since 1970 when it had affirmed that "the rights conferred upon workers' and employers' organizations must be based on respect for those civil liberties which have been enunciated in particular in the Universal Declaration of Human Rights and in the International Covenants on Civil and Political Rights". The concept of union rights was entirely meaningless when there were no such civil liberties. In that context, the disappearance of a media channel known for its independence could also be considered to be an attack on freedom of expression, which was the basis of all union freedoms.

The Government member of Mexico speaking on behalf of the Government members of the Group of Latin America and Caribbean Countries (GRULAC), recalled that GRULAC had recognized the attitude of responsibility and the spirit of cooperation of the Bolivarian Republic of Venezuela with all ILO supervisory and other bodies. The Bolivarian Republic of Venezuela had accepted direct contacts missions in 2002 and 2004 and, in 2006, the ILO high-level mission. The fact that the Bolivarian Republic of Venezuela had responded to all requests for information by the supervisory bodies should be taken into consideration in the Committee's conclusions. GRULAC urged the ILO to maintain its cooperation with the Bolivarian Republic of Venezuela on the basis of a constructive spirit and good faith. GRULAC reserved the right to express, at the adoption of the Committee's report in the plenary session of the Conference, its opinion regarding the methods of work and the establishment of the list of cases to be examined by the Committee.

The Employer member of Brazil emphasized the importance of the discussion for the region as a whole, since it related to such fundamental rights as property ownership, free initiative and freedom of choice in employment. Taking into account his experience as Regional Vice-President of the IOE, he expressed concern at the manner in which the case was developing and observed that certain authoritarian regimes endeavoured to show that they complied with democratic principles. The measures taken against the freedom of association of employers – particularly against the leaders of FEDECAMARAS – were forerunners of despotic behaviour. Moreover, the recent non-renewal by the Government of the concession held by the most representative television station (RCTV) constituted an act of violence against the right to freedom of expression. Without the possibility of expressing their opinions freely, including through this important medium of social communication, organizations such as FEDECAMARAS were unable to fully exercise freedom of association. Representative organizations should be autonomous and independent in respect of all governmental authority in order to be able to generate employment and contribute to the economic development of their countries, as established in the ILO Constitution.

The Employer member of Argentina, spoke as the Chairperson of the Employers' group of the Conference, Employer Vice-Chairperson of the ILO Governing Body and Executive Vice-President of the IOE. The employers and their organizations fully respected the rule of law and the overriding need to give effect to all fundamental human rights, particularly those, such as freedom of association, that were enumerated in the 1998 ILO Declaration on Fundamental Principles and Rights at Work. As stated by the Employer members, the Employer member of the Bolivarian Republic of Venezuela, member of the Board of FEDECAMARAS, and the Employer member of Brazil, freedom was essential to employers. With regard to the statement made by the Worker member of the Bolivarian Republic of Venezuela, who had spoken on behalf of the UNT, he recalled that freedom was also essential to workers and their representative organizations. He said that for employers the situation of FEDECAMARAS in the Bolivarian Republic of Venezuela had the same emblematic value as that of the Solidarnosc trade union in Poland. They would continue to lobby for freedom of association and to protect FEDECAMARAS – employers' organizations in the Bolivarian Republic of Venezuela – at all levels of the ILO.

He emphasized the need to begin civilized dialogue in a constructive spirit of goodwill, urging the Government to avoid confrontations. The employers were united and expressed solidarity in view of the need to promote the social dialogue that had been interrupted and restore the dignity of FEDECAMARAS.

The Government member of Cuba supported the GRULAC statement and indicated that the decision to discuss the case of the Bolivarian Republic of Venezuela was not compatible with the efforts made by the Government to promote genuine social progress. The Government representative had provided detailed information to the Committee, including indisputable data concerning the results achieved, which demonstrated its will to cooperate with the ILO. It was necessary to avoid the ILO becoming involved in the attempted coups d'état and economic sabotage which had sought to undermine the Venezuelan process and he hoped that the politicization of the Committee's discussions would be avoided in the future.

The Worker member of India welcomed the detailed information supplied by the Government representative and the decisions of the Government, which had fully accepted and complied with the recommendations of the direct contacts missions in 2002 and 2004 and of the high-

level mission in 2006. The Government had shown the political will to achieve the ILO's objectives in the country, which had experienced a coup d'état against the elected popular Government. Social dialogue had been carried out through various bipartite and tripartite meetings, without excluding FEDECAMARAS. He further noted that the modifications requested by the Committee of Experts to the Basic Labour Act had already been included on the agenda of the Government, which was committed to improving the living conditions of the working class and the poor, which was not kindly taken by those with vested interests. He asked the Government to remain consistent in its pro-workers' approach, to show respect for all the ILO fundamental Conventions and to ensure that all workers enjoyed trade union rights which were the sole tool for development.

The Government member of Ecuador referring to the statement made by GRULAC, emphasized that the Committee should discuss technical and transparent questions without entering into political matters.

The Government member of Bolivia indicated that her country had also initiated a process of change to recover its national dignity and sovereignty over natural resources. In 1971, there had also been coups d'état in which the interests of certain foreign enterprises appeared to have been involved through the achievement of the Millennium Development Goals in advance and compliance with ILO principles, the Bolivarian Republic of Venezuela was in a privileged position. The Committee should refrain from interfering in the construction of an inclusive, fair and equitable democracy essentially designed to promote the interests of workers.

The Worker member of Spain recalled that for Spanish trade unions, freedom of association was the source of other freedoms, the cornerstone of a country's entire social structure. The comments by the Committee of Experts on the Convention, which was also based on observations made in July 2006 by the International Confederation of Free Trade Unions (ICFTU), were troubling. The observation on the Convention referred to the hindrance of the re-election of union leaders, interference by the National Electoral Council in union elections (in violation of Article 3 of the Convention), the advantages accorded to a certain organization (encouraging union discrimination) and the requirement to provide members' data to the Ministry of Labour, with no guarantees of confidentiality, which was an infringement of civil liberties. The workers' councils mentioned by the Worker member of the Bolivarian Republic of Venezuela, who had spoken on behalf of the Confederation of Workers of Venezuela (CTV), were a source of great concern and constituted interference that was absolutely contrary to the principles of freedom of association.

The past experience of his union, the General Union of Workers (UGT), showed that, even if the existence of independent unions embarrassed the Government, the absence of freedom of association would eventually also be prejudicial to the new breed of unionism currently allied with the authorities. The workers' councils would end up marginalizing the trade unions, which would be a very serious violation of freedom of association.

The Government member of Nicaragua welcomed the detailed information supplied by the Government representative. She questioned the need to discuss the case, as the Government was due to reply to the issues raised by the Committee of Experts in a report due in 2008. The country had seen an increase of over 20 per cent in registered workers' organizations in barely two years. The Government had always been willing to cooperate with all the ILO bodies, as had been noted by the high-level mission in 2006. On that occasion, the need had been emphasized to turn the page and take a step forward for the benefit of the country. As GRULAC had stated, the Committee should avoid politicizing its work and should therefore select individual cases on the basis of technical and transparent criteria.

The Worker member of Ecuador, President of the Ecuadorian Confederation of Unitary Class Organizations of Workers (CEDOCUT), also spoke on behalf of the Ecuadorian Confederation of Free Trade Unions (CEOSL) and the Confederation of Workers of Ecuador (CTE), as well as the Confederation of Argentinean Workers (CTA), the Single Central Organization of Chilean Workers (CUT) and the Autonomous Confederation of Workers of Chile (CAT), the Coordinating Central of Union Federations of Paraguay, the General Confederation of Workers of Peru (CGTP) and the Inter-Union Assembly of Workers-National Convention of Workers (PIT-CNT) of Uruguay. He noted the importance given by employers to freedom of association and expressed the hope that employers would not therefore seek to replace trade unions by solidarist associations, cooperatives or non-governmental social organizations. The Committee should refrain from examining this case and instead address those situations in which union leaders had been murdered. Attitudes should be avoided that could appear opportunistic when they advocated social dialogue to the benefit in practice of a single sector.

The Worker member of Argentina paid tribute to the trade unionists who had been murdered.

Following a point of order, he indicated that one of his visits to the Bolivarian Republic of Venezuela had coincided with the direct contacts mission in 2004. In his opinion, freedom of association was respected in the country and the links of certain sectors with coups d'état were being overlooked. The ILO should support a process of change that acted as a way out of neo-liberal economic models.

The Government member of India noted with satisfaction the detailed information provided by the Government, in particular the tangible and specific developments since the direct contacts missions in 2002 and 2004 and the high-level mission in 2006. He also noted that the Government had accepted the recommendations made by those missions, as well as those of the Committee of Experts. There were clear signs of the Government's commitment to applying Convention No. 87. Furthermore, he noted with satisfaction the achievements of the Government with respect to the social and economic development of the country. The steps taken by the Government to engage with the social partners and its efforts to consult the ILO were encouraging signs. An objective and transparent assessment of the current context would assist in consolidating the process of cooperation and dialogue between the ILO and the Bolivarian Republic of Venezuela.

The Worker member of the United States said that it was necessary to be realistic and accept that there was non-compliance with the Convention. The 2006 high-level mission had reported that the Government had failed to enact the necessary legislation to permit trade union members to re-elect their leaders. Interference by the National Electoral Council in union elections continued, in violation of Article 3 of the Convention. The Government itself had informed the high-level mission that trade union elections held without Council tutelage could be challenged. The delay in certifying trade union elections made it impossible for the unions involved to negotiate a collective agreement. The issue could only be resolved by amending Article 293 of the Bolivarian Constitution and Article 33 of the Basic Act on the Electoral Authority which give the Council powers to interfere in union elections. The Labour Ministry's resolution No. 3538 violated the privacy and confidentiality of trade union membership, exposing individual workers to anti-union discrimination. The issue at stake was not a positive or negative political attitude towards the Venezuelan political process, but discovering whether there was compliance with

the Convention's provisions and the way in which the Conference Committee could find a constructive solution.

The Government member of Belarus recognized the open attitude of the Government representative and the continuing dialogue and cooperation with the ILO. He said that ILO assistance and the coherent approach of the Government to improving the social and economic situation in the country had allowed the drafting of amendments to the Basic Labour Act, which did not raise major concerns in respect of their conformity with ILO standards. He hoped that the draft legislation would soon be adopted by Parliament. He further noted the dialogue between the social partners, the establishment of new trade unions and the conclusion of collective agreements in the country. He underlined that any analysis of the implementation by a member State of its obligations under Conventions should take into account national circumstances and the level of social and economic development of the society. The measures and reforms undertaken by the Government to improve the situation of workers and to ensure decent working conditions and their positive results should be appreciated. That approach should be supported by all the social partners and the Committee should recognize the cooperation that existed between the Government and the ILO on the implementation of the Convention.

The Worker member of Brazil emphasized the social and economic progress that had been made in the country. In other countries, the establishment of trade unions was impeded and the lives of their leaders were threatened.

The Government member of the Russian Federation welcomed the constructive approach adopted by the Government representative and his readiness to cooperate with the ILO. He noted the success of the Government in developing mechanisms for effective tripartite consultations, developing the trade union movement, registering numerous new trade union organizations and improving collective bargaining procedures. He also noted with satisfaction that the draft amendments to the Basic Labour Act reflected the recommendations of the ILO and expressed the hope that those amendments would be adopted in the near future. Noting the progress achieved by the Government in implementing its international obligations, he expressed the hope that constructive dialogue between the ILO and the Bolivarian Republic of Venezuela would continue.

The Worker member of Cuba referring to the observation of the Committee of Experts and the discussion that had taken place, wondered whether consideration of the case was justified. The obstinacy of the Employer members was to be deplored. The Worker's group should maintain their unity and take into account the economic and social progress made in a country where the rights of workers were respected.

The Government member of the Islamic Republic of Iran said that the progress demonstrated by the report provided by the Government representative should be recognized. It was also encouraging that the country continued to cooperate with the ILO.

The Government member of China said that the Government representative's statement and the efforts made by the Government to cooperate with the ILO were appreciated, as well as the progress achieved. He agreed with the GRULAC statement.

The Government representative thanked the members who had shown their support. He added that the Committee on Freedom of Association had not opposed the measures adopted in his country to apply the Convention. Some of the issues raised did not feature in the report of the Committee of Experts. Currently, 3,724 workers' organizations had been registered. It was the largest figure in the country's history and clearly demonstrated that there was no union persecution or any breach of the Convention. Workers councils did not exist: there were only working documents that were produced for discussion, as in any legislative procedure. Trade unions had an invaluable role. As a metallurgical union leader, he knew how important freedom of association was. There were also no obstacles to re-electing union leaders.

In order to achieve civilized social dialogue, as some Employer members had suggested, all employers' organizations in the country needed to be recognized. Some employers' organizations did not feel represented by FEDECAMARAS. The Government should also accept various counterparts among employers. Some organizations in the automotive and construction industries dealt with the Government directly in order to contribute actively to the country's economic development. He said that it was not a good basis for social dialogue to suggest similarities between Hugo Chávez and Wojciech Jaruzelski. President Chávez had won free elections on various occasions and had been the victim of a coup d'état.

He added that the Convention did not accord impunity to employer leaders who participated in coup d'états. Albis Muñoz, Carlos Fernández and Pedro Carmona had participated in a coup d'état. Albis Muñoz was currently being tried for reasons other than her union activity.

The Government would continue dialogue with the ILO supervisory bodies and communicate its responses to the comments made by the Committee of Experts. It would seek to resolve the issues raised concerning the National Electoral Council in the context of the constitutional reform. In those circumstances, it was not acceptable for matters to be discussed that were not part of the comments of the Committee of Experts and a new high-level mission should not be anticipated.

The Worker members noted with interest the Government's indication of the adoption in the near future of new laws and regulations seeking to bring the legislation into conformity with the provisions of the Convention. They called on the Government to ensure, the broadest possible basis for constructive social dialogue bringing together all organizations representing the social partners.

The Employer members said that the Government representative had not touched upon two main concerns that they had raised, namely the need to ensure respect for civil liberties, freedom of speech and freedom of movement as a prerequisite for freedom of association, and non-interference in the internal affairs of employers' and workers' organizations. The systematic destruction of the most representative employers' organization in the country, FEDECAMARAS, was a matter of grave concern. The rights enshrined in the Convention applied to democratic and authoritarian societies alike. The case of Albis Muñoz, which had been discussed in the Committee in 2004, 2005 and 2006, was significant given the systematic violations of the Convention and was a serious breach of the principle of freedom of association. The Committee's conclusions should emphasize that civil liberties, freedom of speech and freedom of movement were prerequisites for freedom of association, recognize that those conditions did not exist in the country and also address the interference by the Government in the internal affairs of FEDECAMARAS. Furthermore, it should be emphasized that Article 3 of the Convention protected both workers' and employers' organizations, meaning that the Committee of Experts should be requested to address all issues relating to Article 3 in relation to both workers' and employers' organizations. The Conference Committee should also recognize that scant progress had been made in terms of freedom of association, particularly concerning the employer aspects of the case. They indicated that a high-level tripartite mission should therefore be sent to the country to examine the situation.

Conclusions

The Committee took note of the information provided by the Government representative and the debate that followed.

The Committee also noted the conclusions of the high-level mission that visited the country in January 2006 and the conclusions of the Committee on Freedom of Association on cases presented by employers' and workers' organizations.

The Committee referred to the following pending issues: legal restrictions on the right of workers and employers to establish organizations of their own choosing; restrictions on the right of organizations to draw up their constitutions and to elect their leaders without interference from the authorities and to organize their activities; the refusal by the authorities to recognize the results of trade union elections; the inadequacy of social dialogue and of the protection of civil liberties, including the right to freedom of movement.

The Committee noted that the Government representative: (1) had stated that the Government believed in an inclusive and productive dialogue with all the partners and had stated that the labour standards meeting for collective bargaining in the construction sector had been established; meetings and negotiations had been held with the employers and workers, for example to consolidate the framework agreement for co-responsibility for industrial transformation; (2) had indicated that a constitutional reform process was about to be initiated which would cover the legislative issues raised by the Committee of Experts, including those concerning the National Electoral Council; (3) had emphasized that the leaders referred to in the discussion who had allegedly been denied freedom of movement had been brought to justice for reasons that were unrelated to freedom of association.

Observing that after several years the legislative reforms called for by the Committee of Experts had still not been adopted, the Committee urged the Government and the competent authorities to amend the legislation and to ensure that the announced constitutional reform would overcome all these problems.

Noting deficiencies in the social dialogue between the Government and the representative organizations of employers and workers, the Committee urged the Government to make every effort to develop social dialogue in the framework of the ILO's standards and principles and to establish a permanent tripartite social dialogue body.

The Committee deplored the fact that a leader of FEDECAMARAS had not been granted permission by the judicial authorities to leave the country to participate in the Conference. The Committee also noted the acts of violence and ransacking of the headquarters of FEDECAMARAS and called on the Government to take measures to investigate this occurrence so that those responsible could be punished and similar events did not occur in the future.

With regard to the allegations of favouritism and lack of impartiality by the Government with regard to certain favoured workers' and employers' organizations and the creation of parallel organizations, the Committee urged the Government to refrain from any form of interference and to comply with Article 3 of the Convention. The Committee requested the Committee of Experts to pay particular attention to this point and to examine the application of the Convention in relation to both employers' and workers' organizations.

The Committee emphasized the fundamental importance of respect for civil liberties as a prerequisite for observance of the rights set forth in the Convention.

The Committee requested the Government to provide the Committee of Experts sufficiently in advance with a full and detailed report replying to the comments of the high-level mission on the application of the Convention. The Committee expressed the firm hope that it would be able to note tangible progress in both law and practice in the very near future.

ZIMBABWE (ratification: 2003)

The Chairperson informed members of the Committee that the Director of the International Labour Standards Department had received that very afternoon when the Government was due to appear before the Committee, a letter from the Minister of Public Service, Labour and Social Welfare, Mr Goche, as follows:

> Following the listing of the Zimbabwe Government this year, as on the previous five occasions, I wish to inform you that the government has determined not to appear before you this year because of the following:
>
> The Committee of Experts does not appear to be raising any new issues, rather, it repeats the same charges to which we have comprehensively responded over the previous appearances. Given the foregoing, it is now the determination of the Zimbabwe government no longer to be an accomplice to the abuse of this august mechanism of the Committee on the Application of Standards of the ILC. Government remains ready to engage with the ILO Office and any other groups who seek to ameliorate the conditions of the worker in Zimbabwe, anywhere and at anytime, *in good faith.*
>
> The submission by the government of Zimbabwe in D.10, appearing before the Committee of Standards dismisses the political consideration of Zimbabwe's issues during the previous appearances. This was a fair response to the issues raised by the Committee of Experts with respect to the technical issues as raised but was never an indication of our intent to appear before the Committee of Standards.
>
> The set-piece of the Committee on Application of Standards does not appear to serve the cherished goals we have outlined above.

The Chairperson, after having discussed with the two Vice-Chairpersons, considered that there was sufficient information to hold a discussion on the case. Nevertheless, together with the two Vice-Chairpersons, they decided to close the debate and mention this case in a special paragraph of the report of the Committee and hold a debate on the case in a plenary session of the Conference.

The Employer members said that the situation created by the Government of Zimbabwe's position was highly regrettable, insulting to the Committee and to the ILO supervisory system as a whole. Only the previous day, the Committee had accepted to reschedule the Government's presentation in spite of the fact that the Government had been aware since 15 May 2007 that it was on the list of countries likely to be called to appear before the Committee. In addition, the Employer members noted that the Government had communicated information in document D.10 that it had prepared for the discussion of the case. The Employer members recalled that the Committee could, as it had done with the case of Bosnia and Herzegovina in 2005, discuss the case on the basis of document D.10. The discussion would be reflected in Part II of the Committee report and, in keeping with the practice followed in the case of Bosnia and Herzegovina, the case would also feature in a special paragraph in Part I of the Committee's report.

The Employer members recalled that the Committee was required, in the present case, to examine two of the fundamental elements required to ensure the exercise of freedom of association as defined in the Convention, i.e. first, that civil and political liberties were protected effectively. Based on information available to the Committee, union leaders in Zimbabwe were victims of torture, harassment, arrests and police violence. The second element necessary to the exercise of freedom of association was freedom of speech. This also seemed to be lacking in the Zimbabwean situation if the number of arrests carried out on the basis of the Public Order and Security Act (POSA) were taken into account. In order for these conditions to be fulfilled, freedom of association required above all else

the existence of the right to freedom and personal security, freedom of movement, freedom of the right to organize and to free speech. These rights could not be restricted to purely trade union issues. The Employer members judged the situation in Zimbabwe to be especially serious.

The Worker members addressed certain broad attacks made by the Government of Zimbabwe in document D.10 before going to the substance of the discussion. Firstly, coming before the Conference Committee was due to the Government having violated the Convention which it had voluntarily ratified in 2003 through no colonial influence but under the leadership of President Mugabe. Secondly, they reminded the Government that the Committee of Experts' report had nothing remotely colonial or partisan that related or even intimated a political agenda aimed at changing the regime and that such a view was a product of a fertile imagination and desperate attempt to divert focus from the real issue which related to the effective application of the Convention in Zimbabwe. Therefore the Worker members were convinced that the arguments raised in document D.10 were misplaced, misdirected, irrelevant and unfortunate. They stated that the Government of Zimbabwe was in the premier league of serial and pathological offenders who flagrantly, persistently and systematically denied the people of Zimbabwe the freedom to exercise their fundamental rights, including their right to freedom of association as enshrined in the Convention. The attitude of the Government constituted total defiance, flagrant disregard of the entire ILO supervisory machinery and was a complete travesty of justice, and indeed was very regrettable and should not be allowed to prevail without reprimand.

The Worker members recalled that, on Monday, 4 June 2007, the Government had voluntarily signed in to appear before the Committee on Wednesday, 6 June 2007, in the afternoon and had been scheduled accordingly; it had then asked for a postponement on Wednesday afternoon, even after having communicated its position in document D.10 – which was not stated in diplomatic language – and had finally decided to boycott its appearance before the Committee, at the 11th hour. This arrogant attitude demonstrated that, on the ground, workers and the Zimbabwe Congress of Trade Unions (ZCTU) members in particular, were given even worse treatment. As this was a case of repeated failure to cooperate with the ILO, continued violation of the Convention and, further, as the situation on the ground demonstrated escalated repression, violence and brute force against workers and ZCTU leadership, in particular, the Worker members appealed to the members of the Committee to ensure that the conclusions of the discussion be stated in a special paragraph. The Worker members indicated that a number of Government representatives were present in the room observing the proceedings, who he identified by name. In conclusion, they cited one of Martin Luther King Junior quotes where he stated that there comes a time when a man-made law becomes incongruent with the dictates of social justice and human dignity, and noted that the quote reflected perfectly the situation currently prevailing in Zimbabwe.

The Worker member of Zimbabwe stated that, contrary to the assertions contained in the written information provided by the Government, the principles governing freedom of association continued to be violated every day in Zimbabwe in practice. Referring to the Public Order and Security Act (POSA), he emphasized that, although the provisions of the Act did not apply to the activities of workers' and employers' organizations in principle, the situation was totally different in practice. His organization, the Zimbabwe Congress of Trade Unions (ZCTU), was systematically obliged to obtain prior authorization from the police to go on strike or to hold meetings. That was a sine qua non condition and the police attended those meetings without any restriction. He read out to the Committee an extract of a letter by the police, in reply to a communication by the ZCTU indicating its desire to organize a trade union meeting. With respect to the accusations made by the Government contained in the written information provided claiming that individuals in the ZCTU were politicians and not true trade unionists, which would justify the strong-handed intervention of the police under the POSA, he reminded the Conference that when the old leaders of the ZCTU had decided in 1999 to set up an opposition political party (the MDC), the ZCTU members who had met in extraordinary congresses had immediately adopted a resolution which stated that the union would continue to be independent from any political party and guided by the principles contained in the Resolution concerning the independence of the trade union movement adopted by the International Labour Conference in 1952. In that regard, he stressed that the ZCTU did have members belonging to the MDC, but also members who belonged to the party in power. The exercise of freedom of association in Zimbabwe was rendered difficult because the Government considered that all questions raised by the trade union movement were a priori political, and thereby fell under the scope of the POSA. In those conditions, the independent trade union movement in Zimbabwe could not engage in legitimate and lawful activities to defend the interests of their members because all trade union activity was incriminated in principle. The ZCTU members were of the view that trade unionists belonged to the human species, like any other social category and, as such, they had the right to enjoy their civil and political rights, like any other citizen. Indeed, as reiterated on numerous occasions by the supervisory bodies of the ILO, the absence of those freedoms negated the very meaning of trade union rights.

He reminded the Conference Committee of the visit to Zimbabwe of the Director of the International Labour Standards Department in August 2006, when she had met all the social partners and noted that the lack of social dialogue in the country was the source of numerous problems. For that reason, she commended them to sign the tripartite Kadoma Declaration, entitled "Towards a shared national economic and social vision", a declaration adopted in 2001 by the three social partners as a first step towards remedying the mutual and profound mistrust which prevailed among the tripartite constituents of the country. Finally, he concluded his statement by reiterating that it was very risky to be a trade unionist in Zimbabwe.

The Worker members fully supported the statement of the Worker member of Zimbabwe, indicating that the situation of trade unionists in Zimbabwe was extremely dangerous. In this respect, they emphasized the fact that the trade unionists present at this Conference were in great danger and called on the ILO to ensure their safe journey home.

Convention No. 95: Protection of Wages, 1949

ISLAMIC REPUBLIC OF IRAN (ratification: 1972)

A Government representative stressed the importance of the Convention and the fact that non-payment of wages constituted a threat to the public interest, and had an immediate bearing on the lives of workers. Delayed payment of wages was at times experienced in certain sectors of the economy contrary to the letter and spirit of the Convention. Since the Conference Committee had first addressed this issue in June 2005, the Government had been vigilant in ensuring that every worker in the country received their salary as regularly as reasonably possible and would continue to do so.

The Government also emphasized that the Committee of Experts was obviously satisfied with the three-day technical assistance mission to the Islamic Republic of Iran and had reached a better understanding of the labour realities. The mission of April 2006 had been held in a

true spirit of openness and good will and had permitted a clear and objective appreciation of the nature, scale and causes of the wage difficulties experienced in certain sectors of the economy. Furthermore, the Committee of Experts had noted that even though irregularities continued to occur, the problem was tackled rather satisfactorily by the Government and the judiciary, and there was no evidence that the country was faced with a widespread wage crisis, or a non-payment of wages culture.

The Government further maintained that although globalization offered extensive opportunities for development, it was not progressing fairly and evenly and had caused inequalities within and among nations, threatening employment and living standards in many developing countries including the Islamic Republic of Iran, and leading to a problem of back wages, large waves of job losses and the most regretable closure of plants.

Article 3 of the Constitution obliged the Government to plan and implement viable policies to eliminate poverty and deprivation, and provide social security for all. The Labour Code also emphasized fair minimum wages, which were fixed by the tripartite Supreme Labour Council according to article 41. More than 50 articles dealt with wage issues in the Labour Code, thus indicating the importance attached to this issue. The decisive steps to improve law enforcement against violations of the Convention included an effective system of regular and unannounced labour inspections. Some 5,000 wage inspection missions had been conducted in 2006 and over 100,000 regular and 200,000 random inspections had been conducted during the same period to monitor payment of wages. The Ministry had received almost 100,000 complaints and meticulously examined them all; 130 labour inspectors had been recruited in addition to the 624 who already conducted inspections, and another 600 were to be recruited by the end of the year, thus doubling the number of labour inspectors in less than a year. Meanwhile, the Ministry also embarked on a rather extensive integrated labour inspection data collection web-based system, for which it required the most immediate ILO technical assistance.

The settlement of disputes was addressed through the Labour Council at enterprise level, and trade unions and legal representatives of workers and employers. In the absence of an amicable solution, the case could be examined and settled in the Reconciliation Council of the Labour and Social Affairs Office. At the discretion of the complainant, the claim could be heard and settled by the Disputes Settlement Board, the rulings of which were binding and executed by courts of justice. Any infringement of the workers' right to payment of wages and other benefits constituted an offence subject to penal proceedings and punishment. Employers who did not implement the ruling of the Disputes Settlement Board were subject to a fine of between 20 and 200 times the minimum daily wage of the worker, depending on their financial condition. In accordance with Article 11 of the Convention, workers were treated as privileged creditors in case of bankruptcy or judicial liquidation of an undertaking, and wages due to them were paid in full before ordinary creditors.

The problem of back wages was most evident in the textile sector where more than 64,000 workers were employed in 132 textile mills. Among them some 16,000 workers enjoyed the benefits of early retirement due to the nature of their hard and hazardous jobs. More than 15,000 workers had been made redundant upon their consent with severance pay. Almost 12,000 workers had chosen to rely on the unemployment fund. Almost 5,000 workers had been reinstated after structural adjustment in their plants. In the context of the new bill on tough and hazardous jobs, more than 80,000 workers had asked for early retirement after 20 years of service.

Thirty-one per cent of 3,000 affected workplaces had serious financial problems in 2006. In order to ensure their sustainability, retain employment and ensure payment of wage arrears, the Government implemented an integrated policy, including industrial planning and policy advice on human resource strategies, advice and assistance in the area of technological innovation, advice on organizational improvement, planning and improvement of in-service training, allocation of financial resources to affected workplaces, allotting 20 per cent of bank loans to small and medium-sized enterprises (SMEs), re-employing workers on unemployment benefit, etc. Because ageing equipment was one of the main problems in many plants, the Ministry along with the Social Security Organization, based on section 1, paragraph 2, of the Unemployment Benefit Act provided legal protection to workers whose plants were under reconstruction and renovation, so that workers of these plants could rely on the unemployment fund until renovation was completed and the workers reinstated. This protective policy had covered approximately 250 production units in 2006 and over 4,000 jobs had been saved.

To renovate textile, garment and leather industries, 560 new plants had received aid and nearly 12,000 jobs had been created in 2006. To help textile mills on the brink of total collapse, the Ministry of Industries and Mines had taken a variety of measures to redress their technological problems.

Concerning the unemployed, the Ministry in cooperation with the Social Security Organization had provided unemployment benefits to more than 150,000 workers in 2006 only. Out of this number, more than 15,000 workers had been re-employed, almost 30,000 attended retraining courses and almost 4,000 had been sent to adult education schools. Large and medium industrial and agricultural enterprises negatively affected by globalization had also been protected by the Government through a mechanism which might provide them with the required financing or rescheduling of their debts. In 154 enterprises almost 40,000 job opportunities had been retained in 2006. A comparative study within the last two years revealed that while the demand of such enterprises for credit had increased by 18 per cent, the number of their protected workers had been reduced by 31.8 per cent, which was a good indication of the success of the policy.

The Employer members thanked the Government for the information provided, including information on the measures taken to apply the Convention, and trusted that the same would be made available in writing. The 2003 General Survey on the protection of wages, they remarked, stated that the purpose of the Convention was to ensure regular payment of wages to workers, so as to afford them a certain level of certainty and security. The Employer members had already stressed the particular importance of regular payment of wages – an issue touching upon several crucial aspects of the employment relationship. If workers were not paid, economic insecurity, increased informality, general deterioration of living conditions and unfair competition could result.

They noted with interest the report of the Office's technical assistance mission to the Islamic Republic of Iran in April 2006, which found that the Government was endeavouring to reduce the problem of wage arrears. The mission also concluded that there was no evidence of a widespread wage crisis, or of a non-payment of wages culture – either in terms of the number of workers affected or the duration of the delay in wages owed. They observed, however, that the Government did confirm the persistence of the problem of wage arrears, particularly in the textile sector. In this regard they joined the Committee of Experts in stressing the importance of providing the statistical information necessary for an accurate assessment of the issue. In the light of the positive indications contained in the mission report, they expressed confi-

dence that the Government would make this information available.

The Worker members emphasized the essential nature of this Convention for workers' security, the prevention of poverty and the sustainability of their purchasing power. In 2005 this Committee had noted the serious and persistent delays and non-payment of wages in violation of the Convention, and urged the Government to take all the necessary measures to find viable solutions to the crisis and ensure that workers claiming payment of wages were not subjected to threats or violence. The Government had then accepted a technical assistance mission which took place in April 2006. Although it only provided a few points of the mission report's content, the Committee of Experts had expressed some satisfaction on the matter. Nevertheless, the information coming from official press agencies in the Islamic Republic of Iran, or reliable sources either in Iran or other countries in recent months, did not corroborate this as they reported continued non-payment or delayed payment of wages in many institutions. The Worker members listed many specific cases, which illustrated the culture of non-payment and delayed payment of wages and demonstrated that serious violations of the Convention persisted. Moreover, those cases mentioned was only the tip of the iceberg considering the difficulties experienced by the press and the trade unionists.

Serious violations of trade union rights were related to the issue under examination in so far as workers claiming their right to be paid on a regular basis were the object of sanctions. The acts of violence these workers were being subjected to, which had already been denounced in 2005, had still not ceased: police repression of strikes, demonstrations and gatherings, and detentions of trade union leaders. This climate of violence had led to the submission of new complaints to the Committee on Freedom of Association which considered that a strike aimed at an increase in wages and payment of wage arrears clearly falls within the scope of legitimate trade union activities. It is true that the present discussion concerned protection of wages, but this was inextricably linked to the exercise of freedom of association and the right to bargain collectively.

Therefore the Government had to take all the necessary measures to put an end to the culture of non-payment of wages: reply to the requests of the Committee of Experts related to the reinforcement of the legislation and labour inspectorate and the adoption of sufficiently dissuasive sanctions; provide reliable and detailed statistics for examination by the Committee of Experts so they could assess the evolution of the situation; and put an end to the climate of intimidation and fear which existed for workers who sought to defend their rights.

The Worker member of the Islamic Republic of Iran said that the textile sector was an ageing industrial sector which had undergone a process of modernization in order to become more competitive. This process had initially led to arrears in the payment of wages. The passing of a law on this issue had brought stability to the situation. Tripartite dialogue should allow the problem to be totally resolved and respond to the challenges of globalization. Private investments also played a major role in easing social tension. The Government had undertaken, along with employers and workers, a search for a practical solution to the problem. As Chair of the Board of the Supreme Centre of the Islamic Labour Council, the speaker declared that as far as he was aware, no trade unionists had been arrested.

An observer representing the World Federation of Trade Unions (WFTU) expressed gratitude for the opportunity to address the Committee. He stated that for 18 years he had represented the Iranian workers at the Conference, but in the past two years, that right had been denied him by the Ministry of Labour and Social Affairs; he was also the President of the Textile Workers of Iran. He stated that, in 2005, he had expressed concern with violations of the Convention.

The Government representative requested a point of order. He stressed that the subject of today's discussion was the Islamic Republic of Iran's implementation of Convention No. 95, not issues concerning freedom of association.

The Worker member of France pointed out that the representative of the WFTU had barely introduced himself before the Government representative had guessed that his statement would concern freedom of association. That was odd to say the least. The Chairperson therefore had to reject his point of order.

The observer representing the WFTU clarified that he was introducing himself, prior to addressing the application of the Convention, but first wished to express his support for the Worker members' statement that the protection of wages was directly linked to freedom of association rights in the Islamic Republic of Iran.

He stated that he had expressed concern regarding violations of the Convention in 2005, and that the Conference Committee's 2005 conclusions on this subject were more critical than this year's comments of the Committee of Experts. He recalled that those 2005 conclusions highlighted the necessity of supplying full and detailed statistical information on the issue of wage arrears as this year's Committee of Experts comment had also noted. However, the Government had yet to provide the requested information. In 2005 he had also suggested that, on top of back wages owed, fair compensation was due to the aggrieved parties for losses incurred as a result of delayed payments. This suggestion, too, had not been taken up by the Government.

He stated that although the measures adopted by the Government had improved the situation to some extent, the problem still persisted. During this year's May Day demonstration, the presence of a large number of textile industry workers was witnessed, including workers of Nassaji Kurdestan, Nassaji Taberestand of Qaiem Shar, Nassaji Mazandaran, and Chiet Sazibehshar. Textile workers from Qazvin province, including workers from Naz Nakh, Farnakh and Mahnakh, had demonstrated in front of the Parliament and the presidential office. These peaceful demonstrations were sometimes met by police brutality, and at times resulted in workplace arrests and the abduction of workers. Offering one example of the country's wage arrears problem, he stated that, in his province of Yazd, the wages of workers of Dorakhshane Yazd Co. and Yazd Fastoon had been in arrears for several months. Additionally, the Baft Balouch company in Balouchestan province, which employed eight hundred workers, had recently shut down without paying its workers their wages for the last four months.

He also noted that a dissonance in the relevant law had placed workers receiving forced unemployment benefits in a difficult situation. Some of these workers were owed back wages, and at the same time were unable to retire under the law concerning hard and hazardous labour, as they were receiving unemployment benefits. He called upon the Government to ensure that these workers were fully compensated.

He underscored that a great deal remained to be done to address fully the wage arrears problem in the Islamic Republic of Iran. First, the Government's complacent attitude towards this issue must change. Second, funds allocated for the creation of new job opportunities should be diverted to those companies facing financial flow problems. Third, workers who were owed arrears should not only receive back wages but also be duly compensated for the losses sustained as a result of the delays in payment. Finally, the recommendations in the Conference Committee's conclusions, including those of 2005, should be duly implemented, particularly the request that detailed infor-

mation on the wage arrears situation be provided to the Committee of Experts.

The Worker member of Canada stated that the 2006 ILO mission report, referred to in the comments of the Committee of Experts, had expressed satisfaction that the discussions held had permitted a "clear and objective appreciation of the nature, the scale and the causes of the wage difficulties experienced in certain sectors of the national economy". He expressed scepticism with this finding, regretting that he did not have a copy of the mission report to read and assess for himself.

He noted that although section 37 of the Labour Code stipulated that workers must be paid regularly and in full on a biweekly or monthly basis, delayed payments to workers had increased in comparison with previous years. According to the Iranian Labour News Agency, 39,424 workers from 114 different production and services units were owed an average of 7.7 months of back wages. Official reports also showed that there were an average of 50 protests every month, and the overwhelming majority of these were staged to protest the non-payment of wages. In Asalouyeh, half of the workers' wages were in arrears for five to six months, even as they continued to labour under harsh conditions. Additionally, reports indicated that there were many cases in which workers chose not to protest delays in payment for fear of losing their jobs. Clearly the non-payment of wages was widespread and not confined to one particular sector of the economy.

He stated that the minimum wage was another important issue related to the payment of wages. Official reports indicated that 75 per cent of over 30,000 contracting companies in the Islamic Republic of Iran had paid less than the minimum wage to over one million employees last year. The monthly payments of workers in Ghom Tissue Manufacturing, for example, did not exceed 80,000 Toman (US$80), even though the minimum monthly wage last year was 156,000 Toman (US$156). Several companies contracted by government offices also paid less than the minimum wage, or refused to pay overtime or night work compensation. He remarked that there was a growing and worrying trend of responding to workers' wage payment demands with threats and dismissals. Additionally, in some cases workers were being hired on temporary contracts and asked, as was done in the industrial city of Saveh, to sign blank forms.

The speaker asserted that it was impossible to dissociate the lack of respect for the Convention and national laws from the broader issue of freedom of association rights. In this respect, he noted that independent unions in the Islamic Republic of Iran were courageously standing up for their rights, in spite of the efforts of the authorities and illegitimate trade union organizations to repress them. For instance, a teachers' protest was repressed by the authorities, with many of the participants arrested and thrown in prison.

The Government representative emphasized that last year's mission to Iran, which some speakers had commented unfavourably upon, was headed by the Director of the ILO's International Labour Standards Department. He remarked that, although he would welcome a discussion on freedom of association, today's deliberations were limited to issues under Convention No. 95.

The Worker members stressed that already in 2005, this Committee had made a link between the two elements in its conclusions.

The Worker member of Canada offered several other examples of the repression of trade unionists. Mr Mahmoud Salehi, a labour activist, was arrested under murky circumstances and taken to the Sanandaj prison; Mr Salehi suffered from serious kidney impairment and his life was in danger. Additionally, over the last two years, union members employed by the Tehran and Suburbs Bus Company had been subjected to arrests, dismissals, and physical assault. Fifty union activists had been suspended from their jobs for over one year, and union president Mr Mansour Osanloo had been sentenced to five years' imprisonment for carrying out legitimate trade union activities.

He concluded by urging the Government to take the necessary measures to bring its law and practice into conformity with Convention No. 95, as well as to ratify and implement Conventions Nos 87 and 98 as soon as possible.

The Worker member of France highlighted that the impressive number of statistics provided by the Government representative was surprising, considering that the report of the ILO mission had noted the lack of reliable statistics.

The right to regular payment of wages constituted a vital right for workers, which was why sufficiently dissuasive sanctions had to be provided by the legislation and imposed on the offending employers. All sectors were affected by the problem of wage arrears, not only the textile sector but also other sectors including the public sector. The data that had succeeded in leaking out evidenced the persistent and widespread nature of the problem. The conclusion that the problem was limited to the textile industry, which had to confront international competition, was completely unfounded. Workers were paying for the poor management by the Iranian authorities and one wondered how the oil revenues were being used. These should have made it possible to make the necessary investments for the modernization of the enterprises.

The situation was serious and persisted while the State had not found any effective solutions, either in law or in practice, which was extremely alarming. The full exercise of freedom of association would allow for genuine tripartite dialogue which would help in finding a more effective resolution of the issue of the wage arrears.

The Government representative stated that the statistics he had cited in his previous statement made specific reference to the problem of wage arrears. The Government was aware of the problem and would address it by all means at its disposal. Noting the comments made concerning complaints of back-wages owed, he stated that the Ministry of Labour had indeed compiled a considerable list of complaints in respect of back-wages. In response to this problem, the Government had managed to double the number of labour inspectors. It was aware that delays in wage payments worsened poverty, and thus tarnished the dignity of workers. He maintained that the Government had also allocated over US$100 million for the renovation of industries, including textiles. The overhaul of industries would not occur overnight, however. The process required more time. With respect to the Islamic Republic of Iran's contributions to the ILO, he stated that CHF900,000 had been deposited a month before last year's Conference, but sanctions had nevertheless been imposed on the Government for the non-payment of contributions.

He reiterated that the non-payment of wages was a problem the Government admitted to freely and was determined to eradicate. In this respect it welcomed technical assistance from the ILO to assist in the collection of the relevant data, without which differing and incongruous information on the matter would continue to proliferate.

The Employer members stated that the purpose of the 2006 ILO mission was to bring attention to the non-payment of wages problem, and that, although a greater awareness of the problem had been generated as a result, this alone was not sufficient. The Government must address the problem actively, and should be supported in its efforts to do so. They noted that, by the Government's own admission, problems in the Convention's implementation persisted. They called upon the Government to produce detailed statistical information to allow for as complete a picture as possible on the back-wages problem.

They considered, in this respect, that the Government should not hesitate to make use of ILO technical assistance.

The Worker members stated that the discussion had given them the impression that the Islamic Republic of Iran lived in two worlds: the virtual world where wages were regularly paid and free and democratic trade unionism was exercised without hindrance, and the real world where a culture of non-payment of wages and a climate of intimidation and fear reigned for workers who dared to defend their rights, as demonstrated by the imprisonment of two union leaders, Mansour Ossanco and Mahmoud Salehi. The Worker members requested the Government to take the necessary steps to put an end to the culture of non-payment of wages, to provide reliable and detailed statistics to the Committee of Experts, to respond to the requests of the latter with respect to strengthening of the legislation and labour inspection and the adoption of genuinely dissuasive sanctions, and to put an end to the climate of intimidation and fear that reigned for workers who sought to defend their rights.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee noted that the Committee of Experts had been commenting on matters relating to accumulated wage debts especially in the textile sector.

The Committee noted that according to the oral explanations provided by the Government representative, irregularities in the payment of wages continued to occur for a number of reasons, both national and international, but several measures had been adopted to resolve the situation. The Government referred to recent measures to reinforce the labour inspectorate and provided data on inspection visits. The Government also described available procedures for the settlement of wage disputes and indicated that several financial assistance schemes had been set up to facilitate the re-employment or early retirement of workers of enterprises which were undergoing judicial liquidation or restructuring.

The Committee was informed of the existence of the report of the technical assistance mission undertaken by the Office in April 2006, following the Committee's previous discussion at the 93rd Session of the International Labour Conference in June 2005. It was informed, in particular, of the report's conclusion that although difficulties persisted in certain sectors as regards the regular payment of wages, the nature and scale of those problems appeared limited and the Government was tackling this situation with responsiveness.

The Committee encouraged the Government to pursue its efforts to improve national laws and practices aiming at protecting wage earners from abusive pay conditions and to report to the Committee of Experts on any new developments in this regard. It emphasized, in this connection, the need for reliable statistical information and accordingly requested the Government to collect and submit at the next meeting of the Committee of Experts concrete information on the sectors and types of establishments concerned, the approximate number of workers affected, the overall amount of accumulated wage arrears, the average length of the delay in the payment of wages, as well as detailed particulars on related inspection activities and the results obtained.

Finally, the Committee welcomed the Government's request for technical assistance in collecting data and establishing a database on labour inspection activities. The Committee therefore requested that the Office undertake a mission and that the conclusions of the mission be submitted to the Committee of Experts at its next meeting for inclusion in its report.

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

AUSTRALIA (ratification: 1973)

The Government representative expressed his Government's deep concern that it had been called before the Committee because there had been serious and fundamental flaws in the processes culminating in that situation. He would not address the observation of the Committee of Experts because it had been the result of a flawed process. While the Committee of Experts' observations were the basis of the Conference Committee's work, the observation on Australia in that case did not take into account the Government's submissions, which was extremely disappointing and completely inappropriate. As the observation was unbalanced and contained factual errors, it was a totally inappropriate and unacceptable starting point for consideration by the Committee.

At its 2006 session, the Committee had asked the Government to report to the Committee of Experts on the provisions of Australia's workplace relations reform legislation and its impact in law and in practice on its obligations under Conventions Nos 87 and 98. Responding to that request had been a mammoth task, given the magnitude of the legislative reforms in question, some of the largest in Australian history. The Government had made every effort to meet the very short timetable set by the Committee and kept the ILO fully informed of progress regarding the development of the report and the possibility of a delay in submitting it. On three occasions, between August and November 2006, the Government had written to the Office, and Government officials had met senior ILO officials in November 2006, again emphasizing the possibility of a slight delay in reporting. Remarkably, a detailed report had been provided in December 2006. However, it was regrettable that the Committee of Experts' observation did not take the information provided by the Government into account. His Government did not believe that it had been necessary or appropriate for the Committee of Experts to make observations on Australia's laws. The Committee of Experts had been prepared to defer the consideration of cases where relevant documents or reports had been received late and could not be examined with necessary care, due to lack of time. The Government could not understand why the Committee of Experts had not taken the same approach in its case.

The Government representative stated that the Committee of Experts' observation that the Government had not replied to the comments made by the National Tertiary Education Union (NTEU) was factually wrong. The Government's response to those comments had been provided to the ILO in mid-November 2006, and the Office had acknowledged that it failed to forward it to the Committee of Experts. Thus, a procedural failure had led to an error in the Committee of Experts' observation.

The Government representative stated that, in view of those failures of process, it would be inappropriate for the Conference Committee to engage in a substantive discussion on an observation which was critical of Australia without having considered the information provided by the Government. Having been in the public domain for more than four months, the observation gave the false impression that Australia had simply failed to provide information. That flaw could only be rectified by way of a new observation by the Committee of Experts, which would take the submission of the Australian Government into account. Australia remained willing and keen to explain its workplace relations laws to the Conference Committee and to discuss the ways in which those laws complied with international obligations. An appropriate course of action for the Committee would be to note that the Committee of Experts' observation was based on in-

complete information and to refer the matter to the Committee of Experts for consideration at its 2007 session, at which time the Government's submission should be considered. Australia would be happy to appear before the Conference Committee in 2008, if necessary.

The Government representative rejected the view that, despite procedural flaws, the case was sufficiently important to warrant immediate consideration by the Committee. Australia was a country with high labour standards that had undergone 15 years of sustained economic growth. It was ironic that the Government had been criticized for implementing reforms that were central to the delivery of significant economic benefits, particularly to workers and employers. In that regard, the Government representative stated that Australia had the second highest minimum wage in relation to median earnings in the Organisation for Economic Co-operation and Development (OECD). Since the workplace relations reforms in March 2006, 358,700 new jobs had been created in Australia, of which 94.8 per cent had been full-time jobs. In May 2007, the unemployment rate stood at 4.2 per cent, its lowest level since November 1974. Wages had increased by 4.7 per cent in the 12 months after the reforms had come into effect. In conclusion, the Government representative stated that the failure of fair and proper process weakened the credibility of international labour standards, the supervisory procedures, and the ILO.

The Worker members pointed out that the Government was not justified in criticizing the report of the Committee of Experts. The Government had neither communicated the requested information within the prescribed deadlines so as to allow it to be analyzed; nor had the Government provided details as to the errors that it attributed to the Committee of Experts. The labour legislation of Australia, be it the initial act of 1996 (Workplace Relations Act) or the Workplace Relations Amendment (Work Choices Act), 2005, remained in blatant violation of Convention No. 98 in at least three respects: (i) it favoured individual rather than collective bargaining, just as it favoured bargaining at enterprise level rather than other forms of bargaining; (ii) it allowed employers to select their bargaining partners themselves; and (iii) it considerably restricted the number of matters open for negotiation.

Since 1996, the legislation provided for two types of agreements: collective agreements and individual agreements between a worker and an employer – known as "AWA" (Australian Workplace Agreements). The AWAs prevailed over collective agreements. Moreover, workers preferring to be covered by a collective agreement rather than by an AWA were exposed to discrimination at the hiring stage or in the course of employment. The situation constituted a flagrant violation of Articles 1 and 4 of Convention No. 98. The Amendment Act of 2005 had only aggravated the situation: an AWA could henceforth replace a collective agreement in force, which meant that the employer was completely free to impose the AWA on the workers; and the substitution of a collective agreement by an AWA was irrevocable, thus marginalizing the workers' organizations.

Under the Act of 1996, the multi-employer agreements, i.e. sectoral collective agreements, were subjected to previous approval by a public quasi-judicial body, which favoured agreements with a single employer and refused authorization to negotiate multi-employer agreements unless it could be demonstrated that this was in the public interest. The Workplace Relations Act provided for two types of "Greenfield agreements", those made with a union, and those made unilaterally by an employer. Such agreements can last for 12 months.

The Act of 1996 prohibited negotiating the payment of wages in respect of strike days. Yet, the Committee of Experts had always stated that, while the deduction of strike days from wages was not in itself contrary to the Convention, making such deduction compulsory infringed the principle of free bargaining. The Act of 2005 even expanded the number of matters that were henceforth excluded from bargaining; such as deduction of union fees at source; payment of wages for time spent in union meetings or union training; access of trade unions to workplaces; union intervention in case of conflict; remedy in case of abusive dismissal and subcontracting.

The Employer members recalled that the Committee of Experts had examined Australia's application of the Convention at its 2006 session because the Conference Committee had requested it to do so. Because the Government's report was received late, the Committee of Experts could not analyse the new legislation. It was therefore difficult to reach substantive conclusions in this case beyond those of June 2006, while keeping in mind that at the current session, Australia was discussed in relation to Convention No. 98. The Government had explained why it had not been able to comply with the conclusions of the Conference Committee and given that Australia had a long tradition of cooperation with the Committee, those explanations should be taken in good faith. The Committee should await the analysis of the Committee of Experts. The Employer members further noted the Government's willingness to appear before the Committee in 2008.

The Worker member of Australia recalled that the Committee was dealing with Australia for the third consecutive time. In the light of the fact that new laws had come into force in March 2006, the Committee had requested the Government, at its previous session, to prepare a detailed report to the Committee of Experts for examination at its November–December 2006 session. Regrettably, the Government's report had been submitted after the Committee of Experts had concluded its work. While time did not permit a comprehensive explanation of the substance and impact of the industrial relations laws, he argued that the Workplace Relations Act, as amended, continued to breach the Convention because it relegated collective agreements to an inferior status as compared to individual statutory contracts, the Australian Workplace Agreements (AWAs). The Act unduly restricted bargaining by limiting the subject matter of bargaining. The Minister responsible for workplace relations could declare the matter a prohibited bargaining matter. Once prohibited, parties faced fines of AUS$33,000 for bargaining on such matters. Prohibited content included, among others, unfair dismissal remedies, attendance at paid meetings of union members, leave to attend training conducted by a union, restrictions on the use of independent contractors or involving a delegate in a grievance process. The Minister could declare prohibited content retrospectively. If a clause in an agreement became illegal, there was no recourse. Clearly, the legislation did not provide the broad scope for bargaining envisaged under the Convention. Further, the new laws imposed new restrictions on multi-employer bargaining, and removed the requirement that authorization of a multi-employer agreement, in the limited circumstances in which it was permitted, or refusal of an application for authorization, be conducted in an open and transparent forum. Where a party pursued a common claim across two or more agreements, industrial action could not be authorized and any such action would not be protected. Strike pay was illegal and subject to sanctions. Moreover, employers were required to dock four hours' pay, even if employees only stopped work for ten minutes. Employers may insist on the signing of an AWA as a condition of employment or promotion, or accessing a wage increase. Those laws breached the Convention. The argument that Australia was not required to promote collective bargaining because such bargaining was already prevalent should be rejected. The extent of the coverage of different industrial instruments was irrelevant in terms of assessing the way laws functioned and their consistency with the Convention. A quarter of the workforce fell outside the minimum conditions available as a safety net.

Thousands of workers had already lost the arbitration award conditions that originally had been intended to underpin AWAs. In any case, the rights and obligations under the Convention were not alleviated by the quality of labour standards and the favourable economic situation, as suggested by the Government representative, which was not relevant to the issue of compliance with the Convention. In conclusion, there was no right to bargain collectively, as the choice rested with the employer. The laws in question were not consistent with the promotion of collective bargaining as required by the Convention.

The Employer member of Australia stated that the Committee of Experts' observation was incomplete, meaning that the Conference Committee could not engage in a substantive discussion. It was even difficult to maintain the previous year's conclusions. In cases that involved complex questions of law, such as the current case, the Committee should base itself on full and correct facts in order to maintain its credibility. The Employer members were greatly interested in having an assessment by the Committee of Experts, taking into account any additional information the Government may wish to provide.

The Worker member of the United Kingdom said that the Committee of Experts' report gave a long list of matters explicitly excluded from collective bargaining and noted that these were traditionally issues which would be included in collective bargaining between employers and unions. These restrictions could only be seen as closely paired to the introduction of Australian Workplace Agreements (AWAs), which bribed workers to give up their union membership and rights in return for short-term benefits in increased pay or better conditions. These had emerged some years ago in the United Kingdom until they were banned by the European Court of Human Rights and outlawed as anti-union agreements in breach of Article 11 of the European Convention on Human Rights, which had similar protections to those in Convention No. 98.

In introducing AWAs, the Government first encouraged employers to move towards individually bargained contracts in order to exclude the influence of trade unions. The Government had now taken the next step and brought in measures to restrict even those employers who understood the benefits of collective bargaining. An employer who wished to develop strong and meaningful bargaining mechanisms would henceforth be restricted from doing so. The Government had included even more areas which could not be bargained on in future, many of which were related to trade union membership. For example, agreements which supported workers joining a trade union or those which facilitated payroll deduction of union dues or provided leave to join a trade union meeting were all outlawed. In particular, it was not possible for employers and unions to reach a collective agreement that restricted introduction of AWAs, either directly or indirectly.

The pursuit of collective bargaining was fundamental to the purposes of trade unions and a government which restricted collective bargaining was undermining the ability of the trade unions to represent members on workplace issues. This was a clear attack on collective bargaining and an attack on trade unionism in Australia.

The interests of trade unions could not be divorced from the interests of their members, and the purpose of collective bargaining was to establish fair, equal and transparent collective terms across the workplace. By limiting the scope of bargaining, the Government was limiting the extent to which Australian workers could benefit from improvements to the most basic statutory provisions which applied. It also hindered those employers who sought to promote strong collective relationships.

She concluded by saying that the provisions struck at the heart of the right to organize and bargain collectively, and requested the Committee to call upon the Government to amend the laws immediately.

The Worker member of the United States focused on the Committee of Experts' observation that giving primacy to AWAs over collective agreements was contrary to Article 4 of the Convention. In fact, she said, AWAs were coercive and experience in the United States had shown that employers' attempts to deal directly with employees and bypass the union were common and in some instances unlawful; yet this was one of the many devices that US employers used to defeat collective bargaining. The National Labor Relations Board had found the conduct of one particular company to violate the National Labor Relations Act, which forbade interference in the right of employees to bargain collectively. However, this employer's conduct would be perfectly legal in Australia. The Work Choices Act allowed not only to offer individual contracts but also to require such contracts as a condition for recruitment, even if the contracts offered inferior wages. This completely undermined the integrity of any collective bargaining process and contravened the Convention.

It was extremely troubling that workers in Australia had fewer protections than those in the United States. She therefore asked the Government to amend the law to bring it into compliance with the Convention.

The Worker member of Japan stated that the Committee of Experts' report had observed that the Work Choices Act breached Convention No. 98 in many aspects and she claimed that legislative amendments made in 2005 seemed to target union busting. She was concerned by the primacy granted to individual contracts over collective bargaining and that there was no obligation on an employer to negotiate a collective agreement with employees even if 100 per cent of the workforce were union members and sought a collective agreement.

Employers were using this legislation to undermine collective bargaining and promote individual contracts. More and more workers were being pushed into individual contracts and their working conditions were changed without appropriate compensation. According to the Government's own report, individual contracts were cutting pay and conditions; for example, 52 per cent of AWAs cut shift work loadings, 64 per cent cut annual leave loadings and 46 per cent cut incentive-based payments and bonuses. Furthermore, companies dismissed workers because they refused to sign the individual contract that would have cut their wages by over 25 per cent.

Referring to the refusal to bargain collectively, she said that an aircraft-related company had consistently refused to negotiate a collective agreement which led to a lengthy strike. But the Australian Industrial Relations Commission could only acknowledge that it had no power to assist employees if their employer refused to bargain collectively.

The Worker member of India observed with great concern that the Government had chosen to introduce retrograde legislation and blamed the spread of globalization as it affected the world's workers. The Convention had been reduced to a piece of paper: the legislation gave preference to individual contracts over collective bargaining and could even supersede the terms of collective agreements. Not only was this contrary to the Convention but was aimed at depriving the working class of a fundamental right to organize trade unions. The new legislation encouraged employers to impose AWAs and make collective bargaining almost impossible. Jobs could be conditional on AWAs which could be thrust upon workers. The result was more work and less pay. The Australian Confederation of Trade Unions (ACTU) was convinced that job security in the country would be reduced. Many workers had already lost protection from being dismissed unfairly since the new legislation came into effect in 2006; he was apprehensive that private sector employers with 99 or fewer employees were exempted from all unfair dismissal laws.

The Government had failed to comply with the recommendations of the Committee of Experts. He requested the Committee to take such steps as necessary to protect and strengthen the right of Australian workers to organize and bargain collectively.

The Worker member of New Zealand said that it was clear that despite the previous advice of the Committee of Experts, the Government had seriously compounded its breaches of the Convention by passing the further Work Choices amendments to its Workplace Relations Act. This was a travesty of ILO fundamental principles.

The primacy of individual employment agreements (AWAs) over collective agreements was contrary to Article 4 of the Convention, as the Committee of Experts had noted. Section 48 of the Workplace Relations Act specifically provided that a collective agreement had no effect while an AWA operated in relation to an employee; that there would no longer be a "no disadvantage test" thereby increasing the incentive to employers to use AWAs to reduce wages and conditions of employment; that award conditions could be displaced by specific provision in an AWA; and that an AWA could be required as a condition of employment.

The ACTU had observed that it "makes the purported ability of unions to bargain collectively on behalf of their members nugatory in any practical sense". But the Government argued that the Act did not promote one form of agreement over another.

He recalled that the Convention required governments to promote collective bargaining and collective agreements over individual agreements, but the Australian Government was doing the exact opposite through section 348.

He said that when similar legislation had been adopted in New Zealand in the 1990s, collective bargaining had been reduced by almost half and the extension of collective bargaining on an industry basis had come to an end. Enterprise collective bargaining and individual employment contracts had become almost universal, and union density had fallen from 56 per cent of the labour force to 21 per cent by 1999. A major contributing factor had been the primacy in law and practice of individual bargaining and employment contracts, and the restrictions and impediments imposed on unions seeking to engage in collective bargaining. The result had gone beyond the negative impact on wages and conditions of work; legal protection had been weakened and there had been a negative effect on productivity and occupational safety and health.

A similar effect was being seen in Australia where a Government survey showed that in a single three-month period, more than 1,000 workers a day were being transferred from collective agreements to AWAs. He found it ironic that, at a time when governments, including Australia, were reaffirming commitment to ILO principles as reflected in the Decent Work Agenda, the Government had moved legislation to compound serious breaches of the Convention. He said that the Government was displaying an almost contemptuous disregard for the Committee of Experts and that for it to claim that the Committee of Experts had got its jurisprudence wrong was not an adequate response. In all, the Government had demonstrated at the very least an indifference to the decisions of the Committee, and he called for strong conclusions.

The Government representative said that his Government should not be expected to make a response to a process that he considered flawed.

The Worker members requested the Office to provide clarifications on the exact status of the reports supplied by the Government, before they made their final statement.

The representative of the Secretary-General informed the Committee that there had been a long exchange of correspondence between the Office and the Government of Australia, beginning with a letter of 7 August 2006 sent by the Office in the framework of the follow-up to the conclusions of the Conference Committee of 2006, up until a letter by the Government dated 11 May 2007. The Government had informed the Office in a communication dated 29 November 2006 that it was unable to submit a report. This communication had been brought to the attention of the Committee of Experts and was reflected in the second paragraph of its report. A substantive reply containing the Government's report was finally received on 10 January 2007.

The Worker members were astonished that the Government had invoked the report's complexity to justify non-respect of the deadline set and considered this as a pretext to avoid dialogue with the Committee of Experts. The Government maintained that Australian legislation was neutral vis-à-vis collective bargaining while the Convention foresaw that collective bargaining should be promoted and encouraged. According to the Government, neither this Committee nor the Committee of Experts had understood the real sense of the Convention with respect to Australia, despite the fact that the Committee of Experts itself had certain Australian expertise. And yet it was clear that there was discrimination against trade unions, obstacles to collective bargaining and a disquieting primacy granted to individual contracts over collective agreements. In addition, an explicit prohibition existed for negotiations on a multitude of issues, which were heavily sanctioned if the parties negotiated them. Indeed, this case was of particular importance to the fundamental principles defended by the ILO and trade unions all over the world, which made it imperative to support the Committee of Experts' requests for modification of legislation that was out of line with the Convention. The Worker members deeply regretted that despite the requests made at last year's Conference the Government had not presented its report on time. Such a trick should not be used to postpone the discussion of a case by the Conference. A detailed report should be communicated by the Government before September this year, if not, the Worker members would ask for the establishment of a fact-finding mission to examine all legal aspects of the case, as well as the real impact of the new legislation on workers and on social dialogue in Australia.

The Employer members noted that the discussion had not been satisfactory as there was a need for an analysis by the Committee of Experts of the information provided by the Government. The Committee now had this information at its disposal. With the exception of any information on intervening legislation and information on the impact of the legislation, which concerned the implementation of the Convention in practice, the Committee of Experts would be in a position to make a more complete assessment of the situation. Thus, this Committee's conclusions should mirror the conclusions of the previous year with an additional request that the Government make sure to bring to the attention of the Committee of Experts all information on the current legislative situation in Australia, so that the latter could appreciate the full situation with regard to the application of the Convention.

The Worker member of France considered that the conclusions of this case should reflect the unacceptable and outrageous manner in which the Australian Government had treated the Committee of Experts, which was a far cry from the customary diplomatic manners in international organizations.

Conclusions

The Committee noted the statement made by the Government representative and the debate that followed. The Committee recalled that the Committee of Experts had been making comments for several years on certain provisions of the Workplace Relations Act (now as amended by the Work Choices Act), in particular those relating to the exclusion from protection against anti-union discrimination, the relationship between Australian Workplace Agreements

(AWAs) and collective agreements. The Committee of Experts had also noted discrepancies between the Building and Construction Industry Improvement Act 2005 and the provisions of the Convention.

The Committee noted the Government's statement which did not address the substantive issues of the case, but rather referred to what it esteemed to be procedural errors in the examination carried out by the Committee of Experts, particularly in respect of its analysis of the application of the Convention without the benefit of the Government's report.

Noting that the Workplace Relations Act had been amended by the Workplace Relations Amendment (Work Choices Act), 2005, and that the Government's report on the latest amendments had unfortunately not been received in time for examination by the Committee of Experts, the Committee trusted that all relevant information relating to the application of the Convention, in both law and practice, would be transmitted to the Committee of Experts in time for it to examine the Government's report – received at the end of December 2006 – and any additional information.

The Committee once again requested the Government to pursue full and frank consultations with the representative employers' and workers' organizations regarding the impact of the Workplace Relations Act, as amended by the Work Choices Act, on the rights afforded by the Convention, in particular regarding the promotion of the effective recognition of the right to collective bargaining. It requested the Government to report to the Committee of Experts in this regard so that it could undertake a full appreciation of the application of the Convention in law and practice in its 2007 report.

GUATEMALA (ratification: 1952)

A Government representative indicated that the Committee of Experts' comments acted as guidelines for applying and complying with the commitments made in the quest for better conditions, as well as for strengthening labour relations for the socio-economic development of the population at large. He welcomed the Office's technical assistance for applying and complying with international labour standards, stressing that it was necessary to continue strengthening and boosting technical support, assistance and cooperation. The work of the technical mission that visited Guatemala between 26 February and 2 March 2007 was extremely useful in continuing or adopting the necessary measures for compliance with the Committee of Experts' comments. The members of the technical mission held meetings with various governmental institutions such as the tax authority, the National Civil Service Office, the President's Commission on Human Rights, Supreme Court judges, prosecutors belonging to the special prosecution service for offences against journalists and trade unionists of the Public Prosecutor's office, members of the Congressional Labour Committee and workers' and employers' organizations, including the Tripartite Commission on International Labour Affairs.

During those meetings, the Government submitted detailed information and responded to questions from members of the technical mission on a variety of subjects raised by the supervisory bodies. Although the technical mission's report had still not been received, the Government had already begun to take measures in compliance with the recommendations and suggestions made therein, such as measures for holding tripartite meetings on freedom of association and collective bargaining in the *maquila* industry. Taking into account the significance of the issue, technical and financial assistance had been requested for holding monthly tripartite meetings on that subject at the ILO Subregional Office in Costa Rica, which had received a favourable response.

A bill was being drafted concerning legal reforms to the Labour Code to comply with the provisions of the Conventions on freedom of association. The bill was in the discussion and negotiation phase with the various sectors. Therefore, he requested that technical assistance continued. The Government representative indicated that, since the Ministry of Labour and Social Security wished to continue dialogue and respond to the various concerns put forward by the Guatemalan trade union and employer representatives, it would begin to hold permanent meetings in order to improve labour relations. The labour issue was central to the successful application of the Free Trade Agreement between Central America, the Dominican Republic and the United States, meaning that the commitments arising from the Declaration on Fundamental Principles and Rights at Work should be made effective. The Government was receiving cooperation on various projects, some of which were undertaken with the Subregional Office for Central America. One example was the project to strengthen justice at work in Central America and the Dominican Republic. Its immediate goal was to bring about effective compliance with international labour standards through a range of highly significant activities such as courses and workshops to help improve compliance with labour legislation.

With regard to the comments made by the former International Confederation of Free Trade Unions (now the International Trade Union Federation), the Government representative indicated that the relevant investigations had been undertaken and their observations had been sent to the Office.

With regard to the cases heard before the Committee on Freedom of Association, the Government representative indicated that the allegations made were being investigated and that they would send the corresponding observations in each case. He expressed a willingness to continue all efforts, as was shown by the regular information sent and in the establishment of a tripartite commission to undertake independent investigations.

With regard to the initiative to amend the Civil Service Bill, the Government representative said that broad consultations had taken place, that contradictory proposals had been made in Congress and that he would keep the Committee informed of developments. In January 2007, technical assistance was requested from the Committee on Freedom of Association in order to analyse and implement recommendations and suggestions needed to make the initiative compatible with Conventions Nos 87 and 98, but a response had yet to be received.

With regard to the complaints made concerning the non-existence of sufficient safeguards on the dismissal of civil servants, the speaker said that the provisions governing labour infractions or offences could be found in Guatemala's Constitution, Labour Code, Civil Service Act and its regulations, and the Unionization and Regulation of Strikes by State Workers Act. For those provisions to be applied, the facts must be examined to decide on which punishment was merited, ranging from a verbal warning to dismissal. There were in fact sufficient safeguards in the procedures concerning the dismissal of civil servants, in terms of both the right to defence and the appeal remedies available. The Government representative added that the Government had continued and strengthened tripartism and social dialogue, spurred on by the ILO, through the National Occupational Health and Safety Council, the National Salary Commission and the Tripartite Commission on International Labour Affairs. He stressed the work undertaken by the latter body, which carried out effective consultations on all issues covered by the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and examined issues relating to freedom of association and collective bargaining. Significant tripartite agreements had been reached. Conciliatory dialogue had been introduced in 15 cases through the rapid response mechanism, bipartite meetings were being held between workers and employers to draft procedures for trying labour and social security offences in order to ex-

pedite the process. Those draft procedures would be then sent to the Supreme Court for the judges to give their opinion. The tripartite subcommissions and councils had begun to meet and priority was given to those cases presented by the Trade Union of Workers of Guatemala (UNSITRAGUA), independent investigations recommended in some cases by the Committee on Freedom of Association and legal reforms proposed by the Committee of Experts. All that was left was for the sectors to nominate the members of those commissions.

Meetings had been held with the congressional working committee on legal reforms. Meetings also took place with Supreme Court judges in order to improve the application of labour legislation in labour courts. That had expedited trials for labour and social security offences, with the respective fines being imposed. The tripartite proposal to appoint an official dedicated specifically to processing labour and social security offences was being considered, as was the tripartite proposal to hold courses and workshops for judges in order to unify criteria.

With regard to the complaints made concerning breaches of collective agreements, the Government representative indicated that, according to a joint investigation undertaken by the Ministry of Labour and Social Security and the labour courts, complaints were few. He stressed that, when a complaint had been made, the parties in conflict were asked to use the Joint Board to reach agreements through mediation and by complying with the collective agreements. Concerning anti-union dismissals, he indicated that, in accordance with an investigation undertaken by the labour courts, complaints were few, in spite of the existing legal measures.

The Ministry of Labour and the Supreme Court judges had begun an investigation into all complaints of non-compliance with the reinstatement of dismissed unionists, as part of the cases heard by the Committee on Freedom of Association. Information was sent concerning the cases in which reinstatement had been made effective. In those cases in which it had not been made effective, the offence of disobeying private sector employers that did not comply with judicial rulings was noted, with a criminal case being launched. When that involved mayors or State Ministers, the matter should be resolved before pre-trial in order to begin criminal proceedings. Other cases remained to be heard by other courts owing to applications for the protection of constitutional rights (*amparo*) or appeals.

With regard to the recommendation by the Committee of Experts on revising the procedures provided for in legislation since the structure of labour trials and the number of courts able to hear a case meant that they lasted for years, the Government representative indicated that the Special Congressional Commission for reforms in the justice sector had drafted a bill to approve reforms to the Act on Amparo, Habeas Corpus and Constitutionality which had been passed and then approved in second reading by Congress. That proposal was the result of support from Supreme Court judges, the National Commission for Monitoring and Supporting the Strengthening of Justice, officials from the Public Prosecutor's Office, lawyers from the national legal aid system, representatives of the Colegio de Abogados and civil society representatives. The reforms sought to improve and expedite the *amparo* process, turning it into an extraordinary, short and effective system in terms of its status as the guardian of fundamental rights. The Government representative recognized that the current system had caused delays, overloaded the courts and generated abuses. He felt that it was unnecessary to reform the Code of Labour Procedure, although there had been meetings in that respect and Supreme Court judges maintained a continuous dialogue with all the country's judges in order to expedite labour trials, being entirely oral.

With regard to the project concerning the national policy on free advice for workers who wished to form trade unions, he indicated that it was moving forward and that didactic material had been distributed throughout the country as part of a national policy to protect and develop trade unionism. The Government representative stressed that the Ministry of Labour was endeavouring to comply with and effectively apply international labour standards and reiterated his willingness to investigate and resolve all cases of anti-union violence. In that respect, updated information had been sent concerning the investigations by the special prosecution service for offences against journalists and trade unionists of the Public Prosecutor's office, as part of cases heard before the Committee on Freedom of Association. He stressed that some cases had been thrown out and in others, it was impossible to take the investigations forward owing to the lack of cooperation by the complainants themselves, particularly in the case of threats, which were independent offences to be heard by a different authority. Lastly, the Government representative indicated that the Government continued to work and take significant steps forward, although he recognized that there were pending issues. Those would require more time, assistance and cooperation, but efforts were being made to achieve decent work for all with sustainable development.

The Employer members appreciated the positive attitude of the Government. They recalled that the Committee had discussed the case of Guatemala every year between 1991 and 2005 under Convention No. 87, and, more recently, for the last two years under Convention No. 98. While the Committee had been able to note progress on several occasions, the Committee of Experts' observation described a number of remaining problems. Convention No. 98 was quite different to Convention No. 87, dealing with two specific matters: the protection of the right to organize, and protection of workers' and employers' organizations from interference by each other. The Convention also promotes collective bargaining, stressing the autonomy of the social partners and voluntariness. The Committee of Experts had identified at least eight issues where the legislation could be insufficient, on all of which the Government had provided information. With regard to the recent technical assistance mission, the Employer members noted that its report was not yet available, which would have given the Committee an updated picture of the situation. The Employer members requested that the Government bring law and practice into line with the Convention.

The Worker members pointed out that the case of Guatemala had unfortunately become a so-called chronic case characterized by persistent violations of the right to organize and collective bargaining. In 2006, the Committee had expressed its deep concern as regards the climate of continuous violence, the inertia of the legal system, the inactivity of the Government when it came to bringing national legislation and practice into line with the Convention and taking the specific measures required in the export processing zones.

The Worker members noted that the consecutive reports of the Committee of Experts did not reveal any real progress. Violence and dismissals still affected workers seeking to undertake union-related activities; the practice of blacklists persisted; trade unionists in enterprises were still intimidated; the legal system continued to work with an intolerable slowness; the number of collective agreements signed in the export processing zones remained ludicrous. In 2007, three trade unionists had already been murdered, and others had been imprisoned. Undeniably, that picture did not demonstrate an improvement in the situation. In its report, the Committee of Experts confirmed that no progress had been recorded concerning the reinstatement of dismissed trade unionists, the tardiness of procedures, trade union rights in the export processing zones, arbitrary dismissals and the violation of collective agreements, guarantees for the dismissal of civil servants,

consultation of social partners, revision of the Code of Labour Procedures and reform of the Civil Service Bill. Regrettably, the reality experienced by the workers of Guatemala confirmed that bleak picture. As regards the statistics provided by the Government, the Worker members treated them with scepticism and requested more precise information regarding the specific results of the technical mission. Lastly, they requested that the conclusions concerning the case be very clear and very firm.

The Worker member of Guatemala paid tribute to Pedro Zamora, Secretary General of the Sindicato de Trabajadores de la Empresa Portuaria Quetzal (STEPQ), who was murdered on 15 January 2007 for reasons linked to his role as a labour activist. The speaker welcomed the support of the International Trade Union Confederation, which had immediately sent a mission to the country. The ongoing impunity in Guatemala for those who committed anti-union acts should be brought to an end.

The speaker criticized the strategies that sought to silence and discredit trade unions and their leaders through intimidation campaigns in the press and unlawful entries and searches of trade union premises. While there were consultations under the tripartite committee established to comply with Convention No. 144, it remained necessary to recognize, abide by and monitor the strict application of the Conventions on freedom of association. The strategy to violate those Conventions included promoting activities by solidarity associations, cooperativism and anything that encouraged a neo-liberal economic project.

The speaker cited particular cases in which union workers had been dismissed and examples of labour law proceedings that had come to a standstill, in addition to a lack of willingness to enter into collective bargaining. Recalling other murders of union leaders in February 2007 in Guatemala City, the speaker stressed the need for the ILO to ensure that freedom of association and collective bargaining were protected in Guatemala.

The Employer member of Guatemala stressed that the ILO supervisory bodies were being used persistently and indiscriminately, even when national circumstances did not warrant it. A direct contact mission had proposed establishing a system to postpone cases to avoid that bad practice, but it had been entirely unsuccessful. The situation in Guatemala was far from being that in which there was a general climate of anti-union acts in the public sector and in private enterprise, even if the existence of some isolated acts had to be recognized. They would be heard by the courts and, if proven, severely punished. Those circumstances had been noted by the direct contact missions and the technical mission that visited Guatemala. There were hidden interests involved in the examination of the case, as was the situation some years earlier when the region was negotiating a free trade treaty and most countries involved were invited to supply explanations to the Committee. The current interest was identified by the Tripartite Commission on International Labour Affairs which argued that the case in question, like those examined by the Committee on Freedom of Association, should be taken into consideration in the report to be presented to the United States Congress as part of the examination of the free trade treaty. The supervisory bodies were being used as instruments, and therefore belittled and called into question. In Guatemala, the informal economy encompassed 75 per cent of the working population. Formal employment should therefore be generated as a priority. He indicated that in many cases, the bargaining that took place between workers and employers for the benefit of all workers in a company was carried out through mechanisms that, while recognized in law and in doctrine, did not include trade unions, but groups of workers represented in ad hoc committees or permanent committees, when the quorum for forming a union was not met. It amounted to good faith negotiations, held in accordance with the law and for the benefit of all the workers in the company. In the specific case of the export processing zones, the Employer member stated that one week earlier, negotiation of a tripartite agreement in a textile company had taken place, fully respecting and ensuring the union rights of all workers. He recalled that garment and textile companies accounted for 12 per cent of formal labour, encompassing some 120,000 jobs, of which over half were taken by women. Moreover, the collective agreements in force in the textile sector covered more than 10 per cent of the workers, demonstrating the progress made by Guatemala in promoting collective bargaining.

The Worker member of Norway recalled that the Committee had discussed the case for many consecutive years under Conventions Nos 87 and 98. Each year, the Government had asked for more time to rectify breaches of the Conventions, which raised doubts as to its political will. Workers in Guatemala continued to be victims of flagrant violations of labour rights. One of the three trade union leaders who had been murdered since the beginning of 2007 was Pedro Zamora, in Puerto Quetzal, who was in conflict with the management over privatization plans. Five of his colleagues and also the leader of the teachers' union had received death threats. Guatemalan workers were among the lowest paid in Latin America with only some 2 per cent represented by unions. Even fewer enjoyed the benefits of collective bargaining. The two new unions in the export processing zones referred to by the Government representative, represented only a tiny proportion of the workers in that sector, and they did not enjoy the right to strike or bargain collectively. Blacklists of union activists existed and court decisions ordering the reinstatement of dismissed trade unionists were not respected. She urged the Government representative to bring the murderers of trade union leaders to justice and to bring national legislation into line with the Convention without further delay.

The Government member of Norway speaking on behalf of the Governments of Denmark, Finland, Iceland, Norway and Sweden, noted with regret that the Congressional Labour Committee had issued an unfavourable decision regarding the reform of the Civil Service Bill. At the same time, the speaker welcomed the Government's recent acceptance of a technical mission to the country and expressed the firm hope that it would help the Government to take the necessary measures to bring the national legislation into conformity with the requirements of the Convention. The Nordic Governments further expressed grave concern at the acts of violence against trade union leaders and members that continued to be reported. Those acts included murder, death threats, the circulation of blacklists of trade union representatives and the persecution of workers because of the establishment of a trade union. The speaker pointed out that acts of violence against trade unionists were seldom investigated and even more seldom clarified. Although labour courts had often recognized unjustified dismissals of trade unionists, remedies were rarely granted. The Nordic Governments observed that those issues were also being examined by the Committee on Freedom of Association and noted with great interest that the Government had emphasized the importance of the dimension of work for the successful application of the Free Trade Agreement between Central America, the Dominican Republic and the United States, which entered into force in April 2005. The Government had pointed out that through the "Comply and Win" plan approved by the United States Government and the Ministry of Labour and Social Security, it had committed itself to publicizing and disseminating the Labour Code and the ILO fundamental Conventions, and to establishing the office of alternative dispute resolution. In that framework, and with the financial support of the United States Department of Labor, the ILO Subregional Office for Central America would undertake a project on strengthening of justice at work in

Central America and the Dominican Republic. The speaker expressed the hope that that project would result in significant accomplishments as regards the effective protection of fundamental trade union rights. Lastly, the Nordic Governments expressed the hope that the Government would introduce policies aimed at ensuring full respect for the human rights of trade unionists and that the protection mechanism would become operational in the near future. They again welcomed the Government's request for ILO technical assistance.

The Worker member of Nicaragua expressed his solidarity with the Guatemalan workers who lived in constant danger and criticized the anti-union attitudes and environment of impunity surrounding those who threatened and murdered workers. He referred to raids on trade union offices, as was the case with the Guatemalan Education Workers' Trade Union (STEG). He criticized the abduction of union leaders, such as Mr Nery Barrios, a member of the Unified Trade Union Popular Action Group (UASP), as well as practices seeking to thwart the free development of union activities and the fact that union leaders were forced to ask permission to leave the country and to be able to participate in international or regional organizational activities. The speaker also referred to the case of Mr Joviel Acevedo, leader of the education union, who was dismissed from his post and beaten. Judicial proceedings were slow and the legal authorities were generally ineffective, when it was their role to act as a watchdog of union rights and to prevent systematic violations of collective conventions. Lastly, the speaker urged the authorities to take the measures necessary to ensure public safety and the observance of collective conventions and freedom of association.

The Worker member of Spain indicated that experts in Latin American trade unionism usually cited the policies that had been implemented in Guatemala over many years as examples of systematic policies seeking to weed out the trade union movement. The Government purported that there were no reinstatement orders for illegally dismissed trade unionists pending before the labour courts, and that there were no complaints regarding the slowness of procedures relating to penalties for violating labour laws. The Government further purported that in spite of the numerous complaints concerning violations of collective agreements, acts of employer interference, acts of anti-union discrimination, particularly in the context of trade union formation and anti-union dismissals, most were resolved through mediation or the withdrawal of the complaint, meaning that, as a consequence, penalties were issued in only one case. Some 250 enterprises employed an average of 200 staff in the Guatemalan *maquila* industry. The Government purported that in March 2006, there were eight registered trade unions, including the two most recently established, with 51 members. By extrapolating those figures, the speaker calculated that the membership rate in the *maquila* industry would be 0.005 per cent – clear proof that the labour and salary conditions in the Guatemala *maquila* industry were unacceptable.

The Worker member of India expressed his solidarity with the cause of the Guatemalan trade unions and workers. Law and administration of justice in Guatemala had to be fully brought into conformity with the letter, spirit and requirements of the Convention. The Government had to make further efforts to guarantee the right to organize and collective bargaining. The speaker requested the Committee to call on the Government to expedite its efforts to give effect to basic trade union rights.

The Worker member of the United States welcomed the promotional measures taken by the Government referred to in the Committee of Experts' observation, as well as the establishment of the office of alternative dispute resolution. However, two fundamental shortcomings remained. Firstly, the labour rights dispute resolution mechanism in the Free Trade Agreement between Central America, the Dominican Republic and the United States only required the United States' trading partners, including Guatemala, to comply with the existing labour law, rather than bringing it into conformity with the ILO Conventions. Secondly, the promotional measures taken did not mean that non-conformity of the legislation with Convention No. 98 had been remedied. The 2003 United States State Department's Human Rights Report on Guatemala recognized the existence of anti-union discrimination, and the Committee of Experts' observation confirmed that the situation continued. The information provided by the Government to the Committee of Experts on the measures taken to advance trade union rights in the export processing zones was questioned, since only one collective agreement applied in that sector. Employer intimidation of workers, reinforced by dismissals or violence, when necessary, as well as direct restrictions on union access to workplaces had resulted in a union rate of less than 3 per cent and in a handful of collective agreements. Moreover, the Labour Code still required over 50 per cent authorization in an entire industry to form a union with the right to negotiate a sector-wide agreement, which was further undermining the integrity of collective bargaining. Finally, concern was expressed at the follow-up given to the direct contacts mission to Guatemala in 2004, which had asked the Government to take all necessary legal and practical measures to end violence against unionists. However, since then, an attempt to murder municipal worker leader Leonel García Acuña, death threats against workers in export processing zones, bank workers and food and beverage workers' leaders, attempted burglaries of union premises, raids on union offices, armed attacks on the rural workers' union, and the murder of Pedro Zamora had occurred. Given the ongoing non-compliance with Convention No. 98, a special paragraph concerning the case was required.

The Worker member of Colombia indicated that the information, explanations and successive pledges by the Government of Guatemala had been heard repeatedly, but without any specific or positive results. The Committee of Experts' report and the constant complaints made by the Guatemalan trade union movement demonstrated that the situation in terms of freedom of association, human rights, collective bargaining, the right to strike and the right to organize had deteriorated significantly owing to the increase in anti-union practices in Guatemala. It was unacceptable for the Government to explain and make commitments without genuine change taking place and without any respect for the Committee's endeavours. The extensive report by the Committee of Experts was an invitation to the Government and employers to comply with the scant legal rulings that ordered unfairly dismissed workers to be reinstated, to expedite proceedings to punish breaches of freedom of association, to promote collective bargaining, to bring forward consultations on a new Labour Code and in general, to bring about an atmosphere of respect for freedom of association. He considered it unacceptable for the Government to publicly indicate that workers did not join unions because they did not believe in trade unionism and that they preferred other organizational activities such as cooperativism or solidarity movements. In reality, workers did not form unions because they were afraid of reprisals, being dismissed or even losing their lives.

The Government member of Mexico speaking on behalf of the Government members of the Group of Latin American and Caribbean countries (GRULAC), indicated that Guatemala had shown signs of receptiveness and cooperation with ILO supervisory bodies. It had received technical assistance missions and had requested cooperation with the Office in order to apply and comply with international labour standards. With that assistance, it had implemented measures seeking to address its problems and had institutionalized tripartite dialogue. GRULAC

asked the Committee to take that into account when giving its conclusions. It further indicated that it reserved the right to give its opinion during the Conference plenary when the Committee's report was adopted and to express its opinion on the working methods and the establishment of the list of cases to be examined by the Committee.

The Government representative reiterated his Government's commitment to applying the Convention and to continuing to cooperate with the supervisory bodies. He indicated his interest in cooperating with the workers and employers in order to make headway in social dialogue as well as in submitting the information requested as part of the assistance mission and by the Subregional Office. He stressed that the Government did not deny the problems, but that it wished to share the efforts that it had made to date with the assistance of the ILO. He expressed the hope that that assistance would continue and stressed that the current situation was better than that of ten years earlier.

The Worker members stated that the discussion had allowed a review of the serious problems arising in Guatemala concerning the application of Convention No. 98. They believed that the facts presented by the Government were unconvincing and underlined that the information had been contradicted by the Worker member of Guatemala and other Worker members from the region, as well as by the Nordic Governments. The Worker members therefore reiterated the same requests that they had made to the Government over a lengthy period: to recognize the reality and magnitude of the problems set out by the Committee of Experts; to establish a legislative framework permitting the true exercise of the right to strike and the right to bargain collectively, both in the public and in the private sector, as well as in the export processing zones; and to guarantee the protection of trade unionists against anti-union acts. In the light of the picture painted by the Conference Committee, the Worker members stated that they envisaged requesting, at the subsequent reading of the conclusions, that the case be mentioned in a special paragraph of the Committee's report.

The Employer members observed that much of the discussion had related to matters concerning Convention No. 87. However, the Committee's conclusions could only address issues relevant to the Committee of Experts' observation and to Convention No. 98. They hoped that the report of the technical advisory mission would be available shortly. The Government should then prepare the necessary legislative draft amendments, in cooperation with employers' and workers' organizations, and report on them in time to the Committee of Experts, as a basis for examination by the Conference Committee.

Conclusions

The Committee noted the statements made by the Government representative and the discussion that followed, as well as the cases presented to the Committee on Freedom of Association. The Committee noted with concern that the pending problems had persisted for many years, involving cases of non-enforcement of reinstatement orders of dismissed trade unionists; the slow procedure related to sanctions for violations of labour and trade union legislation; the need to promote trade union rights in export processing zones (*maquila* enterprises); the large number of anti-union dismissals in both the private and public sectors; inadequate guarantees against procedures for the termination of civil servants; the low number of collective agreements and the violation of a large percentage thereof. The Committee took note with great concern of the acts of violence and intimidation against trade unionists contained in the comments by the International Trade Union Confederation. The Committee noted that a mission of technical assistance had visited the country in February–March 2007, and that it had formulated a number of recommendations for the Government.

The Committee noted the Government's statements including: (1) a request for ILO technical assistance on the different matters raised by the Committee of Experts; (2) the highlighting of the results of the work undertaken by the National Tripartite Committee in relation to such matters and the results of the rapid intervention mechanism in cases of violation of trade union rights in practice; and (3) information on different bills, legislative initiatives, and first drafts under discussion, as well as information on the organization of tripartite seminars in the maquila.

The Committee expected that the Committee of Experts would examine the report of the technical assistance mission and transmit to the present Committee the most important information on the application of the Convention. The Committee also expected that, in light of the mission's conclusions, the Government, in consultation with the employers' and workers' organizations, would rapidly take the necessary measures to make the required changes in law and practice, so as to overcome the problems related to the excessively slow procedures in cases of anti-union discrimination (in particular through the amendment of the Code of Labour Procedures), the reduced number of collective agreements and the remainder of the pending issues, including the situation of maquila enterprises (export processing zones).

The Committee reminded the Government of the imperative need to put an end to acts of violence against trade unionists and to ensure the security of all unionists who were victims of threats.

The Committee expressed the hope that it would be in a position, in the very near future, to note that progress had been made in law and practice, especially in the light of the Government's request for ILO technical assistance once again. The Committee requested the Government to take rapid action and to send a complete report to the Committee of Experts. Finally, the Committee requested the Government to accept the visit of a high-level mission before the next meeting of the Committee of Experts.

Convention No. 100: Equal Remuneration Convention, 1951

JAPAN (ratification: 1967)

A Government representative said that her Government had been making various efforts to diminish the unreasonable wage gap between men and women, such as enforcing the relevant legislation, including section 4 of the Labour Standards Law prohibiting gender discrimination in remuneration, and the Equal Employment Opportunities Law prohibiting gender discrimination in all phases of employment management. This legislation had a major impact on the determination of wages, in areas such as recruitment, hiring, job assignment, promotion and training, etc. As a result, the wage disparity had declined steadily, but there still remained a gender gap. The main factors behind the remaining gap were the uneven distribution of men and women workers in managerial positions and the difference in the average length of service between men and women.

Recognizing the great importance of better employment management, her Government had been encouraging employers' and workers' organizations to clarify the actual situation of wage disparity between male and female workers in each company, to discuss measures to address it and to develop fair and transparent systems including clearer criteria for wage determination and appraisal systems for individuals. She indicated that one of the measures taken for this purpose since 2003 was the preparation of "Guidelines on the Improvement Measures of Wage and Employment Management for Eliminating Wage Disparity between Men and Women", which had been widely distributed to employers' and workers' organizations. In addition, the Equal Employment Opportunities

Law, revised in 2006, had strengthened the ban on gender discrimination in the allocation of duties and responsibilities. She indicated her Government's willingness to endeavour to make further progress by continuing to implement these measures.

Concerning part-time workers, the Diet in its current session had passed a Bill to revise the Part-Time Work Law with a view to correcting unreasonable disparate treatment of part-time workers. Her Government believed that the revised Law would eventually contribute to diminishing the wage gap between men and women, as the majority of part-time workers were women.

In conclusion, she requested the Committee to understand that reducing the wage gap required reviewing the country's long-standing employment management systems and practices, which were themselves products of negotiation between workers and management. Based on careful observation of the changes in such systems and practices in the context of the globalization of the economy as well as the declining birth rate, her Government would continue, with the understanding and cooperation of employers and workers, to promote yet more actively measures to improve employment management so that the wage disparity between men and women would be diminished. She added that in its annual report, her Government would provide replies to the comments of the Committee of Experts, including the latest statistical data, and would continue to inform the ILO of the progress in the situation.

The Employer members emphasized the need to focus on the issue addressed by the Convention, namely equal pay for work of equal value, and not to expand the debate into other, albeit, important matters of gender management and discrimination. They noted with appreciation the acknowledgement by the Government that there was a problem and its commitment to working continually towards the eventual eradication of wage discrimination. The Employer members recalled that article 4 of the Labour Standards Law prohibited gender discrimination in remuneration and that the revised Equal Employment Opportunities Law, which came into force in April 2007, explicitly prohibited discrimination based on sex in the assignment of tasks and responsibilities, as well as in any other changes concerning the occupation or employment contract of a worker. The Government had also produced guidelines in 2003 on measures to improve wage and employment management with a view to eliminating wage disparity between men and women. They further noted with interest a Bill to revise the Part-time Work Law. All of these measures amounted to a clear indication that the Government was addressing this important matter. The Employer members concluded that the laws in place were adequate to address the issue and that the crux of the matter lay in implementation and monitoring, which were the main focus of the comments by the Committee of Experts.

With regard to data, the Employer members emphasized the importance of avoiding incorrect assumptions based on the data provided. While the figures contained in the report of the Committee of Experts were a matter for concern, they could not solely be attributed to non-compliance with the principle of equal pay for work of equal value, which was set out in the current legislation. The situation arose from problems of application and, in particular, from the type of situation that existed in many countries in which women's jobs were focused in certain industries or at certain levels. In addition, many women worked in temporary employment and there were fewer women than men in management.

Turning to the issue of career tracking, the Employer members noted that it was often an effective tool for fast tracking of skilled persons. Nevertheless, it was important to ensure that women were appropriately represented in the process, and this was definitely an area that could be improved upon. In addition, the principle of allowing long service to play a key role in determining pay could create problems, particularly as many women took career breaks for personal reasons and then re-entered the job market some years later. In this respect, they noted that many employers were restructuring wages so that the long service aspect played less of a role in pay levels, with greater emphasis being given to the value of the job and the related deliverables.

They therefore concluded that the Government acknowledged the existence of the problem, was prepared to rectify the situation and was taking steps to do so. The legislation was in place and the recent amendments had tightened the manner in which discrimination was addressed. Other means had been introduced to assist in the advisory and education process and there were specific projects addressing the structure of pay. The Government should therefore be encouraged to continue along the path that it had mapped out and should be requested to provide further information, including reporting data that allowed for a more accurate assessment of the situation.

The Worker members emphasized that Japan was not known as a country of inequalities. The pay gap between men and women was therefore surprising. The observation of the Committee of Experts showed that the overall pay gap between men and women full-time workers had hardly changed since the beginning of the century, passing from 34.5 per cent in 2000 to 34.3 per cent in 2004. Furthermore, the pay gap had grown between part-time workers, with the pay of women being lower than that of men. Moreover, the pay gap was wider than in other industrialized countries.

Japan had made efforts to correct these inequalities. In 2006, the national legislation had been amended to prohibit, as from April 2007, any discrimination based on gender in relation to the assignment of tasks and responsibilities. Nevertheless, it could already be foreseen that the new law would not bring about a firm solution, as it did not integrate the essential principle of Convention No. 100, namely equal remuneration for work of equal value based on an objective and a non-discriminatory evaluation of the various tasks to be carried out. In recent years, the persistence of the pay gap between men and women had demonstrated that the situation was the result of a systematic under-evaluation of tasks undertaken principally or exclusively by women.

The revision of the legislation in 2006 related to indirect discrimination. However, the revision was limited as it allowed the competent ministry to examine only a limited number of situations that could be described as indirect discrimination, instead of setting out a general definition of indirect discrimination which could be applied in many situations. The Government had also issued voluntary directives aimed at encouraging workers and employers to revise their management systems for wages and employment. However, there was very little information available on the impact of these directives. What could be seen was that the use of career tracking systems led to a very weak participation of women in managerial positions. The Committee of Experts had further observed that, of the 122,793 inspections carried out in 2004, only eight violations of the legislation on equal remuneration had been found. None of them had been considered serious enough to be referred to the Prosecutor's Office, which did not appear very credible.

The Government needed to make greater efforts to reduce the pay gap between men and women in an effort to avoid being among the worst industrialized countries in the field of equal remuneration. To do so, it would have to: bring its legislation into conformity with the provisions of Convention No. 100 and establish the principle of equal remuneration for work of equal value; introduce a new general definition of indirect discrimination; strengthen its action at the enterprise level for the revision

of wages and employment management systems; and reinforce the labour inspection system.

The Worker member of Japan said that the ILO had been drawing the Government's attention to the issues of the wage system, career track management and indirect discrimination. The main factors in the gender wage gap lay in the use of career tracking systems, job allocation and posting, and the relatively low wage level for atypical workers, including part-time workers, who were predominantly women. The Government representative had indicated that the Equal Employment Opportunities Law, revised in 2006, was expected to improve the situation in relation to job allocation and posting. However, she said that she did not agree with the Government representative that length of service was one of the major factors in the wage gap, as the length of service of Japanese workers was now similar to that of workers in other developed countries. She also challenged the statement by the Government representative that the overall situation in relation to the wage gap had been steadily improving, because the pace of the change was too slow.

She indicated that under the Japanese wage system, a wage was determined through personal elements and job elements, and wages were not therefore directly related to the classification of the job. Article 4 of the Labour Standards Law, which prohibited wage discrimination based on gender, did not literally stipulate the principle of "equal pay for work of equal value", even though it was the legal basis for ratifying the Convention. However, even within this context, the introduction, implementation and expansion of the principle of equal pay for work of equal value were possible and necessary. There had already been a verdict applying the job evaluation method. It was therefore necessary for the Government to promote the application of job evaluation methodologies. The trade unions would concentrate their efforts on establishing a wage system based on job classification that was applicable across enterprises.

She said that the career track management was used as a de facto gender-based employment management system as it allowed employers to classify workers in different career paths, such as major career track and minor career track. The revised Equal Employment Opportunities Law allowed in its implementing guidelines "distinctions based on employment management" and prohibited gender discrimination only within the same career category. This was not in line with the principle of "work of equal value". The Ministry of Health, Labour and Welfare had recognized the problems arising from the career tracking system and had issued an official notice indicating in detail the points to be taken into account in order to avoid gender-based employment management. Although certain progress could be seen, the situation was continuing without significant improvement.

The revision of the Equal Employment Opportunities Law in 2006, ten years after the previous revision, focused principally on prohibiting indirect discrimination. Only three criteria were defined in a ministerial ordinance, which could constitute discrimination if the employer could not provide justification for them. They were as follows: (1) the requirement of a certain height, weight and physical strength on recruitment and hiring; (2) the requirement of nationwide transfer upon recruitment and promotion of workers in the major career track; and (3) the requirement of transfer for promotion. The Japanese trade unions had called for a general prohibition of indirect discrimination, but their claim had not been accepted. Verification was needed as to whether these restrictive provisions were in conformity with the legislation requested by the Committee on the Elimination of Discrimination against Women. Another issue relating to indirect discrimination was whether or not discrimination against part-time workers should have been regarded as indirect discrimination. The Government viewed it as discrimination by type of employment, rather than indirect discrimination, while the trade unions considered it to be gender discrimination.

In May 2007, the Part-Time Law had been revised to prohibit discriminatory treatment of part-time workers whose duties and responsibilities were considered the same as those of regular workers. But the number of part-time workers covered by such protection was only 1 to 5 per cent. The Law therefore needed to be revised to prohibit discriminatory treatment for all part-time workers.

She added that the Advisory Council for Regulatory Reform set up by the Government had recently produced a position document on labour calling for drastic changes in the labour legislation with a view to reducing worker protection and increasing the use of atypical forms of employment. With regard to pay equity, the Advisory Council had come out against the implementation of the principle of equal pay for equal work and had suggested that the State should establish conditions for increased mobility of employment. Her trade union confederation, RENGO, strongly objected to this position document and even the Minister of Labour and Welfare had indicated that its conclusions were not in conformity with current government policy. The position document had therefore been removed from the Council's final conclusions, but it was necessary to remain vigilant and raise the alarm whenever necessary.

The Employer member of Japan indicated that the statistics contained in the report of the Committee of Experts were based on an average of the monthly pay of a large sample of the population and on different kinds of pay systems. One of these was pay based on the job or the work performed, while the other consisted of pay based on the person, reflecting length of service and other factors. Over the years, the relative share of the two components had changed. In very general terms, around 70 per cent of average pay had been based on the pay system geared to the person, with 30 per cent being geared to the work done. In recent years, according to a study carried out by the Japan Productivity Centre, the trend had been reversed, with an average of 30 per cent being based on the person and 70 per cent on the work performed. He added that in May this year the employers' federation had prepared a proposal for the restructuring of the pay system in the light of the need for companies to be competitive and in view of changing social and economic circumstances. This placed emphasis on shifting towards a pay system that created a better environment in which employees could meet the challenge of the future, which would be based on the principles of equity, objectivity, visibility and gender equality in pay systems.

The Worker member of Pakistan recalled the fundamental importance of Convention No. 100 and called on the Government of Japan to bring its law and practice into conformity with the Convention. Japan was one of the major world powers and needed to recognize the need to comply with its international commitments, as outlined by the Committee of Experts. Although the Government had recently amended the legislation, it needed to take measures to prevent indirect discrimination and should engage in consultation with the social partners. In particular, measures were needed to prevent abuse through the career tracking system and to establish effective inspection machinery. The main concern was that the gender wage gap had been reduced very little over the past 20 years, as indicated in the report of the Committee of Experts. Although the Government claimed to be monitoring the situation, it was of great importance to ensure a congenial working environment for women, especially those engaged in part-time and temporary work and in the informal economy. Moreover, it was a matter of concern that so few violations had been identified by the labour inspection system, despite the high number of inspections carried out. It was therefore essential to ensure that in-

spections were targeted at work typically performed by women, carried out in a transparent manner and undertaken in collaboration with workers' organizations in the enterprise. There was also a need to share examples of good practice. He hoped that the Government would take the measures recommended by the Committee of Experts in cooperation with the social partners with a view to giving full effect to this very important Convention.

The Worker member of Singapore recalled that the Convention was intended to address a significant imbalance that existed in society today, namely the serious and grossly unfair undervaluing of women's work compared to men simply because of their gender. There was no research or evidence to show that women were less productive or less capable than men, but they continued to receive less pay for work of the same value and to suffer significant barriers to their career advancement. There was no doubt that Japan would never be where it was today without the contribution of its women. Yet they continued to suffer discrimination and pay inequality. If women continued to earn significantly less, it was not because of their shorter service, as the Government representative had maintained. The gap in length of service between men and women had narrowed as more women opted to stay in the labour market after marriage or childbirth. So there were clearly other factors at work. It was therefore necessary to look closely at the legislation, practices, structures and systems, which were often so institutionalized and deep-rooted that a great deal of effort was required to eradicate them.

She added that the case of indirect discrimination was an example of an issue on which the legislation had been amended, but where the problem persisted. Employers were still allowed to impose certain criteria when employing workers, even though it was clear that women would face greater difficulty than men in meeting those criteria. The Government therefore needed to make it clear that any form of discrimination, whether explicit or implicit, was unacceptable and should be clearly prohibited by the legislation. Another practice that appeared to offer a way of circumventing the law was the career tracking system. Although on the surface it seemed to be simply a management tool to select better performers, it could become a tool of suppression as women stood little chance of entering it, as admitted by the Government in its report to the Committee of Experts. Indeed, a Government survey in 2003 had shown that the overall number of women on the main track system was 3.5 per cent. She therefore urged the Government to work closely with the social partners to address the issues raised, end discrimination against women and comply with its obligations under the Convention. She added that it was also in the interests of employers to ensure that there was a fair and transparent system. If they deprived themselves of the best people for the job, they would be at a competitive disadvantage in today's battle for talent.

The Worker member of India noted that, although the Government claimed that the disparity in gender pay had been reduced over the past 18 years, it recognized that the remaining gap was still wide when compared with other countries. Although the legislation on equal remuneration had been revised, the revision had failed to address pay discrimination because it had not prohibited direct and indirect discrimination in procedures for the determination of wages. He expressed full agreement with the observation by the Committee of Experts that the application of the principle of equal remuneration required consideration to be given to the remuneration received by men and women performing jobs of equal value. It was likely that the persistent disparity had occurred due to discrimination which resulted in work performed predominantly or exclusively by women being undervalued. It was also a cause for alarm that, despite the large number of inspections carried out, only eight cases of violations had been identified, none of which were sufficiently serious to be referred to the Prosecutor's Office.

It was now a global phenomenon that employers in all countries were endeavouring to exact more work for lower wages from all workers in general, and from women and children in particular. Although it was a highly developed and industrialized country, Japan was no exception. Women were doubly exploited at home and in the workplace. This practice would continue until society accorded the dignity and honour to women that they so fully deserved.

The Worker member of the United Kingdom said that although Japan and her own country were oceans apart, they shared many things, including the failure to implement Convention No. 100. She emphasized that unequal pay reflected on the value that society placed on women's work, women's roles and women's position in society. Although Convention No. 100 was among the most widely ratified ILO Conventions, she wondered how many countries actually gave their women, both full-time and part-time workers, equal pay for work of equal value. She added that when reference was made to women breaking their service, what was really meant was having babies. What was needed was the coherent and transparent implementation of effective job evaluation with full protection under the law to ensure that all women workers had access to equal pay, including the protection from direct and indirect discrimination of vulnerable workers and those in atypical employment relationships.

She concluded that Convention No. 100 needed to be implemented to its fullest meaning; all forms of discrimination, including indirect discrimination, had to be eliminated; and social dialogue should be promoted with a view to speeding up the process of achieving equal remuneration for all the workers affected. In the words of a famous Scottish poet, we are blessed only if we have the gift of seeing ourselves as others see us. She therefore called on everyone to examine themselves before judging others.

The Government representative noted the points raised by the members of the Committee. Her Government considered that diminishing the wage disparity between men and women was an important issue, and would therefore continue to take the most effective measures to address it and to obtain the understanding and cooperation of employers and workers in this respect. Regarding some of the matters brought up during the discussion, her Government would take them into consideration in conducting further studies on measures to be taken in the future and would keep the ILO informed of any relevant developments.

The Employer members emphasized that they fully recognized the value that women brought to the workplace and their overall and invaluable role in society. They also fully endorsed Convention No. 100. However, they believed that it was necessary to examine the situation before the Committee on its merits. There was common agreement that there was a wage gap problem that needed to be addressed. However, it was necessary to recognize that the Government was active in adapting its legislation, that an advisory body was in operation and that guidelines had been disseminated. All of these measures were to be welcomed. What still required attention was the implementation of the legislation, monitoring and reporting.

The Worker members urged the Government to reduce the wage disparity between men and women as soon as possible. Between 1986 and 2004, a period of almost 20 years, the disparity had been reduced by only by 8 per cent and, since 2000, this reduction had clearly come to a stop. The Government needed to take multidimensional measures, to reduce the gap. They called on the Government to create an environment conducive to diminishing wage disparity by taking measures to encourage the social partners to review the system of employment manage-

ment and promotion in enterprises. In addition, in order to demonstrate its conviction and determination to diminish the wage gap between men and women, the Government should establish a precise time frame within which to achieve this objective, and include this in its general economic targets.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee noted that the Committee of Experts had been commenting for a number of years on the persistent and wide gender pay gap, the legislative framework, and pay discrimination arising out of wage and employment management systems.

The Committee noted the detailed information presented by the Government concerning the laws and regulations, guidelines and policies in place to address discrimination against women, including with respect to wages. The Committee noted in particular that the Equal Employment Opportunities Law had recently been amended to prohibit discrimination based on sex with respect to assignment of tasks and responsibilities.

Noting the persistence of the wide gender pay gap, the Committee welcomed the Government's commitment to take effective measures to address this issue, and acknowledged that steps had been taken to address gender discrimination, including regarding wages. The Committee urged the Government to promote more actively equal remuneration for men and women for work of equal value in law and in practice, to strengthen the implementation and monitoring of the existing legislation and measures, and to assess the impact on indirect discrimination and equal pay for work of equal value. It also requested the Government to further examine the impact of wage and employment management systems, including career tracking systems, on the earnings of women, with a view to addressing wage discrimination. The Committee urged the Government to create an environment conducive to eliminating the gender pay gap, including through providing incentives, guidance, and improving enforcement in this area, as well as stepping up its efforts to promote objective job evaluation methods. The Committee called for further tripartite consultation on all these matters.

The Committee requested the Government to reply to all the comments of the Committee of Experts as well as all the requests made by this Committee in its report due this year under article 22 of the ILO Constitution.

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

BANGLADESH (ratification: 1972)

A Government representative quoted from the Bangladeshi Constitution, the preamble of which mentioned that the fundamental aim of the State was to realize a society free from exploitation – a society in which the rule of law, fundamental human rights and freedom, equality and justice, political and social, would be secured for all citizens. Article 10 of the Constitution stated that "steps shall be taken to ensure participation of women in all spheres of life", while article 19(1) stated that the "State shall endeavour to ensure equality of opportunity to all citizens". Furthermore, article 28(1) clearly prohibited discrimination, stating that the "State shall not discriminate against any citizen on grounds of religion, race, caste, sex or place of birth", and article 28(2) stated that "women shall have equal rights with men in all spheres of the State and of public life".

The Bangladesh Labour Law of 2006, which was a result of tripartite consultation, contained special provisions to ensure opportunities and rights of women. It also made all citizens eligible for employment and equal pay, irrespective of religion, race, caste, sex and place of birth. The Labour Law was in conformity with Convention No. 111.

Turning to the comment of the Committee of Experts, he noted that the first comment required reconsideration as there were sufficient legislative bans on discrimination in employment and occupation in Bangladesh. Regarding the second comment on participation of women in education and employment, the Constitution stated that there shall be equality of opportunity for all citizens in respect of employment of office in service of the Republic, and this was reflected in the Labour Law. The Law also permitted affirmative action in favour of women.

In Bangladesh, girls enjoyed free education up to higher secondary level, and the Government was considering extending this to university undergraduate level. In addition to normal facilities, female students had specific quotas for entering educational institutions and jobs. The Government ran programmes where female workers were separately enrolled for development of skills, education and economic empowerment. With respect to the Committee of Experts' comment on discrimination in equal access to employment, as well as the range of occupations, he could state that women in Bangladesh were not barred from entering any profession. Bangladesh's success in women's empowerment through microcredit was such that over 97 per cent of borrowers were women.

As to the third comment of the Committee of Experts concerning violence against women, including sexual harassment at work, the laws were unusually strict. The Suppression of Violence against Women and Children Act, 2000, was significant. Under this law, 42 special tribunals had been established in 33 districts, headed by senior judges. The Act provided severe punishment including life imprisonment for rape, abduction, dowry violence and trafficking. The Disabled Welfare Act, 2001, ensured equality of opportunity to disabled persons without gender discrimination. The Government had also established the Speedy Trial Tribunal 2002 to handle cases relating to violence against women and children, while the Women Convicted in Jail Privilege Act, 2006, provided skills to women convicts for reintegration after release. His Government believed that the Committee of Experts' third comment should have concluded the opposite of what it stated and was so general as to make it impossible to determine what would be a satisfactory answer.

Finally, he urged the Committee to consider the level of economic development of a country when its case was being examined.

The Employer members said that the case of Bangladesh in connection with this Convention was of great concern to the employers. The importance of the Convention resided in the fact that, apart from its ratification, it was mentioned in the 1998 ILO Declaration on Fundamental Principles and Rights at Work, which included the elimination of discrimination in employment and occupation.

In 2000 the literacy rate in Bangladesh was 54.6 and 42.5 per cent for men and women, respectively. In the two year period from 1995 to 1997, women represented only 8.57 per cent of the labour force in the public sector and independent organizations of the formal private sector.

Two observations were made. Firstly, with regard to the prohibition of discrimination as contained in Articles 1 and 2 of the Convention, although this prohibition was included in the Constitution, there was no law or provision in the Labour Code to enforce it. The Committee of Experts had requested the Government to include this prohibition in the reform, to examine the text before its adoption and, if necessary, to request ILO technical assistance. Secondly, they highlighted the low participation of women in employment and education. This had been confirmed by the United Nations report of 2005. The information provided by the Government on law and practice

on this matter was scant. As the Committee had requested, the Government had to supply more detailed information with regard to the specific action taken to eliminate discrimination against women and to promote their access to education and vocational training and employment.

The Employer members added that the July 2004 report of the United Nations Committee on the Elimination of Discrimination against Women had reported the existence of widespread violence against women, including sexual harassment in the workplace. The Government had to adopt effective measures against sexual harassment, by means of laws, policies and procedures, with the participation of workers' and employers' organizations, and punish such practices.

The Worker members recalled the three points made by the Committee of Experts and stressed that only when the country's name was added to the list of potential cases did the Government provide the additional information required. According to this information, the new Labour Code would no longer allow discrimination at the workplace or in wages, secondary education would be guaranteed for girls and sexual harassment would disappear. It was indispensable that the Government provide further information in order to evaluate any progress made. The situation was supposed to have evolved but its description did not seem credible. In fact, equal opportunities for women existed neither in employment nor in education nor in vocational training. Forty-three per cent of women worked in agriculture, the large majority of whom received no remuneration as they work in family enterprises, a sector where workers enjoyed no legal protection. Apart from the garment sector, where they accounted for 80 per cent of the workforce, women were almost totally absent from the formal sector.

In Bangladesh, women were subjected to three types of serious discrimination: poor working conditions in the garment sector were actually worse for women; women could only find work in sectors where labour law was not applied, such as agriculture and export processing zones; and maternity leave was not granted.

According to a study carried out in 2000, their wages were only 58 per cent of men's, partly because they did not have access to skilled jobs. In 1997, 32 per cent of women workers earned less than the minimum wage as compared with 6 per cent of men. The situation was made worse by the fact that women found it difficult to get training, which was a preserve of men. To earn the minimum wage in the garment sector, namely US$23 per month, women worked six days out of seven, sometimes up to 12 hours a day.

The Worker members referred to the tripartite agreement signed on 12 June 2006, which guaranteed many rights, among which was the right to a letter of engagement, maternity leave, weekly time off and regulation of overtime. The Government had to ensure the implementation of the agreement and that women obtained their rights. The Worker members concluded by stressing that women workers in Bangladesh were among the most exploited workers, and had neither protection nor rights.

The Worker member of Bangladesh stated that discrimination of any sort, whether in respect of employment, or any other fundamental socio-economic right, had roots lying deep in the very core of society. To eradicate it, therefore, its root causes needed to be addressed. He acknowledged that although it was prohibited by law, gender discrimination still existed in his country, for two basic reasons. The first reason was socio-economic in nature: although Bangladesh had had, at the outset of nationhood, a large state-owned industrial sector, its industries were gradually privatized, beginning in 1975. Sixty per cent of these industries collapsed, whereas the rest of the private sector failed to prosper, in spite of measures by the Government to foster its growth. Bangladesh hence remained an underdeveloped and largely agrarian nation.

He observed that, according to a recent survey by the Bangladesh Institute of Labour Studies, 45 per cent of the working-age population of 80.8 million were unemployed, and of the unemployed 35 per cent were women. The fierce competition for jobs resulting from such massive unemployment posed a barrier to women's entry into the labour market. The second cause of gender discrimination was socio-cultural in nature. Though secularism had been a guiding principle of the nation since its foundation, politicians had exploited religion and religiosity for their gain, so that society was still saddled with traditional values deeming women's proper place to be in the household, not the workplace.

He maintained that legislation was important to overcoming these obstacles but was not, in itself, sufficient. Changing deeply rooted social values would require no less than a cultural movement. In this regard, he stated that the political transition his country was undergoing gave rise to the possibility of a thorough socio-cultural change which, he hoped, would overturn those values contributing to women's discrimination. Efforts to promote women's employment through legislation still played a vital role; nevertheless, he expressed regret, that the new labour law – apart from sections on maternity benefits and working hours for women – contained no such provisions.

He stated that the present Government was in fact an interim one, and had taken many steps to eradicate corruption and poor governance. It had also taken the initiative of ensuring the payment of minimum wages for garment workers, as agreed upon by a tripartite negotiation, and had enacted many new measures to fulfil its mission. He welcomed the Government's stated determination to free the trade union movement of political influences and called upon it to issue an ordinance on the recruitment and employment of a minimum quota of underprivileged women.

The Employer member of Bangladesh stated that several recently published studies confirmed that poverty had been reduced in Bangladesh, primarily through growth in the service sector and such labour-intensive sectors as food processing and footwear. This, in turn, had led to increased employment opportunities for women: 54 per cent of the new jobs created had gone to women, and that proportion was 80 per cent in the ready-made garment sector. Several press articles had highlighted a number of good employment practices to address gender discrimination, including the adoption of new approaches to generating employment and the collection of data disaggregated by sex. Problems still existed, of course, but these were in decline.

The main cause of Bangladesh's economic problems, he remarked, was a governance deficit in the labour market, and only by reducing poverty could the problem of gender discrimination be meaningfully addressed. He maintained that Bangladesh's efforts to reduce poverty and empower women had been acknowledged worldwide, as demonstrated by the awarding of the Nobel Peace Prize to Mohammed Yunus. The Committee of Experts ought to have noted such information, instead of relying on secondary information in formulating its comments.

He stated that he had served on the commission tasked with drafting the new Labour Code and that, in the process of the law's preparation, every effort had been made to incorporate the views of all groups by issuing public notices to different organizations. In spite of this, many of the groups solicited failed to reply, and the issue of gender discrimination did not figure prominently in the replies of those that did. Nevertheless, trade unions, women's non-governmental organizations (NGOs) and human rights NGOs were all closely associated with and contributed to the drafting of the new law.

He remarked that a new permanent law commission, headed by a former Chief Justice, had been created, and had the authority to receive complaints of gender discrimination. The Office ought to inquire as to whether any complaints had thus far been received. He concluded by stressing that the fundamental issue was whether, on balance, the problems related to gender discrimination were escalating or in decline. The latest information available demonstrated that they were in decline.

The Worker member of Japan stated that the Committee of Experts had in recent years, regularly been issuing observations on Bangladesh's implementation of this Convention. Observations were issued in 2000, 2003, 2005, and again this year – with a double footnote. The contents of the comments were almost always the same, as the reports submitted by the Government contained very little or no information, demonstrating a clear lack of progress in the Convention's implementation.

Although a new Labour Code was reportedly enacted, she remarked, it was shocking that nobody, including the Committee of Experts and the members of this Committee, had a precise notion of its provisions. She expressed concern moreover that from all available indications, the new law excluded certain groups of workers from the right to association and contained no provisions to promote gender equality. She strongly urged the Government to provide a copy of the new legislation, translated into English, so that the Committee of Experts could examine its conformity with the Convention's requirements.

She stated that, according to an analysis by her colleague, Tomasz Wojcik, 58.3 per cent of Asia's population were covered by the Convention. The people of Bangladesh should be able to count themselves among those enjoying the protections afforded by the Convention; unfortunately, such was not the case.

She maintained that the present case was typical of others marked by a lack of progress, and brought to mind the familiar phrase "ratification is one thing, and implementation another". She called upon the Government to fulfil its obligations under the Convention by revising the law on the basis of tripartite consultations – while ensuring that the social partners' contributions were incorporated to the greatest extent possible – and reporting fully to the ILO supervisory bodies.

The Government member of Egypt referred to the statement made by the Government representative of Bangladesh, which gave information on the new Labour Code promulgated in the past months. She reiterated that some time was needed for the Government to apply the Code, and remedy the situation from the practical side. The ILO could also provide technical assistance and advice to the Government in that regard. She reiterated that non-discrimination in the employment of men and women in the labour market was one of the achievements that would help raise the level of economic development, which was an aim shared by all countries. She concluded that she hoped that the Committee would take into consideration the statement made by the Government representative of Bangladesh on his country's efforts to fulfil the requests made in the observation of the Committee of Experts. The Government could communicate to the ILO a copy of the new Labour Code.

The Worker member of Greece stated that he was dazzled by the picture drawn by the Government: workers benefiting from 16 weeks maternity leave; compulsory schooling for girls up to secondary school; judicial sanctions for violence against women. This picture was obviously far from the observations of the Committee of Experts. The Committee's information was perhaps out of date and the Government had perhaps accomplished great improvements and discrimination had actually been abolished. If this progress was true, the Government should be congratulated, but if the progress was only theoretical, the Government should be asked to appear once again before this Committee in order to explain the situation at the risk of having to hear that it had not told the truth.

The Government member of Belarus thanked the Government for its clear and well-argued presentation. He welcomed the 2006 adoption of the new Labour Code, the provisions of which would improve the country's labour situation and, as such, played an important role in the implementation of the Convention. He stated that, in addition to legal amendments, other programmes to increase women's participation in the workforce had been implemented as well. Of these, the microcredit programme in particular was an excellent model for the economic empowerment of women.

He observed that the issue of sexual harassment was a highly topical one. It existed everywhere, and in addressing the subject care must be taken to also consider such matters as the way of life and cultural norms of the country concerned. He expressed surprise that the Committee of Experts had failed to take note of the effective use of the courts in tackling the problem of sexual harassment. The Committee should fully consider all the available information and be more attentive in drafting its comments. He stated that the Government ought to be commended for its efforts. Assistance should be extended to allow it to increase its institutional and programme implementation capacities.

The Government member of Malaysia welcomed the Government's commitment to eliminating the practice of discrimination in its country, as demonstrated by the new Labour Code and several programmes to implement the provisions of the Convention. Such measures deserved the recognition of the entire Committee. He trusted that the Government would continue to fully respect and implement the Convention, and expressed the hope that it would continue to engage in constructive social dialogue as a means of doing so.

The Government member of Cuba stated that his delegation had noted that the Government of Bangladesh had recently adopted a new Labour Code which demonstrated the will of the Government to make progress in the implementation of labour standards. It was appropriate in such cases that this new document be presented to the Committee of Experts for evaluation. If there was any disagreement as to the conformity of the new law with the Convention, it would be appropriate that the Government consider the possibility of availing itself of the technical assistance of the ILO. This procedure was in line with the promotion of cooperation between the parties, in order to achieve the adoption of legislation and the application of laws which reflect the content and spirit of ILO Conventions.

The Government member of China stated that the principle of equality was embodied in the Constitution and new Labour Code. Taking note of the women's microcredit programme in particular, he remarked that the Government had also made genuine efforts to combat discrimination and apply the Convention in practice. He asserted that, as Bangladesh remained an underdeveloped country, its economic development was crucial to overcoming the challenges it faced in implementing the Convention. He concluded by encouraging the ILO and the international community to provide assistance to the Government in its efforts to promote gender equality at work.

The Government representative thanked all speakers for their comments. With respect to the comments made by the Worker member of Greece, he clarified that the new Labour Code provided for maternity leave for a period of eight weeks before birth, as well as a period of eight weeks after – 16 weeks in total. The new Labour Code, he stressed, was enacted after considerable discussion with the social partners and was available in Bengali, and would soon be translated into English.

He maintained that he had not intended to convey the impression that discrimination and sexual harassment had

been completely eradicated in Bangladesh: clearly, those problems still existed. Nevertheless, considerable progress had been made, and the Government would continue to strive towards the complete elimination of discrimination in the workplace.

He stated that the purpose of the Committee's deliberations was not to "score points", but rather to work together towards the faithful implementation of ratified Conventions. With this common aim in mind, he suggested the possibility of establishing some mechanism for enhanced information sharing amongst the social partners. He concluded by emphasizing that the Government faced substantial limitations with regard to resources and institutional capacity. The Government needed time to overcome these limitations and trusted that, in this respect, it had the understanding of the members of the Committee.

The Employer members thanked the Government for the information supplied and requested that the progress made by Bangladesh with regard to the application of the Convention be evaluated. They said that they considered non-discrimination and equality of opportunity to be very important issues.

Ever since the adoption of the Declaration of Philadelphia, the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work, employers had been deeply committed to equality of opportunity. The Government had indicated that it had apparently made progress and this had to be corroborated through an analysis by the Committee of Experts. Bangladesh could request ILO technical assistance and had to cooperate with the ILO. They pointed out that the collaboration of employers' and workers' organizations was also important. The formulation of the Labour Code was part of that collaboration and its application also required the cooperation of workers and employers.

In conclusion, they thanked the Government of Bangladesh for the information provided and indicated that the relevant information on the progress made with the new Labour Code had to be submitted to the Committee of Experts for examination.

The Worker members expressed their doubts with respect to the Government's declaration. The picture described was too good to be true. The Government wanted to show that everything had changed: no more problems concerning freedom of association; a new labour law prohibiting all discrimination; compulsory schooling for all girls and no violence against women. After having considered proposing this case for a special paragraph, the Worker members decided to grant the Government one year to provide specific information to support its statement. In the case where a report did not allow, on its own, for an evaluation of the situation in practice, a direct contacts mission would be necessary.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee noted that the Committee of Experts had commented on the need for a specific legislative ban on discrimination, the low participation of women in education and employment, and the widespread violence against women, including sexual harassment.

The Committee noted the information provided by the Government concerning the constitutional provisions, laws, policies and programmes in place to address discrimination against women, improve their access to education and employment, and prevent and punish violence against women. It also noted the information provided concerning the recent adoption of the Labour Code, and the programme on women's empowerment through micro-credit and microfinance.

While noting the Government's expression of its commitment to promote gender equality and to eliminate discrimination against women, the Committee observed that serious gender-based inequalities continued to prevail in the labour market, as well as violence and sexual harassment against women. It expressed the firm hope that in the revision of the Labour Code provisions specifically prohibiting discrimination in employment and occupation had been adopted. The Committee urged the Government to submit the legislation, once it had been translated, to the Office in time for it to be examined in detail by the Committee of Experts at its session in 2007. The Committee also asked the Government to involve workers' and employers' organizations closely in the implementation of the Labour Code.

The Committee stressed the importance of addressing social and cultural traditions regarding the role of women in society and resulting occupational segregation, in order to promote gender equality in practice. The Committee called on the Government to take active measures to ensure that women have a real choice of a wider range of jobs and occupations, including through broadening their educational and employment opportunities. Concerning the issue of sexual harassment at work, the Committee requested the Government to provide specific information on the impact of the existing legislation to prevent and address this specific form of sex discrimination, as well as any other measures taken or envisaged in this regard, including information on the effectiveness of the dispute resolution mechanisms in place to address complaints of sexual harassment.

The Committee requested the Government to provide detailed information, in reply to all the comments of the Committee of Experts, as well as the information requested above in its report due this year. The Committee also urged the Government to accept an ILO high-level mission to assist with the effective application of the Convention in law and practice.

The Government representative thanked the social partners for their comments and interest in the case. He also expressed appreciation that they had not called for the case to be placed in a special paragraph of the Committee's report. With regard to the proposal that a high-level mission should be undertaken to his country, he indicated that his Government was fully taken up with electoral reform at the present time, with a view to the adoption of the necessary legislation and the holding of fair and free elections in 2009. The process was extremely time-consuming and he was therefore not sure that the Government would be able to receive a high-level mission during that period. That would not prevent communication between the Government and the ILO through its office in the country, especially in relation to the legislative process. Moreover, all the necessary information would be provided so that the Committee of Experts could examine developments in the case.

The Worker members emphasized that it was for the Office to decide with the Government when the mission should take place. The mission had an important role to fulfil in assessing the situation and in doing so could help to prepare the ground for the next Government.

The Employer members recalled that they had indicated their willingness to support any type of measure which would provide a basis for improving the application of Convention No. 111 in Bangladesh. They therefore supported the Committee's conclusions and the proposal for a high-level mission. They left it up to the Government and the Office to decide on the most appropriate time to carry out this mission.

INDIA (ratification: 1960)

A Government representative said that with regard to the Committee of Experts' comments on discrimination based on social origin, article 16 of the Constitution of India provided for equality in employment. However, positive discrimination measures had been implemented by reserving posts for socially disadvantaged groups in government

services through direct recruitment and promotion, among other methods. There had been indications of occupational diversification taking place among scheduled castes over recent years. The percentage of members of scheduled castes depending on agriculture had been declining and there was evidence of a shift to urban areas for their livelihood. The share of agricultural labourers among scheduled castes had also declined substantially over one decade. The Government had taken various initiatives to uplift and empower scheduled castes. The National Scheduled Castes Finance and Development Corporation provided credit facilities to beneficiaries for income-generating activities. The Scheduled Castes Development Corporations in individual states identified and motivated the target group by providing credit and missing inputs. The Protection of Civil Rights Act (1955) had been enacted in order to enforce article 17 of the Constitution, which abolished untouchability and prohibited its practice in any form. The Act applied nationwide. Furthermore, in order to halt atrocities against scheduled castes and scheduled tribes, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) had been brought into force with the further objective of rehabilitating victims of such offences.

With regard to the Committee of Experts' comments on manual scavenging, the Government had adopted a three-pronged strategy to eradicate that practice. Firstly, legislation in the form of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act (1993) had been enacted. Secondly, centrally sponsored Integrated Low Cost Sanitation Schemes had been introduced, providing subsidies and loans for converting dry latrines into water-borne latrines and constructing wet latrines. Lastly, manual scavengers and their dependants were being rehabilitated to undertake more dignified occupations through the Self-Employment Scheme for Rehabilitation of Manual Scavengers.

Furthermore, a Central Monitoring Committee had been constituted under the chairpersonship of the Secretary of the Ministry of Social Justice and Empowerment to monitor the progress of implementation of the National Action Plan for Total Eradication of Manual Scavenging by 2007. The Committee had held six meetings to date.

As a result of that Committee's persistent efforts, there had been a significant improvement in eradicating manual scavenging. All states had adopted the 1993 Act, with the exception of Jammu and Kashmir and those states that had declared themselves as "scavenging free". Most states had reported that they had no dry latrines. The Low Cost Sanitation Scheme was being monitored to provide further assistance in converting dry latrines and constructing new, water-borne latrines.

Under the Self-Employment Scheme for Rehabilitation of Manual Scavengers, concessional credits of up to 0.5 million rupees and capital subsidies of up to 20,000 rupees per person for self-employment projects to be undertaken by manual scavengers and their dependants were provided. The principal emphasis was laid on capacity building by providing useful training linked with employment and self employment. Particular emphasis was laid on placements for trainees.

There was no manual scavenging in establishments managed by the railway authorities. An affidavit had also been filed before the Supreme Court in respect of WP (Civil) No. 583 of 2003 affirming that Indian Railways had no manual scavenging in establishments under its control and that it had always endeavoured to achieve high standards in managing its waste disposal system.

With regard to the observations concerning the application of Convention No. 111 in India, the special female Voluntary Retirement Scheme (VRS) introduced in 2002 had been operative only until 31 December 2003. Since the scheme was no longer in operation, the question of discrimination in that regard did not arise. The BPE VRS operating in the subsidiaries of Coal India Ltd to reduce surplus manpower did not discriminate by gender.

The special female VRS had been intended to benefit women employees who had preferred to discontinue their services with all terminal benefits, in addition to passing on employment opportunities to their dependants. The scheme's introduction had benefited unskilled female employees and paved the way for securing employment for their sons to begin forging a career within the coal industry. However, the very nature of coalmining activities restricted female roles, since they could not be used in underground mining activities. Given the inherent requirements of those activities, male dependants, if available, were preferred for employment. As an alternative to employment, provision existed for the payment of monthly financial compensation to female dependants in order to support the deceased's family.

As per the provision contained in the National Coal Wage Agreement VI and VII, with reference to clauses 9.3.0, 9.4.0 and 9.5.0, a revised scheme would be prepared, taking into account the verdicts handed down by India's Supreme Court. Such a scheme was still being designed and the existing provision concerning the employment of dependants remained in force. There was no gender discrimination since all eligible dependants were offered employment.

Necessary clauses had been incorporated into the Discipline and Appeal Rules of Coal India Ltd, applicable to executives, and also into the standing orders of Coal India Ltd, Western Coalfields Ltd and Bharat Coking Coal Ltd. Proposals to include such provisions in the standing orders of other subsidiary companies were being considered by the respective certifying authorities.

With respect to measures to promote gender equality in employment and occupation, the Government had enacted the Equal Remuneration Act (1976). The details of inspections conducted under that Act in central sphere establishments during 2004–05 and 2005–06 were forwarded to the secretariat. With regard to establishments under state government control, inspections were undertaken by the respective states. Inspectors endeavoured to raise awareness among workers about their legal rights and benefits.

Further schemes had been implemented for the economic empowerment of women. Swayamsidha had been initiated in 2001 with a view to achieving the complete empowerment of women at the social and economic levels by ensuring their direct access to and control over resources through a sustained process of mobilization and convergence of all ongoing programmes. The Support to Training and Employment Programme for Women was launched in 1986–87. It aimed to make a significant impact on women in traditional sectors by upgrading skills and providing employment on a project-by-project basis. The scheme provided for training to boost skills, including at the managerial, entrepreneurial and marketing levels. Another scheme, Swarna-Jayanti Gram Swarojgar Yojana, aimed to bring beneficiary families above the poverty line by providing them with income-generating assets through a blend of bank credits and government subsidies. Forty per cent of the benefits under the scheme were earmarked for women. Sampooran Grameen Rozgar Yojana was launched in 2001. It sought to provide additional employment in rural areas and thereby bring about food security and improve nutritional levels. It was stipulated that 30 per cent of employment opportunities should be reserved for women. Under the Urban Self-employment Programme, part of Swarn Jayanti Rozgar Yojana (an urban poverty alleviation scheme), those living below the poverty line in urban areas were assisted in establishing self/group-employment ventures.

The Government had recently enacted the National Rural Employment Guarantee Act (2005). It provided a legal guarantee of at least 100 days' employment on asset-

creating public works programmes every year at the minimum wage for at least one able-bodied person in every household whose adult members volunteered to take on unskilled manual labour. If an eligible person was not provided with work as per the provision within 15 days of receipt of an application, the applicant would be paid unemployment allowance at the prescribed rate. Priority would be given to women, so that at least one third of the beneficiaries who had registered and requested work under the Act would be women. The scheme had succeeded in providing adequate employment for women in rural areas, since employment generation under the programme numbered 492,838 people during 2006–07, of whom 40 per cent were women.

The most prominent national microfinance apex organization providing microfinance services for women in India was the Rashtriya Mahila Kosh (National Credit Fund for Women). Its main objective was to facilitate credit or microcredit support to impoverished women in order to generate income and production and to develop skills and housing activities in order to make them economically independent. Microcredit was extended for such purposes as land acquisition, leasing and redemption, health and other consumption needs, skills improvement and crop credits. In districts with a high percentage of landless families, women were supported in creating off-farm livelihoods, such as trading, marketing and establishing links with other sectors.

Based on the national policy on skills development for girls and women, the Central Social Welfare Board had begun the Vocational Training Programme in 1975 in order to train women in marketable trades and to upgrade their skills, thus enabling and empowering them to gain access to remunerative employment opportunities, thereby boosting their self-confidence and self-esteem. The scheme had been instrumental in providing job opportunities to a significant number of needy women, thereby enhancing their socio-economic status. National Vocational Training Institutes for Women continued to offer skills training facilities to women, enabling them to find employment in industry as semi-skilled/skilled labourers or instructors in vocational institutes or to engage in income generation activities or self-employment. Four new such institutes were being established. The Vocational Rehabilitation of Women with Disabilities Scheme sought to work with various governmental and non-governmental organizations to coordinate promoting the rapid rehabilitation of women with disabilities by providing training and employment and self-employment assistance. Of the 17 Vocational Rehabilitation Centres for persons with disabilities in India under the auspices of the Ministry of Labour, one was reserved for women.

In recent years, the IT, health, pharmaceutical, textile, manufacturing and service sectors, among others, had shown significant growth potential and had generated further employment opportunities for women and impoverished citizens. India was therefore establishing a skills development mission to train and develop a cadre of skilled urban and rural young people.

Pursuant to the judgement in the Vishaka case on sexual harassment, the Government had taken numerous steps to ensure compliance with the law as laid down by the Supreme Court. Services rules had been amended to classify sexual harassment in the workplace as misconduct, providing for a departmental inquiry into such complaints and subsequent punishment if proven. The model standing order applicable to industry had been amended to include sexual harassment as misconduct. The Government would not approve or grant any licence to any new industry which did not provide for such a provision in its standing orders. The National Commission for Women and the Ministry of Human Resources had taken the necessary steps to ensure that all educational institutions and all organizations under state control, in addition to private institutions, carried out the necessary amendments to classify sexual harassment in the workplace as an offence. Pressure was being put on management to provide for establishing a committee for the redress of sexual harassment. The bill was uploaded to the Ministry's web site and comments were invited, all of which were being duly considered.

With regard to the Hind Mazdoor Sabha complaints mentioned in the observations of the Committee of Experts, information was being sought from the relevant sources and would be communicated in due course.

With regard to the fishing sector, fishing in India was traditionally the vocation of the population living in the coastal belt and along the banks of rivers and lakes. There was no discrimination based on social origin in the fishing sector since all religious groups in that area had chosen that vocation. Members of the scheduled castes fished in many areas without problems. Furthermore, fishing rights in man-made hydroelectric project reservoirs were granted to members of scheduled tribes in many states. A profile of the religious and other communities engaged in fishing activities in all coastal states/union territories was available in the Marine Fisheries Census 2005. In the industrial fisheries sector, there was no customs or conventions and members of all communities were accepted. No discrimination based on social origin was reported. Sea fishing was a hazardous occupation globally and women rarely worked in that field. However, a number of support activities in marine fisheries, such as net-making and repairs, fish processing, prawn peeling and fish vending were almost entirely conducted by women in India. The gender profile of the marine fisheries sector was available in the abovementioned census. With regard to inland fishing, the representation of women in actual fish capture was more pronounced. In most states, their role in hatchery operations, quality control, ornamental fish breeding and inland fish/shellfish farming was predominant. Therefore, as per information available from the relevant department, there had been no gender discrimination reported in the fisheries sector. Furthermore, there were special drives to promote female self-help groups and all-female cooperative societies in the areas of low cost fish processing, fish vending and shellfish farming, among others, in many states.

The Worker members thanked the Government representative for his contribution and stated that addressing discrimination in the labour market in India was essential and one of the most challenging tasks that could be faced in the age of globalization. No one doubted the historical conditions to be addressed, but we might be able to make a much bigger difference to the lives of many millions of people than we could foresee now, through effective legal, policy and practical steps. The issues raised by the Committee of Experts had a significant impact on the most impoverished and marginalized workers in India and demanded the serious consideration of the Conference Committee.

The Global Report *Equality at work: Tackling the challenges* that had been submitted to the Conference concluded that many countries, like India over the past decade, had implemented legislation and institutions to prohibit discrimination in employment. The Global Report identified fundamental weaknesses in the implementation of laws and policies. This also applied to India. The Government representative had described the laws, measures and schemes put in place with the objective of prohibiting discrimination. While the Worker members appreciated those efforts, it was the actual change in practice that they sought.

The Committee of Experts had noted in its observation two general forms of discrimination in the labour market: discrimination against Dalits and discrimination against women. India's Prime Minister had likened the discrimination of Dalits to apartheid in South Africa. Although

caste-based discrimination was prohibited under the Constitution of India, the practice continued and was not being adequately addressed. Despite the legislation, an estimated 150 million people continued to face violence, discrimination and exclusion based on their social origin. Most of these people lived in rural areas. For those who succeeded in finding employment, it was often in the most exploitative conditions, and they faced violence that went unpunished.

The agricultural workers' union Andhra Pradesh Vyavasaya Vruthidarula Union (APVVU) in Andhra Pradesh, had reported hundreds of cases of violence to the police over the past years, including sexual violence against Dalit women. It was only as a result of their great persistence that some cases were brought to court. In the view of the Worker members, the Government had to encourage the competent authorities and courts to play a much more proactive role in identifying and prosecuting cases of violence against Dalits, including provision of training to ensure compliance. Widespread education and awareness-raising campaigns were needed to eradicate the social acceptance of discrimination based on social origin.

The Worker members urged the Government to undertake two key areas of action to comply effectively with the Convention: (i) to implement more effectively all relevant legislation; and (ii) to adopt other policies and social measures increasing employment and enhancing the employability of those vulnerable to discrimination, in both the public and private sectors. As the Global Report indicated, the Government needed to take measures to improve the access of discriminated groups such as the Dalits to employment via such programmes as vocational training and labour market measures. The Employment Guarantee Act, which provided for employment for 100 days to rural workers, was a useful instrument to secure employment for Dalits. The Worker members encouraged the Government to make efforts to ensure that Dalits reaped the benefits of this Act as well as of the new law on social security for the unorganized sector.

Violence and exploitation of Dalits in rural areas took place in a context of extreme unequal labour relations stemming from feudal-like power relations. In that context, the Worker members drew the attention of the Committee to the need to implement rural land reform. Equal access to land for Dalits, as a legal entitlement, would address discrimination in a very real and effective way.

The Committee of Experts gave a specific and extremely serious example of discrimination of Dalits, that of manual scavenging. The Indian Planning Commission had formulated a National Action Plan for the Total Eradication of Manual Scavenging by the end of 2007. The plan included the construction of wet latrines and the provision of alternative training and jobs to scavengers. Based on the intervention of the Government and the lack of statistics on the specific impact of the measures taken so far, it appeared, however, very unlikely that the deadline of the end of 2007 would be met.

The Worker members referred to a speech delivered by Ms Ruma Pal, retired Supreme Court Justice and member of the Committee of Experts, in Delhi on 10 May 2007, in which it was said that although the employment of manual scavengers was a punishable offence, the problem still existed. The latest report on violations of core labour standards in India by the International Trade Union Confederation estimated that 1.3 million Dalits were still working as manual scavengers at that time. A time-bound scheme for the elimination of the practice and rehabilitation of scavengers would be vital. The Worker members supported the recommendations of the Committee of Experts and requested that the Government provide information about those plans and statistical information on the specific results of their implementation.

With regard to discrimination against women in the labour market, the Worker members noted that, as in many other countries, participation of women in the labour market had increased. The example of the growing information and communication technology sector in India, where many women found employment, showed that working women could increase their participation in the labour market on an equal footing. The Worker members, however, also noted that most women found employment in the informal economy, in agriculture, as domestic workers, home-based workers, street vendors and increasingly in the special economic zones. The number of women employed in the formal economy had always been low and seemed to be ever decreasing. The sectors where women did find employment were those with no or very little protection. It was in those sectors where 12-hour working days, six or even more working days per week, payment below the minimum wage and no job security whatsoever, were prevalent. In the garment industry, women employees were housed in hostels near the factory, with the promise of a contribution to their dowry after five years' employment. As they received less than the minimum wage, that arrangement was no less than delayed payment of wages for five years.

Structural discrimination against women in the labour market was a reality. It could only be redressed by serious efforts by the Government to provide women with protection against exploitation. In addition, as the Worker members supported the emphasis of the Committee of Experts' recommendations to address discrimination against women, the Government needed to undertake further action to promote the National Policy on Women, women's access to vocational education and training, income-generation programmes, especially for Dalit and tribal women, and more effective implementation of sexual harassment legislation.

The Worker members urged the Government to review the as yet outstanding areas of legislative reform; to ensure the implementation of relevant legislation; and to complement that by specific social measures and programmes in order to comply with the Convention. The Worker members expected the Government to comply with all requests for information made by the Committee of Experts and were looking forward to the examination by the Committee of Experts of the Government's next report on the measures taken to ensure compliance.

The Employer members stressed that the issues examined did not refer so much to adapting legislation to comply with international labour standards, but to ensure conformity with the Convention's provisions in practice.

With regard to discrimination based on social origin, the Employer members noted the persistence of caste-based discrimination, which had been abolished by the 1950 Constitution and on which there was a substantial body of law. In 1999, the authorities promoted the establishment of a National Commission for Scheduled Castes and Scheduled Tribes, which issued recommendations relating to applying effectively rules, intensifying coordination of the public authorities responsible and undertaking broad awareness-raising campaigns. They also recognized the programmes for the eradication of this problem undertaken over the last years. Nevertheless, in spite of those measures, progress had been slow. Still many people who would otherwise have the capacity to undertake other jobs, are limited to doing those determined by their social status. The Employer members stressed the lack of information on the measures adopted to eradicate the problem, in spite of the requests by the Committee of Experts in 2005 and 2006. The information was only supplied recently to this Committee by the Government.

With regard to discrimination against the Dalits who undertake hazardous work, the Employer members noted that attribution of that work appeared to be the consequence of the continued existence of the caste system.

They stressed the efforts and responsiveness of the central Government in that respect, particularly by launching a nationwide programme in force until 2007 to eradicate entirely the manual collection of waste, complemented by specific programmes creating alternatives to those systems, such as training, proposals for alternative employment and a public awareness-raising campaign. The information supplied continued to be limited, since it did not refer to specific measures to implement the plan, sanctions for non-compliance, specific measures to rehabilitate Dalits, or statistical data on progress achieved.

With regard to equality between men and women, the Employer members, referring to the observation made by the Committee of Experts relating to a public sector company that gave jobs exclusively to male heirs of deceased workers, noted that the good or bad practices of a particular company could not be extrapolated to the entire sector. Moreover, they recalled that distinctions based on sex could only be justified due to the inherent nature of the job in question, and felt that giving preference to the male heirs of deceased workers should not diminish the rights of other workers in relation to their merits or capacity.

The Employer members considered that the most effective measures for bringing about greater female participation in employment were those that had a progressive, gradual nature, free of impositions. They should take into account varied situations, in addition to cultural, social and economic obstacles, as well as those inherent to the employment in question. In 2001, the Government had put in place the National Policy on Women, which indicated a high degree of awareness in that field, although the Employer members invited the Government to indicate the measures taken as part of that policy, in addition to the progress achieved and obstacles encountered in its implementation. Lastly, the Employer members stressed the need for the Government to supply more detailed information concerning progress made, obstacles and difficulties encountered and, above all, the specific measures taken in order to bring about conformity with the requirements of the Convention concerning discrimination based on social origin.

The Worker member of India stated that divisions in society on the basis of religion, race, caste and sex had been exacerbated by British rule in India. Unfortunately, after 60 years of independence, there were continuing complaints concerning discrimination against Dalits, adivasis women, scheduled castes, etc., which were legacies of British rule. India was a developed country among developing countries, although Indians remained impoverished with some 92 per cent living outside social protection measures. Society was divided into two distinct classes, namely the exploiters and the exploited, the latter including Dalits, scheduled castes and women. This was a common phenomenon in South-East Asia, Africa and even developed countries where racial divisions existed. Given the significant problem of unemployment in India, it was almost impossible to promote equality of opportunity and treatment for Dalits by separating them from other disadvantaged groups. With regard to manual scavenging, members of upper castes were also taking up this work as a result of the unemployment problem. The Indian trade union movement was opposed to the voluntary retirement schemes used in the private and public sectors to downsize the workforce in order to boost competitiveness. Refusing to give jobs to female heirs was discriminatory. The Government should be urged to hold tripartite consultations on that matter.

The Employer member of India drew the attention of the Committee to the Committee of Experts' observation which referred to the allegations made by Hind Mazdoor Sabha that protection under articles 14 and 15 of the Constitution of India did not cover private sector employees. In his view, this was a mistake as the country's Constitution covered all citizens, even though it was only enforceable against the State. In addition, other national legislation covered the private sector and reflected the spirit of equality embodied in the Constitution. Furthermore, the complaints made were of an extremely general nature and fell outside the scope of the enquiry of the Committee, in the absence of a specific complaint. The allegations referred to discrimination against Dalits, adivasis and women in a small number of sectors – the construction and fishing industries and in agriculture – which included mostly the informal sector, which was presently gaining attention. Secondly, manual scavenging was purely a social issue. Every country had its own history of development, and with economic progress, such undesirable forms of employment would disappear. The caste system in India had indeed pervaded deeply in the past and had been linked to specific occupations. This had now vanished. However, he asked how long the Committee would continue to refer to those issues, which were of a wider socio-economic nature and not related to a violation of the Convention. The Government had provided valuable information on the measures taken to eradicate the caste system and the Committee of Experts should take care to review the matter. Lastly, the voluntary retirement schemes introduced by Coal India Ltd were optional. Male heirs were preferred because the jobs concerned underground work which was unsuitable for women.

The Worker member of Pakistan said that, as evidenced by the Government's statement, and as the Employer members themselves had stressed, the crux of the debate lay in the obvious incompatibility between federal and national legislation, which clearly prohibited discrimination while the practice was unfortunately a constant illustration of discrimination. India was undoubtedly a long-standing democracy. However, no society could develop positively if it could not succeed in eradicating discrimination, as regards specific groups of society (such as the Dalits) and women. It was therefore the Government's responsibility to undertake unstinting practical action and to inform the Committee of Experts in that regard.

The Worker member of Singapore indicated that her intervention would focus on equality of opportunity and treatment between women and men, and that she had taken note of the various schemes and laws mentioned by the Government representative aiming to improve the employment status of women. However, the main point in the Committee of Experts' observation was the lack of information on the progress made in achieving equality. Legislation in itself was not sufficient. It was important that the legislation was also implemented and enforced. The Government representative's statement did not address that point. India was in the midst of a period of tremendous economic growth and was one of the fastest growing economies in Asia. Since it had had a female Prime Minister, the workers strongly believed that India could do more to foster gender equality in employment and occupation. Experience in many countries had shown that failure to integrate women effectively into the economy and society was one of the factors that could affect growth. The speaker highlighted the specific problems of women in employment in both the private and public sectors and urged the Government to address the lack of opportunities for women in vocational training and to pay closer attention to the most vulnerable groups, such as Dalit women. Furthermore, the Government should enact legislation to protect women against sexual harassment as that undermined and weakened the position of women in the workplace. She concluded by highlighting the important role of women in development and joined the spokesperson of the Worker members in urging the Government to address quickly the concerns raised by the Committee of Experts regarding discrimination against women in employment and to provide the information requested in that regard.

The Government representative thanked the speakers for their remarks and the high quality of the debate. The recent remarks of the Prime Minster of India concerning discrimination against Dalits showed awareness at the highest level of the Government of India concerning the issue. India was a large country in which social behaviour was also governed by traditions. Adequate measures were being taken to uplift the downtrodden sectors of society. The Government would provide the Committee of Experts with statistical information, including information on the implementation of schemes to rehabilitate manual scavengers. The workforce participation of women had increased by 7 per cent in less than a decade. India was fully committed to the values of the ILO and its obligations under ratified Conventions.

The Worker members indicated that the discussion had demonstrated an obvious case of widespread discrimination in employment and occupation contrary to the Convention, and that addressing the issue provided an opportunity to make a decisive impact on the progress of social justice in India. Discrimination based on social origin remained widespread despite its prohibition under the Constitution. The Worker members appreciated the information provided by the Government but assessed the situation differently. Therefore, they asked the Government to provide detailed statistical information on the actual impact in practice of the plans and measures that had been implemented. With regard to manual scavenging, they suggested that the Government should provide a time-bound plan for its eradication, in addition to information on the impact of measures taken to eliminate discrimination against Dalits. Discrimination against women was also an essential issue. The information provided by the Government indicated that women still mainly found employment in the informal economy. The Worker members requested that the Government provide information on the impact of specific measures taken under the National Policy for the Empowerment of Women of 2001, as well as on supportive measures to eliminate discrimination against women. The Worker members further suggested that it would be worthwhile considering the existing job classification system under which women's work was classified as "light work", which often meant that women were not even paid the minimum wage. The Worker members expected the Government to provide appropriate information in due time so that it could be examined with the next report of the Committee of Experts.

The Employer members recalled that the Convention was a mainstay of progress and social development, constituting an essential premise for bringing about a just society with genuine social mobility. A social system that failed to give its members opportunities was contrary to the very development of entrepreneurial activity. Nevertheless, they recalled that, on some occasions, it was difficult to combat deeply-rooted practices and traditions and stressed the Government's readiness to supply further information, particularly concerning the obstacles and difficulties encountered in eradicating discrimination based on sex. They expressed their hope that the Government would renew its efforts and adopt new measures for the elimination of discrimination in employment and occupation.

Conclusions

The Committee took note of the statement made by the Government representative, as well as the discussion that took place thereafter. The Committee noted that the Committee of Experts had been commenting for a number of years on matters relating to caste-based discrimination and gender equality in employment and occupation.

The Committee noted the detailed information presented by the Government outlining laws, policies and schemes put in place to combat discriminatory practices suffered by men and women considered to belong to the lowest castes and to promote gender equality. It noted that the law prohibited the practice of untouchability and caste-based discrimination and that the Constitution provided for positive measures to promote employment opportunities of the scheduled castes.

While the Committee welcomed the measures taken, it considered that it was important to tackle the still widespread practices of exclusion and discrimination in employment and occupation on the basis of caste, which constituted discrimination based on social origin within the meaning of the Convention. It was particularly concerned that women often faced discriminatory treatment and violence due to both their sex and caste. Such practices were not only contrary to human rights and dignity but were also an obstacle to social progress and economic growth.

The Committee recognized that the eradication of caste-based discrimination was an enormous task that had to be accomplished over time. However, given that those practices were deeply entrenched in the society, the Committee urged the Government to take continuing, decisive and effective action to promote and ensure equal treatment and equal opportunities. The Committee particularly stressed the need to ensure strict enforcement of the relevant legislation and the full implementation of policies to promote equal opportunities of Dalits and women in respect of access to education, training and employment. In particular, the Committee requested the Government to intensify the awareness-raising campaigns on the unacceptability of those forms of discrimination. The Committee requested the Government to implement urgently a new time-bound programme to bring an end to the inhuman practice of manual scavenging which is carried out by Dalits.

Finally, the Committee emphasized the need to assess at regular intervals the impact of the action taken to eliminate discrimination against women and Dalits. In particular, the Committee requested the Government to supply information, including detailed statistical data, on the results of such action, as well as any obstacles encountered. The Committee requested the Government to provide to the Committee of Experts this year all the information requested, including on the implementation of the 2001 National Policy for the Empowerment of Women.

Convention No 119: Guarding of Machinery Convention, 1963

DEMOCRATIC REPUBLIC OF THE CONGO
(ratification: 1967)

The representative of the Secretary-General stated that, according to information she had received, the delegation of the Democratic Republic of the Congo would not attend the Conference before Monday of the following week.

The Worker members deplored the absence of the Government of the Democratic Republic of the Congo, while recognizing that the situation in the country was difficult. The case was one of particular interest, selected for precise reasons: firstly, the footnote proposed by the Committee of Experts and, secondly, the particular nature of the Convention.

The Employer members stressed that ten years had passed since the Government advised the Committee of Experts that a new Labour Code would be drafted to comply with the provisions of the Convention, and yet no new legislation had been produced. They urged the Government to seek technical assistance from the ILO so as to ensure compliance with the Convention in its national law and practice.

The Chairperson indicated that, in the absence of the Government representative of the Democratic Republic of

the Congo, the case would be mentioned in the appropriate paragraph of the Committee's report.

Convention No. 122: Employment Policy, 1964

ITALY (ratification: 1971)

A Government representative gave a presentation on the characteristics of the Italian labour market and examined labour market developments and government policies related to the labour market.

Firstly, a significant increase in the employment rate could be observed, particularly in the northern part of the country, but also to a lesser extent in the south; an increase in the rate of employment of women could also be noted, although it was still insufficient and below that of men. The unemployment rate had fallen to 6.8 per cent, contrary to the trend observed in other European countries. The unemployment rate of women was 8.8 per cent and measures had to be adopted to bring it into line with that of men, which stood at 5.6 per cent. In general, unemployment had been steadily decreasing in the whole of the country, despite the fact that this decrease was sharper in the north than in the south. Long-term unemployment was still unacceptably high, affecting 2.5 and 4.4 per cent of men and women, respectively, particularly in the south of the country. With regard to the employment rate, she considered that it still was not sufficiently high and noted a decrease in the employment rate of women in the south, which might be linked to the phenomenon of undeclared work, which the Government had been striving by all possible means to combat. The level of employment of young people was also insufficient and the Government believed that this problem had to be addressed by means of an active policy to combat precarity and unemployment of young people. She added that Italy had an educational system characterized by a high high-school drop out rate which, however, had been declining since 2000. The number of women and men with degrees was on the rise and two-thirds of adolescents succeeded in making the transition from school to university. The country was also facing a number of new problems related with the liberalization of the labour market, and there were no fewer than 2 million temporary jobs, essentially located in the southern part of the country, which represented 9.2 per cent of all jobs. In this respect, it was important to encourage permanent contracts. Furthermore, part-time work, which had not been highly prevalent in the past, was increasing sharply in the country as a whole, particularly for women. As for precarious or atypical contracts for which there was no guarantee that they would be made permanent, such as "project contracts", of which there were 400,000.

She recalled that the lines of action that had been decided on by the Government to address these problems consisted in combating precarity, adopting measures to encourage permanent employment and encourage undeclared workers to become legal, to improve social protection for precariously employed workers, to support the action of the labour inspectorate against undeclared work while at the same time encouraging the enterprises concerned to legalize their activities and, finally, to formulate a bill on occupational health and safety. In this respect, the Government was, in collaboration with the social partners, organizing a series of round tables to formulate a new social safety net, measures addressing occupational change, measures intended to reduce undeclared work and precarity, as well as to discuss the issue of retirement. In conclusion, she emphasized the importance of social dialogue and consultation between the social partners in the formulation and development of national policies, and stated that the action of the new Government in this area would be directed at improving social cohesion.

The Employer members recalled that this case went back some 20 years and the Government had been asked to appear before the Committee on at least half a dozen occasions. The Committee of Experts acknowledged that the Government had provided a comprehensive report and this level of cooperation should also find satisfaction in the Conference Committee. This case was atypical in that it did not concern an assessment of whether a legislative matter or factual development was compatible with the terms of a ratified Convention, but rather broader and less precise questions. The fundamental issue was whether the employment and labour market policies of the Government of Italy were compatible with the treaty obligation to take active steps to promote employment, reduce social disadvantage through employment and to do so in consultation with the social partners. While imprecise, these issues were no less important than a case involving more typical legal analysis. The Conference Committee had noted this point in previous comments about Italy and in 1998 had borne in mind "the particular difficulty of assessing the application of a Convention which requires the formulation and implementation of policy".

The most recent observations by the Committee of Experts concerned four subject matters, namely: the macroeconomic position as it affected the labour market; the measures to promote labour market flexibility; the measures relating to human resources, education and training; and the participation by the social partners in this work. These observations and requests by the Committee of Experts appeared well founded and there was no reason to demur from them.

On the issue of unemployment, the Committee of Experts drew attention, in line with its previous observations, to the unequal impacts of the scourge of unemployment in the different regions of the country and called for "territorial cohesion in order to fill the gap between the various regions of the country". As a general proposition this request was not unreasonable, but the Committee of Experts had provided little in the way of real guidance. This was not surprising as the solutions to the application of this Convention were policy, rather than legal matters, the latter being the province of the Committee of Experts, but not the former.

Although they considered that the most desirable policy settings for the cure of long-term unemployment depended on national circumstances, and hence international consideration of these issues was by definition limited, the Employer members recalled the views they had expressed on this issue in numerous policy debates occurring on labour market reform in the ILO, both at the current session of the Conference and in the Governing Body or Regional Meetings. These views included the belief that there should be a holistic (rather than piecemeal) approach to address a range of inter-related measures; that there should be structural reform rather than one-off measures; and that long-term problems needed long-term planning and perseverance. As employers, they also believed that the "legislation" of the ILO itself needed to be subject to regular review to ensure that it did not act as a disincentive to meaningful employment. The problems were not unique to Italy and many other countries were grappling with similar issues to a greater or lesser degree. No country could be satisfied that it had done enough in this area, and the reform effort around the world was a continuum. The task in this Committee was to check that the reform continued in the right direction and that there was learning from other countries' experiences. Structural reforms of one type or another were also advocated by the OECD, the World Bank and the IMF. Overall, it was clear that the Government was sensitive to the task. Whether it adopted the right mix of solutions would be seen in the outcomes, and in the further steps it was asked to take by the Committee of Experts.

The Worker members pointed out that Convention No. 122 was considered as a priority instrument as it guided and oriented the work of ILO member States in the area of socio-economic policy. The right to work was recognized in this Convention as an individual right which should be guaranteed though voluntary action on behalf of governments, in cooperation with the social partners, aimed at the promotion of full employment and the fight against unemployment and insecurity.

The proclamation by the Declaration of Philadelphia of the right of every person to work and to the free choice of work in equitable and satisfactory conditions and to protection against unemployment remained fully relevant today through the notion of decent work. In order to achieve this, it was necessary for political leaders and the social partners to recognize the priority of full employment and to refuse a policy consisting of leaving the labour market to be governed solely by free market forces.

The Convention provided to the ILO member States, through the respect of the essential principles it set out, a framework for the development of their employment policies according to their own methods and on the basis of national conditions in order to significantly reduce unemployment. As underlined by the report of the Committee of Experts, the unemployment rate remained high and there was a slowdown of employment growth and a serious deficit in human capital. Regional disparities were important, especially between the North and the South of the country. The difficult integration of certain target groups, especially young persons and the long-term unemployed was also examined. Nevertheless, the main question was which policies were developed by the Italian Government to increase employment and promote an improved distribution of work with fewer disparities and inequalities, as well as the question of the conformity of these policies with the provisions of the Convention. This demonstrated the need to involve the social partners fully in the elaboration and implementation of employment policies.

The Committee of Experts concentrated its observations mainly on the criticism made by the Italian trade unions with regard to the inequitable tax cuts made by the previous Government, the flexibilization of the labour market, the legislative texts of 2003 on labour market reform and the low participation or perfunctory consultation of the social partners in the elaboration and evaluation of policies. Its report was limited to requesting the Italian authorities to provide additional information in the next report. In fact, the previous Government's priority was to render the labour market more flexible and to promote the individualization of labour contracts. The legislation adopted in 2003 had resulted in a serious problem of precarity in the labour market, especially through the introduction of new forms of employment, new types of flexible contracts and the reduction of security of employment and of the protection of workers against abuse. The new spectre of flexicurity haunted Europe and the international institutions. Instead of serving to guarantee more security to workers with precarious contracts, this concept had been emptied of its positive content and served as an argument for destroying protection against dismissal, making regular contracts more flexible and putting an end to the primacy of permanent contracts. Moreover, the European Commission was announcing that a communication would be issued on this subject at the end of June 2007 pursuant to the Green Paper on modernising labour law published at the end of 2006. The Government seemed today to wish to change course and adopt a different employment policy, another approach to the question of flexicurity and different relations with the social partners. The Committee should encourage this new policy direction.

The Worker member of Italy noted the Government representative's statement and recognized that the issues being discussed were to a large extent the legacy of the previous Government. The latter had done all it could to liberalize the labour market, raise the retirement age and undermine the very basis of tripartism and social dialogue.

The attitude of the new Government had therefore to be welcomed, as well as the reactivation of tripartite negotiation, particularly with regard to the new labour legislation. The basis for genuine dialogue, however, consisted in clear positions followed by appropriate action. A clear position by the Government on matters of social and labour legislation was therefore desirable because, despite certain actions carried out in the 2007 Budgetary Act, it still did not have a coherent policy to address the problems in the field as a whole.

Under the pretext of modernizing the labour market, Act No. 30/2003 had caused a serious situation of precarity in employment relations. The Government today wished to eliminate the worst forms of labour contracts established by the above Act; however, the objective should rather be to return to the situation in which permanent contracts were the rule. The statistics indicated a serious deterioration in the employment situation of the country. In 2005, while the working population had shown a slight increase in terms of full-time equivalent jobs, employment had decreased by 0.4 per cent compared to the previous year, for the first time since 1995. Fixed-term contracts were the main means for young people to enter the labour market, but it was increasingly rare for these to turn into permanent contracts; the situation was even worse for young workers. Furthermore, the introduction of "project contracts" in 2003 had only changed the name of an atypical form of work, thereby concealing a real employment relationship. According to official statistics, only one out of 25 employment relationships of this type eventually evolved into a permanent contract, whereas in 30 per cent of cases the workers concerned ended up being unemployed.

Labour market distortions were becoming increasingly pronounced. The south of the country was experiencing an alarming phenomenon of the reduction in the employment rate. This was because an increasingly large number of people were no longer actively seeking regular work and were swelling the ranks of irregular and undeclared workers. Despite a number of government actions, the illegal economy represented at least 18 per cent of the gross domestic product. The problem of long-term unemployment was especially prevalent among young workers, as well as older workers.

The situation in general was a far cry from the Convention's objective of promoting growth and development through a higher standard of living and overcoming unemployment and underemployment, and the objective of an effective policy intended to promote full, productive and freely chosen employment. The liberalization of the labour market had been the only objective of the previous Government to the detriment of and neglecting industrial, research and regional development policies, which were necessary to ensure competitivity in the modern sectors, rather than seeking to compete with emerging economies. In this respect, political measures were required, as well as the allocation of public resources to education and industrial research.

The Italian trade union confederations therefore suggested the following priorities for national tripartite negotiation: measures to fight precarity at work beyond those adopted under the Budgetary Act of 2007; the formulation of an action plan to limit, by legislative means, the use of fixed-term contracts, and to envisage the abolition of the many forms of atypical working relations established by the Act of 2003 so as to return to a situation in which permanent employment prevailed. It would also be advisable to guarantee unemployment benefits for all types of working relationships, regardless of the economic sector

or the size of the enterprise, to repeal the extension of the retirement age and to put in place a system to encourage enterprises to hold on to older workers with options of flexibility when approaching retirement. Adequate resource allocation to training and a new education policy were also necessary. The implementation of the policy to combat undeclared work and encourage equality of treatment for migrant workers also constituted an employment policy element that complied fully with the Convention.

In conclusion, he hoped that, taking into account the fact that the Committee could not discuss the case of Colombia, the Italian Government would put pressure on the Government of that country to implement the tripartite agreement signed in 2006. He hoped that the Government would rapidly take steps to reform the legislation in accordance with the recommendations of the Committee of Experts and the Conference Committee.

The Worker member of India recalled that two major Italian trade unions had sent comments to the Committee of Experts on the uneven and decreasing trend in employment and productivity, the persistent high long-term unemployment rate and the unfair and inefficient tax cuts which would indirectly affect the workers. Moreover, territorial balance had to be kept in national growth and labour flexibility had to be an outcome of collective bargaining and not of the arbitrary dictates of the Government and the employers. There should be a tripartite mechanism to see that reforms were not adverse to the interests of the workers. Job security was an important right of workers without which all other forms of security were meaningless. Hence, the Government had to make much more extensive efforts.

He declared his solidarity with the workers of Italy and requested that the Government provide information on the effective implementation of an appropriate employment policy and to ensure the full employment of women, the promotion of employment for older people, measures to educate workers and the genuine participation of trade unions in employment reforms instead of perfunctory consultations, such as those criticized by the Italian trade unions.

The Worker member of France remarked that a break with Act 30/2003 would also be a rupture with the notion that the right to work was an obstacle to competition and growth. The Act had been promulgated by the executive and gave a leading role to the principle of labour market flexibility, while playing down the leading role of legal rules to the benefit of contractual freedom, which in practice was to the employer's advantage. Among the different types of contract instituted, the continuous and coordinated collaboration contract considered an employment relationship as a service. On-call work was another means of underpaying workers who nevertheless had to remain available. As to shared work or project contracts, both constituted forms of precarious work instituted by the system set up in 2003 in the same way as flexible part-time work or the extension of the possibility of using overtime, or even of modifying working hours, which were a key element of the employment contract. This resulted in widespread underemployment, even though its elimination was one of the main aims of the Convention. The weakening of workers' rights in favour of employers' rights and the decline in income caused by the multiplication of precarious employment contracts were also contrary to the objective of improving the standard of living through an active labour market policy. The Convention was absolutely critical in an international framework which promoted flexibility. This instrument made it possible to combat the phenomenon of poor workers currently developing in Europe. Involuntary part-time contracts and low hourly wages were the result of this situation which, moreover, mostly affected women. In addition, it was not only a question of just creating jobs, but of ensuring their type and quality. Finally, she supported the call made by the Worker member of Italy for the implementation of the Convention and for the Government to repeal Act 30/2003.

The Government representative recalled that her Government had only been in power for one year and that several issues and demands presented by the Worker members had already been taken into account. Indeed, flexibility was not a key element of the policy followed by the Government; permanent contracts should be considered as the norm and priority should be given to combating precarious and clandestine work. Another political objective was employment creation for young workers and women, and narrowing the gap between the north and south. The Government had already created four negotiation groups in which the social partners were involved in establishing policies in these areas.

She said that the discussion seemed to belong to the past, to another government. Indeed, the current Government had already introduced changes, and the results were starting to be seen, particularly with respect to the employment of women, the reduction of poverty and the fight against clandestine work.

The Employer members observed that finding consensus on labour market policy questions was not easy. It was not possible to legislate against unemployment and policies could only be adopted to make a difference in this respect. One area where consensus appeared to exist was that meaningful and productive employment was a pathway to human and economic dignity and well-being. It was a way out of poverty and social disadvantage. Another area of consensus could be that measures to reduce unemployment and help vulnerable groups required commitment and support beyond governments, especially if structural changes were required. Reform efforts rarely worked if they were imposed on unwilling communities. Thus, the view of the Committee of Experts that the social partners needed to participate in the development of these measures reflected the right approach.

Since this case involved a change in Government, it involved the opportunity for new methods and fresh thinking, and a new resolve to tackle issues, which seemed to be the approach that was being adopted by the Government. The information sought by the Committee of Experts was therefore particularly timely as it provided the new Government with an opportunity to inform the international community of its intentions, and of the process by which it would seek to achieve the objectives of the Convention.

The Worker members invited the Government to continue to provide all the information requested to ensure that the Committee could examine the issue in greater depth. The Government should do everything to combat the high unemployment rate and the differences and inequalities that existed in the labour market and to combat the rise in precarious work. Another priority would be the revision of Act No. 30/2003. It was satisfying to hear the Government's statement that permanent employment contracts should be considered as the norm and that flexibility was no longer the focal point of the employment policy. Italy should defend this position before the European authorities. Finally, and as indicated by the Committee of Experts, employment policy should be developed together with the social partners to obtain their support for the implementation of the necessary reforms. Indeed, this now seemed to be the case once again in Italy.

Conclusions

The Committee took note of the interactive presentation and the detailed and informative data supplied by the Government representative, as well as the discussion that followed regarding the measures to support the labour market adopted by the Government in applying this priority Convention.

The Committee welcomed the slight increase in the employment rate and the drop in the unemployment rate, in addition to other labour market indicators reported by the Government, which had announced its intention to reduce temporary and part-time employment, to combat clandestine employment and to promote productive employment for the most vulnerable categories, particularly young people seeking their first job, women and workers in less developed regions. The Government also proposed to foster social dialogue in order to forge an active employment policy and to amend the provisions of Act No. 30 of 2003 on labour market regulations.

The Committee further noted that measures to increase labour market flexibility needed to ensure appropriate protection for workers against dismissal and in obtaining a permanent employment contract which was productive and freely chosen. The Committee invited the Government to continue to mainstream its national programmes for full and productive employment, the promotion of decent work and high-quality work for all, as required by the Convention. It requested the Government to include in its next report detailed information on how the experience and views of the social partners had been taken into account when formulating and implementing employment policy measures. The report should also include information on the impact of the measures taken with a view to increasing the participation of women in productive employment, combating youth unemployment and closing the gap between the various regions of the country in terms of employment.

Convention No. 144: Tripartite Consultation (International Labour Standards), 1976

UNITED STATES (ratification: 1988)

A Government representative referred to the written communication already provided to the Conference Committee and recalled that during the discussion in the Conference Committee in 2005 of that case, her Government had noted that Convention No. 144 was a very flexible, promotional instrument which allowed for consultations to be conducted in a manner that was best suited to national conditions and practice. In her Government's view, the mechanism for tripartite consultations on questions relating to ILO standards, which had been established before the adoption of the Convention and its ratification by the United States, continued to be effective and appropriate to the national situation.

It was important for the Conference Committee to understand that the President's Committee on the ILO was more than just a formal body; it was, in fact, a broad-ranging mechanism for tripartite consultation. The Committee itself only met when warranted by issues that required decision at the highest level. However, tripartite consultations did not stop because there was no formal meeting of the President's Committee. The speaker explained that the bulk of the ILO consultations were conducted less formally at the staff level and covered a broad range of ILO matters considerably exceeding what was required in Article 5(1) of Convention No. 144. The tripartite consultations that were held in the context of the drafting of the Maritime Labour Convention were a particularly good example in that respect.

Turning to the issue of consultations on ratification of ILO Conventions, she observed that much of what had been said about the implementation by the United States of Convention No. 144 related to the country's ratification of ILO Conventions. The speaker acknowledged that her Government would not ratify a Convention unless or until law and practice were in full conformity with its provisions. It was true that the legal review process had resulted in a very slow process towards ratification but this was preferred to ratifying first and assessing compliance later.

Turning to her Government's commitment to tripartism, she pointed out that the President's Committee mechanism now allowed for other interested organizations of workers and employers who had a legitimate interest and rationale for doing so to participate and be kept informed about ILO standards-related issues. As such, the right of United States workers and employers had been acknowledged to decide for themselves who should represent them on the President's Committee. The speaker recalled the Committee of Experts' view that effective tripartite consultations were those that enabled employers' and workers' organizations to have a useful say in ILO matters. In that regard, her Government continued to believe that the tripartite consultations in the United States were effective. In conclusion, she recalled the Committee of Experts' request to both the United States Government and the social partners to re-examine the manner in which Convention No. 144 was being applied in order to ensure that all stakeholders take appropriate measures to achieve a satisfactory solution. She expressed her personal commitment to respond to the Committee of Experts' call for action, and she looked forward to working with the social partners concerned in that endeavour.

The Employer members recalled that the Convention sought to establish tripartite mechanisms to promote the application of international labour standards. To undertake such a task, it provided for the implementation of procedures ensuring effective tripartite consultations on various issues relating to the ILO, such as those referring to items on the agenda of the International Labour Conference, the submission of Conventions and Recommendations, examination of non-ratified Conventions and denunciation of ratified Conventions. It was therefore necessary to determine whether consultations existed and their effectiveness or lack thereof. Before doing so, the Employer members felt it important to clarify two issues. Firstly, the Convention sought to promote the application of international labour standards through a system of consultation or collaboration and to facilitate tripartite consideration of the possible benefits of ratifying or not Conventions. It did not expressly seek to promote a greater or lesser number of ratifications. Therefore, it was irrelevant to analyse how many Conventions a particular country had ratified.

Secondly, the Employer members felt that it was inappropriate to become involved in considering the level of influence exercised by social partners in the Government's decisions or commitments as a result of tripartite consultations. Instead, they felt that it was important to determine what was meant by "effective consultations". No definition was given in the Convention, but by following various legislative criteria, effective consultation could be considered as the transmission of relevant information to social partners so that they could become aware of a topic and examine it, and as the exchange of opinions and contributions on matters relating to ILO activities. With regard to the form taken by effective consultations, the Employer members indicated that the Convention referred to national procedures. Was it necessary for consultations to take place during one meeting or during several? Should meetings be held at the highest level or at a more technical level? Should a formal consultation procedure be established in writing or should it be more informal? The Employer members felt that the nature and form of consultations could be significant, but at the same time, could vary by country. In many cases, there were formal consultations with numerous meetings and documentation, but which were considered no more than a formality with limited effectiveness. The crux of the matter was for relevant information to be supplied on time, with the social partners able to make their contributions in order to influence the final decision through their opinions and submissions. Nevertheless, they stressed that in no way did it amount to a question of negotiation or agreement.

The Employer members felt that in the United States, that obligation had been channelled through a consultation system established some years earlier, consisting of a political body and two technical bodies. The former, the President's Committee, met only when decisions were required at the highest level. It had met six times since 1988 and not at all since 2000. In addition to the President's Committee, there was a consultative group on ILO matters that channelled consultations relating to items on the International Labour Conference agenda, as well as tackling issues relating to the Governing Body and the application and ratification of ILO Conventions. A further body, the Tripartite Advisory Panel on International Labour Standards (TAPILS) was established specifically to examine the legal feasibility of ratifying selected ILO Conventions. Those technical consultative bodies had met regularly, the former on six occasions and the latter at least once. They considered issues to which the Convention referred, and took into account meetings before and after the ILO Conference and Governing Body, and issues relating to the ratification of at least two Conventions.

The Employer members indicated that there was insufficient proof of an absence of regular meetings in respect of the Convention or that the information provided was not suitable or not provided in time. There was also insufficient proof that the social partners were unable to give their opinions before decisions were taken. They felt that the Government representative supplied information on the Convention's application since 2005 and indicated that they were willing to receive further details and information that would enable them to have a more complete overview of the Convention's application in practice.

The Worker members recalled that the issue of the application of the Convention in the United States had already been addressed in 2005. They appreciated the fact that the Government had provided in advance additional information in the form of a written communication. As regards the substance, they noted that the spirit of Convention No. 144 was to institutionalize an effective and pragmatic process of tripartite consultations ultimately aiming at ratifying ILO Conventions. Yet, to date, the United States had merely ratified 12 Conventions, of which only two were fundamental Conventions: Convention No. 105 and Convention No. 182. In the conclusions of this Committee in 2005, it noted the information regarding the procedure for the ratification of Conventions Nos 111 and 185 and expressed the hope that the consultations announced in this regard would take place as soon as possible. Furthermore, Convention No. 144 sought to establish a favourable framework for the implementation of Conventions Nos 87 and 98. A restrictive interpretation of Convention No. 144 would therefore compromise, on the one hand, the role of workers' organizations and, on the other hand, the impact of ILO standards in every country. The Convention certainly allowed for the division of the foreseen procedure between two bodies, as was the case in the United States, with, on the one side, the President's Committee on the ILO, and, on the other side, the TAPILS. Of course Convention No. 144 did not indicate the intervals at which consultations are to take place, and the effectiveness of the tripartite consultations could not be measured solely by the number of tripartite meetings that had been organized. However, when a country ratifies a Convention it must be applied both in letter and spirit. The Worker members believed, however, that the particularities of the mechanism, whatever it might be, should not be utilized to slow down the process. Moreover, they firmly rejected the view of solely envisaging the ratification of those Conventions that did not require modification of national legislation, since such a strategy would destroy hopes for a positive development of social legislation of all States adhering to it. Given that the whole world looked to the United States, it was imperative that the country undertook to reinvigorate the competent bodies for tripartite consultations and seriously considered ratifying the ILO fundamental Conventions.

The Worker member of the United States noted that the issue was not the mechanism for tripartite consultation, but rather the fact that the current Administration had allowed the tripartite process to languish. As had been noted by the Committee of Experts in its observation, the Government had failed to respond to the comments made by the American Federation of Labor and Congress of Industrial Organizations (AFL–CIO). It was only after submission of the written response to the Conference Committee, that the Government's position was known. The speaker questioned the Government's stated commitment and pointed out that while the President's Committee had been established as the pinnacle of tripartite consultative mechanisms, the Secretary of Labor had failed to call one single meeting over the past seven years. This was the longest period of inactivity of the President's Committee since 1989.

Turning to the United States framework for carrying out the tripartite consultative process, she indicated that, in addition to the President's Committee, two other mechanisms existed, notably the TAPILS and the Consultative Group. According to the United States Government, the primary purpose of TAPILS was to examine the national law and practice relating to selected ILO Conventions with a view to considering the legal implications of ratification or other appropriate action. However, the lack of a serious agenda for TAPILS underscored the fact that the Government had engaged in no serious effort to ratify Conventions Nos 111 and 185 despite the fact that those Conventions had been under consideration for possible ratification for some time. The speaker pointed to the fact that a working group had met once to discuss the law and practice report with respect to Convention No. 111 but that a final report had yet to be produced. A similar problem existed with regard to Convention No. 185. The Worker member of the United States was surprised to hear from the Government that the TAPILS process would be reviewed as soon as an internal governmental review of the Convention was completed. No explanations were given as to the timing of such a review. The only explanation that had been given was that the review touched upon national security issues – the usual fallback for every action that the current Administration took when it wanted to avoid public scrutiny.

Turning to the meetings of the Consultative Group, she contested the Government's view that it was engaged in tripartism only because the Consultative Group met prior to the ILO Governing Body and the International Labour Conference. In her view, these meetings did not amount to effective consultation and stood in stark contrast to the kind of discussions that the Consultative Group had been engaged in prior to the current Administration.

Further, she expressed her concern over another disturbing development since 2005, which was the change in the composition of the President's Committee. The purpose of this was to delete reference to the AFL–CIO as the workers' representative and the United States Council for International Business as the employers' representative. Instead, the Secretary of Labor would decide who would be represented at the Committee. This was done without notice and prior consultation. In this context, the Department of Labor had twice called a meeting of all international presidents to discuss the composition of the delegation to the Conference in 2006 and 2007 despite the fact that no union or the AFL–CIO had expressed the need for such a meeting. In sum, she felt that the Government's meddling in the affairs of the workers hardly amounted to a commitment to tripartism, on the contrary.

The Worker member of Greece raised a question directed at the Government representative concerning the reasons why the Government of the United States lagged behind

the overwhelming majority of ILO Members in the ratification of Conventions, including those that were the foundation of the 1998 Declaration.

The Government member of Cuba stated that tripartite dialogue on international labour standards constituted an effective mechanism to achieve not only ratification, but also to apply effectively ILO Conventions in law and in practice. Therefore, the ILO supervisory bodies should pay special attention to complying with that principle in their activities and to applying those standards at the national level. She felt that as regards promoting the ratification of fundamental Conventions, priority should be given to those countries which applied a restrictive policy on ratification, since although ratification in itself did not prove its application, it entailed a willingness to assess and modify aspects of legislation and practice through the effective application of the ratified standards. In the particular case, the ratification and effective application of Convention No. 87 should be promoted, since it was the cornerstone of tripartite consultation under Convention No. 144.

The Worker member of India pointed out that in June 2005 the Conference Committee had rightfully developed the hope that the consultations concerning ratification of Conventions Nos 111 and 185 would be concluded in the near future. However, such hope and aspiration of the workers of the United States had not been fulfilled through sheer neglect of the United States Administration. In spite of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the United States Government had failed or neglected to ratify ILO fundamental Conventions such as the Forced Labour Convention, 1930 (No. 29); the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); the Equal Remuneration Convention, 1951 (No. 100); the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Minimum Age Convention, 1973 (No. 138). Instead, it preferred to isolate itself from other countries while at the same time preaching to other countries about their obligations to apply labour standards. The fact that the United States had so far ratified only 12 ILO Conventions only indicated what could be the fate of Convention No. 144. The speaker urged the Committee of Experts to ensure that the issues that had been raised by the AFL–CIO concerning fruitful tripartite consultations could be resolved appropriately and that the American workers were given their fundamental rights enshrined in the ILO Constitution.

An observer representing the World Federation of Trade Unions indicated that the current case not only referred to a violation of Convention No. 144, but also to the Government's refusal to ratify significant Conventions, such as Nos 87 and 98. She expressed her solidarity with the United States workers and rejected the Government's obvious intention to appoint trade union representatives in consultative committees. Such an appointment was the trade unions' sovereign right.

The Government representative indicated that her Government would respond to all the points that had been raised in the debate and provide information on subsequent developments in a detailed report for the Committee of Experts' next session. She reiterated that the existing tripartite consultation mechanism was an effective means of implementing the Convention. However, tripartite dialogue did not necessarily mean agreement. The ILO Constitution, the records of the Credential Committee of the Conference and the 2000 General Survey on tripartite consultation made it clear that there could be more than one most representative organization of employers and workers in any given country. She recalled that the Government had made it possible for American workers and employers to decide for themselves who should represent them on the President's Committee. The Government was looking forward to exploring with workers' and employers' representatives how to respond best to the observation of the Committee of Experts on the Convention, which was addressed to all the parties.

The Employer members indicated that the significance of the Convention lay in the implementation of dialogue mechanisms to improve the atmosphere of cooperation and the application and ratification of international labour standards. They felt that the discussions demonstrated that there were no serious issues concerning the Convention's application in the particular case. Nevertheless, they recognized that all systems could be improved and in that respect, indicated that any requests or contributions could be taken into account, since that would benefit the consultation procedures.

The Worker members reiterated that by ratifying Convention No. 144, the Government was required to uphold both its letter and spirit. It therefore fell to the Government to re-energize the competent authorities in respect of tripartite consultations. It was further incumbent on the Government to take a different approach and contemplate ratifying ILO standards even when they entailed amending domestic legislation. The Worker members looked forward to the ratification of Conventions Nos 111 and 185. Moreover, taking into account the influential role played by the United States on the world stage, they expressed the firm hope that the country would soon ratify other Conventions, particularly the fundamental Conventions, which remained outstanding. The Worker members felt that possible recourse to technical working groups, as was suggested by the Employer members, could undoubtedly be of benefit in terms of effectiveness, but as far as tripartite consultations were concerned, the crux of the matter lay in genuine and honest political will. Lastly, they asserted that it was not the responsibility of the Department of Labor but of the workers' organizations themselves to nominate the trade union organization called to sit on the consultative bodies.

Conclusions

The Committee took note of the written and oral information provided by the Government representative, as well as the discussion that followed regarding the effectiveness of the tripartite consultations required by the Convention.

The Committee noted that according to the information provided by the Government, the President's Committee on the ILO was much more than just a formal body and that it was a broad-ranging mechanism for tripartite consultation. The Committee noted that the consultation mechanisms required by the Convention also included regular meetings of the ILO Consultative Group and of the Tripartite Advisory Panel on International Labour Standards (TAPILS). In this regard, the Committee noted with interest that an updated document including the results of tripartite consultations had been submitted to the Senate Foreign Relations Committee in January 2007, with a view to obtaining consent for the ratification of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Consultations in TAPILS would resume of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), as soon as the internal governmental review had been completed.

Taking due account of the concerns expressed during the debate and the fact that the Committee of Experts had requested the Government to reply in detail to its observation before 1 September 2007, the Committee trusted that the Government and the social partners would deepen their dialogue on all the matters covered by the Convention in order to engage in a review of the manner in which the Convention was applied in practice. The Committee hoped that the report that would be examined by the Committee of Experts would include information on the initiatives taken to give satisfaction to all the parties involved in the consultations required by the Convention.

SPAIN (ratification: 1985)

A Government representative thanked the Committee for giving his Government the opportunity to address the Committee regarding what it referred to as an individual case of progress, but which he preferred to term "good practice". Without wanting to reopen the debate on the working methods of the Conference Committee, he stated that at the next session of the Governing Body, he would propose an amendment concerning the terminology used and the need for cases of progress and cases of non-compliance with standards to be clearly distinguished. Therefore, there would be greater adaptation to the objective of the Conference Committee and the Committee of Experts, which was to ensure decent work for all.

The speaker stressed the development of legislation and practice in two essential fields: occupational health and safety, and equality, free of all discrimination, for all workers without distinction. Such development was the practical consequence of a constitutional mandate agreed upon some 30 years before by all the political parties and accepted in a referendum by the Spanish population. It established the monitoring of occupational health and safety as the driving force of Spanish socio-economic policy. Any improvements to the body of law and administrative practice in that field resulted from the strengthening of social democracy by the Government. From that social commitment came the current Act on the Prevention of Occupational Risks that included the European Union *acquis* and the provisions of Convention No. 155. The Committee of Experts stressed the significant change that the law had introduced in the preventive culture of occupational accidents and diseases. There was a genuine and exacting social demand in Spain for safe and healthy workplaces, with Parliament and the administration responding to that demand. In that regard, the Government representative recalled that the central administration of the State shared competences with the local government of the autonomous communities, and stressed that both fully agreed on accepting the obligations imposed by the constitutional mandate, which facilitated coordination and cooperation.

The speaker indicated the generalized nature of Spanish labour inspections, which enabled ensuring good occupational health and safety conditions to be linked with the other standards that also influenced respect for workers' rights, such as non-discrimination and full equality at work. That issue had been examined on several occasions by the Committee of Experts given that combating discrimination at work was one of the main roles of the ILO, since this issue constituted a distinctive indication of contemporary society and an indispensable requisite for social justice. The issue was expressed in 1889 by Spanish legislators in article 27 of the Civil Code, which provided for foreigners in Spain to enjoy the same civil rights as Spanish citizens. Furthermore, the Act on the Prevention of Occupational Risks did not contain any rules governing its scope of application, meaning that it applied to all workers, with the exception of special laws applying to military centres and penitentiaries. Public officials were also covered by the law.

Nevertheless, despite showing a positive trend, statistics on occupational accidents were unsatisfactory and the matter had been the subject of a particular demand by trade unions during the celebrations of 1 May. The Government shared their concern, as could be seen from the significant number of existing health and safety regulatory provisions, some of which were included in the Committee of Experts' report, and the severe penalties in case of non-compliance. For example, in order to promote a suitable culture of prevention among the working population, the Ministry of Labour launched a state media campaign particularly targeting employers and workers, and also encompassing the population at large, at a cost of some 4 million euros. The initiative was an integral part of the health and safety strategy forged by the Government and the social partners, which was integrated into the Plan for the Improvement of Occupational Safety and Health and the Reduction of Accidents.

The Government representative further indicated that on 4 May, the Council of Ministers had approved, on the proposal of the Ministry for Labour and Social Affairs, a Royal Decree on the form of publishing penalties for very serious offences concerning the prevention of occupational risks.

The speaker also cited an example from the Andalusian Administration, which had implemented the immigrant PREVEBUS campaign, aimed at preventing risks and targeting the immigrant population (particularly from the Maghreb, Ecuador and Romania). It includes a bus containing 15 computer stations, where training was provided by teachers from Romania, Poland, Spain and from the Maghreb, and a meeting room with space for 15 people was made available. The scheme combined prevention, risks and social, labour and personal integration for the immigrant population. Another example was the publication in five languages of the collective agreement and salary scales of collective agreements for sectors and activities with a significant foreign workforce. This demonstrated the efforts undertaken to continue reversing the trend in terms of occupational accidents. Nevertheless, the Government remained firm in its wish to surpass the target set by the European Union Employment and Social Affairs Commission of reducing the number of occupational accidents by 25 per cent during the period 2007–12.

The Government representative further stressed the efforts of the trade unions and the employers' associations, which, as a result of collective bargaining, had progressively adapted more general standards to the particular nature of companies and industries.

It should be recognized that, in many cases, occupational accidents occurred in clandestine or marginal labour sectors. Therefore, and in the name of equality, the labour inspectorate had launched campaigns affecting the irregular economy, which in 2006 in Andalusia alone saw some 100,000 inspections with corresponding penalties to a value of 14 million euros. Nevertheless, the best ways of solving those problems was through training and social dialogue. Social dialogue was a well-known government action. The new 2007–10 strategic plan for citizenship and integration, for which the Government had earmarked over 2 billion euros, influenced participatory issues, education, employment, housing, health and co-development. It could not be stated that migrants were the primary victims of accidents, but given the status of illegal migrants, they could suffer more than others. Therefore, the regularization of migrants undertaken by the Government had significant social effects on the equality of workers, because there was no greater discrimination than that which separated legal and illegal migrants. The speaker stressed that 578,375 illegal migrants had been regularized.

The issue of migration had been of great concern to the Spanish delegation at the Governing Body, the Tripartite Meeting of Experts on the ILO Multilateral Framework on Labour Migration, in the discussion on technical cooperation at the 95th Session of the International Labour Conference (May–June 2006) and the European Regional Meeting in Budapest in which the Government and the Secretary-General of the General Union of Workers (UGT) stressed the need for the ILO to become involved. The regularization or normalization procedures undertaken in Spain had been recognized by the ILO as a very good practice.

Lastly, the drive for equality had given rise to the criminal offence of racial harassment law. It could be considered as a form of harassment against which all pos-

sible prevention should be taken. Spain was currently a receiving country for migrants, without forgetting that it used to be a sending country, making it sensitive to the foreigners who accounted for 10 per cent of its population. Multiculturalism was fully accepted in Spain and the Alliance of Civilizations proposed by the Prime Minister was a further response to the demands of society, wishing to live together in peace and enjoy social justice, in applying the emblem of the International Labour Organization to which they belonged.

The Worker members concurred that Spain should be cited as a case of progress in the context of the application of the Convention. Public opinion could expect no less from a country hosting for a number of years the European Agency for Safety and Health at Work. They highlighted the following as particularly positive: the adoption of a new law on occupational safety and health that was mainly based on the concept of prevention; the 2005 governmental plan for the improvement of occupational health; the 2006 national plan for priority measures to reduce risks; and other initiatives. The Worker members hoped that future results would confirm the effectiveness of these measures, recognizing that results were never immediate in this field. Indeed, a policy of prevention was a long-term policy that called, in particular, for a radical change in mentalities and attitudes at work. The Worker members further welcomed the fact that these initiatives had been taken in cooperation with the representative employers' and workers' organizations. This way of proceeding provided undeniable evidence of a global tripartite approach characterized by strongly implicating the social partners in governmental politics: in Europe, the "Spanish model" had begun to become a point of reference. Indeed, this model gave reasons to rejoice in a world where, all too often, governments and employers hid behind the alibis of globalization and deregulation, in order not to establish the legislative framework necessary to guarantee the protection of workers. This positive evaluation also illustrated to what extent international labour standards could contribute to the constant improvement of national legislation and to its application in practice. The Worker members called on Spain to continue to deploy the same energy to ensure that the numerous migrant workers on its territory benefited from the same protection in terms of health as national workers. This approach should be accompanied by the recognition of the right of all workers to unionize, in view of the fact that, from the moment that workers were confronted with an irregular situation from the administrative point of view, this right became undeniably linked to the occupational safety and health issue. In substance, the Worker members conveyed to the Government their congratulations for what it had already achieved and their encouragement for what remained to be done.

The Employer members stressed that this was a case of progress. The Committee of Experts had noted with interest the adoption of a new Framework Act, which followed a preventative approach to occupational safety and health. The Employer members stated that measures at the level of the enterprise had to be supplemented by national policies, as envisaged by the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). They commended the Government for the progress achieved in promoting a culture of prevention under the 1998 Plan of Action, and also for relying on social dialogue in this context. A number of other instruments had been adopted to supplement the Plan of Action, all of which the Committee of Experts had considered to have contributed to improving the implementation of the Convention. Further, the Employer members noted that the legislation on occupational safety and health applied to all workers, irrespective of their legal status. They also noted the Government's great efforts to promote awareness of the relevant legislation, including through the dissemination of information materials in foreign languages, and encouraged the Government to continue its extensive promotional campaigns.

The Government representative welcomed the Employer and Worker members' praise. He reaffirmed Spain's commitment to rejecting all forms of discrimination in employment, to forging a policy for occupational health and safety and to protecting migrant workers. Such a pledge resulted from the regulatory will directing the European social model to which the Government was fully committed. Isolated cases of xenophobia could not conceal the fact that most foreigners habitually resident in Spain – even without being active workers – were genuinely and fully enjoying the quality of life prevalent in the country. The Government was active at all levels of the International Labour Organization, which was evidenced by its contribution to the budget and technical cooperation activities. International labour standards, in addition to the Convention's provisions, should be integrated into everyday life and used to promote globalization with decent work.

The Worker members, at the end of this by and large positive review, expressed the hope that the Government would report regularly on the progress achieved in the field of occupational safety and health, as well as on the expansion – in consultation with the social partners – of the measures envisaged in favour of migrant workers, in particular for those working in irregular situations (without work permits).

The Employer members stated that the Government should continue to report on the measures taken to ensure the Convention's application in law and in practice, as well as their impact.

Conclusions

The Committee took note of the statement by the Government representative and the discussion that followed. The Committee noted that the issues raised by the Committee of Experts in its observation referred to the efforts by the Government to improve the occupational safety and health situation for all workers in the country, including foreigners, through the adoption and implementation of a coherent national policy of prevention and targeted legislative and follow-up measures.

The Committee noted the information provided by the Government in which it underscored that the current national policy and legislative framework, including the shift towards a preventative safety and health culture, was part of a broader policy framework. This framework, which was aimed at the democratization of social progress, had been developed in close consultation with the social partners and rested on popular support articulated in a referendum. The Government also indicated that while the impact of its efforts had yet to be reflected in national statistics, it was a positive trend that reported accidents now tended to be less serious. With reference to its efforts to implement the legislative framework by codifying equal rights between nationals and foreigners in terms of occupational safety and health, the Government indicated that it had taken concrete measures such as launching multilingual information campaigns, carrying out intensified inspections and regularizing the status of more than 578,000 migrant workers.

The Committee noted that this case had been included in the list of countries as a case of progress which should serve as an example of good practice. It commended the Government for its comprehensive efforts to improve the occupational safety and health situation for all workers in the country and encouraged the Government to pursue the implementation of its national preventative safety and health policy in close cooperation with the social partners and the ILO. The Committee requested the Government to continue to report on progress made in the implementation of the above policy, including through national statistics, and to provide

further information on the results of the campaigns to improve the working conditions of migrant workers irrespective of their legal status.

Convention No. 182: Worst Forms of Child Labour 1999

CHINA (ratification: 2002)

A Government representative referred to the written documentation already submitted to the Committee and reiterated that his Government was strongly committed to eradicating the worst forms of child labour, having made unstinting efforts to implement the Convention effectively.

Firstly, measures had been taken to improve legislation and the rule of law. The Labour Law, the Criminal Law, the Law for the Protection of Minors, the Compulsory Education Law and the Law on the Protection of Rights and Interests of Women contained specific provisions on the prohibition of child labour, including its worst forms, and stipulated penalties. In recent years, China had amended its Criminal Law by adding several provisions on the offences of child trafficking, the sale and purchase of trafficked children, and the recruitment of children for hazardous and hard labour; as well as by stipulating more severe penalties. The Regulations on the Prohibition of Child Labour had been revised. A document on issues related to rural-to-urban migrant workers had been published, with special attention being paid to the right of the children of migrant workers to equal access to education. An approach to assist and protect homeless minors was currently being drafted; the Regulations on Administration of Overseas Employment Agencies were under revision with a view to putting an end to cross-border human trafficking for labour exploitation, and the system of re-education through labour was under review. The Government was also cooperating with the ILO on the two fundamental Conventions on forced labour. Furthermore, Labour and Social Security Inspection Regulations had been promulgated and implemented; training modules for labour inspectors had been developed, and inspectors were being trained in cooperation with the United States Department of Labor and the ILO.

Secondly, efforts had been made to address the root causes of child labour through poverty eradication and universal education programmes. For nearly three decades since 1979, the Chinese economy had maintained an annual growth rate of 9 per cent, reducing the population living in poverty from 250 million to 20 million. Economic growth had laid solid foundations for the elimination of child labour. In recent years, the Government had launched a programme to develop rural areas and had increased the budget for those regions, focusing on infrastructure development in health, education and transportation. As of 2006, agriculture tax was no longer levied. The disposable income of residents in rural areas had increased by a real 7.4 per cent in 2006 compared to 2005. In 2007, tuition fees covering the entire period of compulsory education had been waived in rural areas nationwide, to the benefit of around 150 million primary and secondary-school students. In addition, China provided living subsidies for students from poor families. In 2006, 7.8 million students had received such subsidies. In 2005, the national enrolment rate of primary school-age children had reached 99.15 per cent, while the junior middle school rate was 97.38 per cent.

Thirdly, action had been taken to mobilize civil society to combat child labour. While the Government had an undeniable obligation with regard to the prohibition of child labour, social partners and non-governmental organizations (NGOs) could also play an irreplaceable role. The All-China Federation of Trade Unions (ACFTU), China Enterprise Confederation, All-China Women's Federation, China Youth League and other NGOs provided strong support to the Government. Those organizations took advantage of their close connection with the population at the grassroots level, undertook publicity campaigns on laws and policies and outreach programmes for vulnerable groups, served as part-time labour inspectors and participated in targeted inspections on the ban on child labour. Those measures greatly supplemented the Government's efforts. For example, the All-China Women's Federation had implemented the ILO project on the prevention of trafficking in women and children and had undertaken such activities as education on gender equality, occupational skill training and also provided small loans, with a view to improving the living conditions of women and raising the enrolment rate of girls in poverty-stricken areas.

Fourthly, efforts had been made to strengthen education concerning the legal system, and to enhance awareness of the rule of law. The Government had placed legal education on the programme of all its departments. Public lectures, contests, posters and brochures on relevant legislation were used to raise the awareness of businesses so that they would comply with the law, and raise the awareness of the public so that it could protect itself through the law. Efforts to combat child labour, in particular in its worst forms, had always been an important component of those education programmes.

The Government representative recognized that, despite the ardent efforts and the significant progress achieved, China was the most populous developing country at a relatively low level of economic development, with broad regional disparities and a society undergoing change. Consequently, child labour still existed in a small number of enterprises and individual businesses, sometimes in its worst forms. The Government was firmly committed to combating child labour. Once child labour was identified, those responsible would be punished severely without delay.

In conclusion, China was making significant strides towards modernization, and had, along the way, encountered difficulties and problems, some of which had been resolved. Many issues were yet to be addressed and difficult to tackle but efforts were being made nonetheless. In recent years, China had put forward the Scientific Outlook on Development aimed at building a harmonious society, which emphasized balance and coordination between economic growth and social progress, between rural and urban development as well as development between different regions. The concept sought to put people first in order to realize development by the people, for the people, with the ensuing benefits being shared among the people. With regard to efforts to combat child labour, the Government representative assured the Committee that continued efforts would be made to improve legislation further, to strengthen compliance and to implement effective measures. China stood ready to boost its cooperation with the ILO and the tripartite members of the Organization, to learn lessons and to share experiences in order to further improve its work. The Government representative called for joint efforts to attain the ultimate goal of eliminating child labour.

The Employer members welcomed the Government's commitment to eradicating child labour and to striving towards universal education for all children, as well as its willingness to cooperate with the ILO and the international community on the matter. They recalled the Committee of Experts' comments that although national legislation appeared to prohibit the sale and trafficking of children aged under 18, trafficking for labour and sexual exploitation remained a concern in practice. China continued to be a source, transit and destination country for trafficking in children for sexual exploitation and the entertainment industry. However, they found it significant that the Committee of Experts had also noted a number of measures taken by the Government to combat trafficking

in children in coordination with the social partners and in close cooperation with the ILO. Those included public education campaigns and conferences on human trafficking, making combating trafficking a top priority for the Public Security Department, and training police officers working at different levels to combat trafficking in children. The Employer members also specifically noted the measures taken by the Government regarding international cooperation and commended the Government on its steps to prevent trafficking in children for labour and sexual exploitation and on the important progress achieved. They hoped that the Government would continue to develop measures in that area.

With regard to forced child labour, the Employer members noted that the Committee of Experts had observed that despite the prohibition of forced labour under national legislation, a number of work-study programmes continued to exist, such as "diligent work and economical study" for children aged between 12 and 17, and "re-education through labour" for children aged over 16. Although the Government had explained that those programmes applied to children who had committed offences requiring criminal punishment and that the system was currently under review, the Employer members were concerned by the situation of children performing forced labour either in work-study programmes or as part of re-educational and informative measures. They reminded the Government that forced child labour was considered one of the worst forms of child labour, and requested the Government to take measures to ensure that children were never subjected to forced labour.

With regard to labour inspection, the Employer members noted that the Government had adopted regulations expanding the authority of the labour inspectorates to enforce the law. They were pleased to learn that the Government had increased the human and financial resources allocated to the labour inspectorates and commended the Government for working with the ILO regarding training for labour inspectors. They encouraged the Government to continue implementing those positive measures.

Lastly, with regard to homeless children, the Employer members noted that the Committee of Experts had observed that there was a significant number of child beggars and noted with interest the measures described by the Government to address the situation. Recognizing the complexity of the problem, they encouraged the Government to continue its efforts to protect homeless children and child beggars from the worst forms of child labour.

The Worker members welcomed China's ratification of Conventions Nos 182 and 138, since it was a significant statement of commitment to the international community and the ILO. Bringing a quarter of the world's children under that ambit marked significant progress in the shared campaign to eliminate child labour, particularly its worst forms. The Worker members, the International Trade Union Confederation (ITUC) and the Global March Against Child Labour had previously stressed the need to understand and pursue the holistic relationship between Conventions No. 182 and No. 138, the achievement of universal education, and decent work for adults. Experience told that a holistic approach by governments and social partners promoted greater, more rapid and more sustainable progress.

The education legislation passed by the State Council and the ratification of Convention No. 138 with a minimum age of 16 indicated that the Chinese authorities agreed that the elimination of child labour required the provision of universal, compulsory and formal public education up to the minimum age for employment. Additional resources were welcomed, but more needed to be done to ensure quality education for all, to remove the need for schools to raise funds by ensuring income-raising labour from their pupils and to fulfil the requirements of Convention No. 182.

Given the size of China, it was unsurprising that it should be a source of internally and externally trafficked workers. Though trafficking was a subset of forced labour rather than migration, movement of people and the risk of trafficking were related. Recent internal migration in China was the largest in human history. In 2005, there were 140 million migrants, with 40 million in Guangdong Province alone. With such rapid economic and demographic change, the trafficking challenge had grown. Chinese workers were also being trafficked internationally. Deficits in domestic decent work caused them to take great risks in seeking work abroad, meaning that they could fall victim to traffickers.

The Worker members recalled the deaths of more than 50 trafficked shellfish-pickers in the United Kingdom and the ensuing outpouring of anger and sympathy, which had led trade unions and food retail companies to campaign successfully for new legislation regulating "gangmasters" – irregular labour contractors – in the agricultural sector. China should also regulate informal labour brokers who facilitate trafficking and employment. The ratification of the Private Employment Agencies Convention, 1997 (No. 181), would assist in that matter. Furthermore, official Chinese labour offices were costly and offered work which demanded high levels of skills and education, meaning that children with low levels of education – among them the most disadvantaged and excluded – were likely to find work through unregulated labour brokers.

The Worker members welcomed the authorities' recognition that trafficking was a serious challenge requiring an effective and coherent response. The information supplied indicated the crucial understanding that trafficking – characterized by deception and coercion – of women and children gave rise to forced labour. Chinese law defined trafficking of children as abduction for adoption and forced marriage. There was also the de facto recognition that abduction could result in sexual exploitation. The authorities could, however, take more coherent action if the legislation itself clearly reflected a comprehensive understanding of trafficking for labour and sexual exploitation.

In the spirit of constructive debate and the Government's commitment to eliminating trafficking of all children aged under 18, both male and female, the Worker members urged the drafting of comprehensive, consolidated legislation, calling on ILO technical assistance if necessary. They urged the Government to study and ratify the Protocol to prevent, suppress and punish trafficking in persons, especially women and children (the Palermo Protocol) and to examine the new European Convention on Action against Trafficking in Human Beings, which stressed the rights of victims. Given the commitment that they heard, that course of action appeared logical. A further logical course of action would be to ratify Conventions Nos 29 and 105, and the Worker members urged the Government to move rapidly on that matter.

There was some existing and developing good practice. Educational material was being produced to warn children and young migrant workers of the risks of trafficking and to inform them about how to stay safe. They were currently being used in pilot schemes, but mainstreaming them would be highly advantageous. The Worker members requested that the Government supply information about the extent to which such information was being made available to children who had dropped out of the educational system, as they were at greater risk, and to children from ethnic minorities and other socially excluded communities. Education, movement, housing, discrimination and exploitation all required action.

The Worker members welcomed projects under way to combat trafficking and to protect migrant workers, such as the Pan-River Delta Regional Women Development Cooperation Framework and a project on preventing trafficking in girls and young women for labour exploitation.

They asked the Government to provide further and more detailed information about implementation and results of those projects. They noted the important role of the All-China Women's Federation and the ILO, as well as the role for the All-China Federation of Trade Unions spelled out in the State Council Directive on Trafficking.

Law enforcement, particularly concerning trafficking, also required effective inter-agency cooperation between the various public authorities. The education system, the police, the labour ministry, labour inspectors, social and health services, social protection, public housing and the transport network all had roles to play in disseminating information, detecting trafficking, protecting victims and prosecuting offenders. The Worker members insisted, however, that the death penalty was incompatible with international law prohibiting cruel and unusual punishment.

While reports indicated political will in central government in tackling trafficking, evidence reflected a lack of local enforcement. The Worker members were deeply concerned by reports of poor local enforcement and collusion between local authorities, the police and bar and nightclub owners in the recruitment of Tibetan sex workers. Additional information supplied by the Government reported information on combating the trafficking of Tibetan women and girls, but more detailed evidence was required. The Government should collate and provide clear statistics and information. The agreement on Labour Cooperation among the Labour and Social Security Departments of nine provinces and regions within the Pan-Pearl River Delta called for the building of labour market information networks and the collation and analysis of regional labour market information. The Worker members asked the Government to supply the Committee of Experts with the detailed labour statistics arising from those endeavours.

Inter-agency cooperation also required a strengthened, gender-balanced and child-friendly labour inspectorate. The Worker members welcomed the expanded authority of the labour inspectorate under 2004 regulations, the cooperation between the Labour Ministry and the United States Department of Labor in developing training materials, as well as the ILO training workshops, which they hoped would continue and spread. They recommended that the Chinese authorities consider the conclusions of the ILO meetings of experts on labour inspection and child labour. The labour inspectorate required increased capacity and access to all workplaces, including in the informal economy, where trafficked children were more likely to work. If legislation was required to enable such a step, it should be enacted.

Developing coherent public policy required qualitative and quantitative research. The report to the Committee of Experts was rather general and would be insufficient for forging such policy and for easily identifying where intervention was required or where ILO assistance could be of greater assistance. There was a need to go beyond averages and generalizations and, alongside broad national legislation and social policies, to focus delivery on specific areas, sectors and subgroups where the prevalence and risk of trafficking was greatest. The Worker members welcomed the additional information on efforts to protect homeless minors and child beggars.

Turning to re-education through labour, the Worker members noted that school-run factories operated in work-study schools under the "Diligent Work and Economical Study" programme. In violation of the Convention, children sent to those facilities without due process were detained and required to perform at least 12 hours' labour per week. The international trade union and child rights movements had deep concerns over those procedures, not least that most girls had been detained for sexual offences. Many had been confined for having underage but consensual sex, but girls were punished for such behaviour more than boys. Girls who were victims of sexual exploitation could also be subject to that regime, violating the principle that victims must be protected. Given that they were punished without due process and by forced labour, the Worker members noted significant incompatibility with the Convention and the rights of the child: gender discrimination, no due process, forced labour and victimization – not by private exploiters, but by the State itself.

With regard to re-education through labour camps, the Worker members noted a typographical error that had appeared in the report by the ITUC and, as a consequence, in the Committee of Experts' report. It referred to the power of local security bureaux to send children aged 13–16 to custody and re-education programmes "with" recourse to the criminal justice system, when it should have read "without" recourse to the criminal justice system. This was an example of summary punishment and children were also sent to those camps without due process. Forced labour of children violated the Convention, and in addition the Worker members asked why children were being detained without the right to fair legal proceedings and defence.

The Worker members had received contradictory information about whether children could be sent to re-education programmes. Even if it were the case that children aged under 16 could not be sent to such camps, the Government had informed the Committee that children aged 16 and 17 could in fact be sent there, thus violating the Convention, which defined a child as any person aged under 18 and prohibited all types of forced labour for children. Therefore, China was not in compliance with Convention No. 182 or with the United Nations Convention on the Rights of the Child. That non-compliance should be resolved as a matter of urgency.

There was a further system in which schoolchildren were forced to work to make up school budgets. That included factory and agricultural work, for example, with arduous long hours picking cotton, quotas to be filled and fines for missed targets. The Worker members further recalled the fatal explosion in a school where children were producing fireworks. British-based companies sourcing glass Christmas ornaments from Xanxi had discovered child labour in their production chains. In conjunction with the trade union organizations in the Ethical Trading Initiative, they were supporting remediation and transfer of those children back into education. Multinational enterprises needed to examine the capacity of the local adult labour market before they placed contractual demands in communities where they would be filled only with recourse to – possibly hazardous – child labour.

Despite the common ground and good will, and although discussion was under way in China, there was a need to enter into deeper discussion in the ILO forum about re-education through labour. The Worker members had received contradictory information about the subjection of children to forced labour under the various strands of that policy. They noted the findings of the Committee on Economic, Social and Cultural Rights that "Diligent Work and Economical Study" programmes constituted exploitative child labour in breach of Convention No. 182, and the Committee's encouragement to China to withdraw the programme. They further noted its grave concern at the use of forced labour as a corrective measure, without due process, under the re-education through labour programme.

The decisions governing re-education through labour dated from 1957. As China leapt forward in economic growth and surged ahead as a pillar of the global economy, it needed modern legislation, modern social policy and modern industrial relations that were compatible with international law in order to enable it to achieve its aim of a balanced and prosperous society. The Worker members recognized that entering into a debate on reform meant

recognizing that a problem existed and needed to be solved. They expressed the belief that such recognition was a sign of strength, rather than weakness, since it demonstrated a willingness to embrace change and progress. Therefore, they urged the Chinese authorities to continue dialogue at the highest level with the ILO and other relevant United Nations agencies in order to find a way to dismantle the re-education through labour system, which was already under review.

The Worker members echoed the Committee of Experts' request for further information about the implementation of the Global Education for All Campaign and the ILO Mekong Delta Trafficking project.

The Worker members hoped that they had demonstrated the international community's willingness to help China – through support and constructive criticism – to attain the goal of full compliance with Convention No. 182.

The Worker member of China stated that Chinese trade unions strongly opposed any form of child labour, particularly its worst forms. Together with other social partners, they had vigorously lobbied for the ratification of the Convention by China. Since ratification, Chinese trade unions had taken numerous measures to promote its implementation. For example, Chinese trade unions had assisted the National People's Congress in launching a nationwide inspection on the enforcement of the Regulations on the Prohibition of the Employment of Child Labour from July to August 2005. They had also participated in the ILO programmes on combating trafficking. China had established a sound legal framework for eliminating child labour, which was consistent with the provisions of the relevant Conventions. However, in reality the use of child labour had still not been completely eliminated. This was largely due to the fact that, despite economic growth, poverty remained a problem in China. In addition, some companies were solely driven by profits and resorted to child labour. Furthermore, China's labour inspection needed to be strengthened. The speaker suggested that China should take action to bring about economic development and reduce poverty. In addition, legal education and raising legal awareness among the public should be provided and labour inspection should be reinforced. The Chinese trade unions urged the Government to take effective measures, and make concerted efforts, together with the social partners, to eliminate the worst forms of child labour.

The Employer member of China stated that the Government had made outstanding achievements in improving the labour environment and eradicating child labour. China was promoting economic and social development in a comprehensive and coordinated way by adopting the concept of scientific development in which a people-oriented approach was key. With the improvement of relevant labour laws and regulations, awareness of the need to respect and protect workers had been widely increased, and the environment for eradicating child labour and realizing decent work was maturing. He stressed that most Chinese employers complied with child labour legislation. However, China remained a developing country and its society and economy was developing in an unbalanced way with variations between employers in the level of awareness of child labour. While recognizing that child labour existed in China, he underlined that employers in general were strongly opposed to it. In conclusion, he called upon employers to comply with child labour legislation, to motivate their business partners not to use child labour and to fulfil their social responsibilities. His organization wished to work closely with the ILO and other social partners to eradicate child labour and to provide children with a better environment and education in order to help them to become the driving force behind the country's development.

The Worker member of Senegal noted that the systematic degrading of women in Chinese society ultimately resulted in China being a source and destination country for the trafficking of women and children for commercial and sexual exploitation, with the main developed countries in Europe and North America as the primary destination. The ineffectiveness of repressive action led to a constant increase in trafficking. The absence of local measures virtually destroyed all efforts made by the Government to put an end to the scourge, and national legislation did not provide for the necessary sanctions to punish traffickers and their accomplices. Furthermore, families needed to possess the necessary means to assume their parental role, and the labour inspection needed to have at its disposal the means required to discharge its duty. In substance, the Government had to continue striving to combat the problem, since a harsh economic climate could increase poverty and thus aggravate the risk of the emergence of the worst forms of child labour. Ratification of Convention No. 29 would, without a doubt, enable the legal system in place to be strengthened.

The Worker member of France stated that one of the problems concerning the application of the Convention by China was that of forced labour in schools. The fact that children were subject to labour, particularly forced labour, within the very institution that should keep them safe, was, at the very least, paradoxical. Numerous sources testified that some schools forced their pupils to undertake paid productive activities and claimed to assist the children in developing new "skills". Unfortunately, in most cases, the tasks undertaken were not only far from educational, but in fact arduous and often dangerous.

In 2001, the explosion of a school in Wanzai county, Jiangxi Province, which had become known as the "fireworks capital", perfectly illustrated that issue. Sixty pupils, aged from 8 to 9, and three teachers died. Despite protests by parents, the children were required to make fireworks, without pay, and families even risked being fined if their children refused. In the autonomous Uighur province of Xinjiang, classes were interrupted every year at the same time and pupils were sent to pick cotton. The activity was an official part of the "work-study" programme, but the children were required to fulfil a certain level of productivity at the risk of a fine, sleep in dormitories for six weeks and work from 7 a.m. to nightfall. with a 30 minute lunch break. Some 100,000 pupils in the province participated.

Each year, girls fell victim to sexual assaults during the harvesting and children were victims of accidents, particularly relating to tractors, which they were authorized to drive. Thus, not only did schools compel their pupils to undertake forced labour, but they required them to carry out dangerous work, which was a gross violation of Article 3(d) of Convention No. 182. Requiring children to work was a means for schools to raise additional funds to cover their expenditure and finance materials and teaching. According to the last United Nations Development Programme Report on Human Development in China, the country earmarked only 3.4 per cent of its GDP for education, which was much lower than the international average. Lacking financial resources, schools needed to find solutions. Other than child labour, they implemented enrolment fee systems which could prove prohibitive, thereby contributing to excluding children from already marginalized families from the education system. The administration and funding of primary schools were within the purview of the local authorities. It appeared that the smaller a region's resources, the higher the education fees and the greater the recourse to forced labour in schools. Therefore, children from the poorest regions were most likely to be compelled to work. China had indeed made considerable progress in education. Between 1964 and 2000, the illiteracy rate had fallen from 52 to 9 per cent. Such progress was commendable, but its impact would remain limited as long as the unacceptable practice of forced labour in schools continued. Additional infor-

mation on the financial assistance that was supplied for schooling and regarding the 98 per cent of primary school-age children attending school would be welcomed. School was, by definition, the place which should protect children from forced labour, the institution which should enable them to later have access to decent and dignified work. It should give them the keys to their freedom and their future. Forced labour in schools should therefore be entirely prohibited. To achieve that aim, the Government should forge an ambitious and coherent education policy so that schools no longer needed to seek, through any means, additional financing, and also to reduce inequality in access to education.

The Worker member of Germany expressed her concern that despite some progress in respect of the application of the Convention, there were still serious forms of forced child labour in China – either by "work-study schools", labour camp re-education programmes or "custody and education".

The work-study schools were, in reality, in certain instances school-run factories, which could lead to the exploitation of child labour. In "re-education through labour" camps, children had scant safeguards against overwork as well as dangerous working conditions. In school-related and contracted work programmes, children were exploited by heavy work in labour-intensive unskilled jobs in rural areas of handicrafts, firework assembly, cotton harvesting or small-scale industry. Children forced to stay at work-study schools had scant education and training and were vulnerable to dangerous and poor working conditions and serious accidents. Young girls also suffered sexual abuse. Those forms of child labour severely breached the Convention. The speaker therefore called on the Government to withdraw the programmes and ensure through legislation, practice and adequate labour inspection that children and young people aged under 18 were not forced to work, either through re-educational or reformative measures in schools.

She also reminded the Government of the conclusions of the Governing Body at its 293rd Session in respect of Case No. 2189 of the Committee on Freedom of Association regarding China "that the subjection of workers to the education through labour system without any court judgement is a form of administrative detention which constitutes a clear infringement of basic human rights …". In the recommendations of that case, the Government was requested to refrain in future from applying the measure of re-education through labour which constituted forced labour. What was recommended by the ILO Governing Body for the respect of human rights and trade union rights at large was even more valid with respect to the particular case of abolishing forced labour for children in line with Convention No. 182.

The Worker member of the United States considered efforts to combat and eradicate child labour, including its worst forms, to be fundamental and a founding principle of the ILO. The failure to fully investigate and divulge the prevalence of the worst forms of child labour in China meant that the problem had remained hidden from much of the public opinion worldwide, including in the United States. He pointed to the seriousness of the problem by highlighting the examples of the millions of school-age children working in the low-cost manufacturing industry and the kidnapping and trafficking of children from southern China's coastal region to undertake hazardous work in the cities.

Turning to the root causes of two specific forms of child labour, he stressed that Chinese children would continue to be victims of the sex and drug trade and be involved in work detrimental to their health, safety and morals as long as certain social, structural and public policy conditions persisted. He mentioned in that regard the deterioration of decent work for the adult population, especially in southern coastal industrial areas, due to pressure from the Government and multinational companies, including from the United States, for ever cheaper labour costs, and the privatization of fees for public schooling. The UN Special Rapporteur on the Right to Education had, however, found in 2003 that the privatization of fees for public schooling compelled parents to pay for nearly 50 per cent of schooling costs amounting to at least a month's pay per term. Those rising costs made education inaccessible to many Chinese children, driving them into the labour force and making them vulnerable to forms of child labour in violation of Convention No. 182. He welcomed the fact that the Government had waived the education fees for children but insisted that the situation should be monitored to determine whether progress had been achieved.

In conclusion, he supported the recommendations of the Committee of Experts for a more effective enforcement of the measures against trafficking, a heightened prosecution of those responsible for kidnapping and trafficking children, an enhanced inspection capacity for the Chinese authorities and a better protection for child beggars and homeless children. However, if the lack of decent employment for millions of parents and the lack of a sustainable educational system persisted, the Conference Committee as well as the Committee of Experts would be obliged to review the case for many years to come.

The Government representative thanked the Employer and Worker members, as well as the other members of the Committee, for their positive remarks and encouragement on the efforts his Government had made and progress achieved. He also thanked them for their understanding with regard to the challenges and difficulties confronting China and for their advice and suggestions on making progress. However, on the issue of forced child labour he indicated that there was a misunderstanding regarding the nature of work that was carried out in the context of the education system. The work-study schools and the re-education through labour programmes should not be considered as forced labour. Nevertheless, he reassured the Committee that his Government remained committed to fully implementing Convention No 182, and that it would continue its efforts to develop the economy, eradicate poverty and ensure access to compulsory education, as well as to enhance and enforce the legislation on child labour, particularly its worst forms. His Government was ready to cooperate with the Office and the tripartite members of the ILO in the global endeavour to end child labour. It was also determined to face the challenges and difficulties and was fully confident of achieving greater progress.

The Employer members welcomed the Government's commitment in cooperating with the workers' and employers' organizations and the ILO in eradicating the worst forms of child labour. The Government should continue to take measures to apply the Convention in law and in practice, to monitor their impact, and to report to the Committee of Experts.

The Worker members noted that progress had been made, particularly in the Government's campaign against trafficking, but felt that more remained to be done and a broader, more effective campaign could be constructed. They further noted areas of continuing and serious non-compliance, such as hazardous work and forced labour for children. Therefore, they repeated their calls for coherent national legislation and more effective law enforcement; strengthened and effective inter-agency cooperation; inspectors active in their international organization; effective, child-friendly action at the local level; resources to ensure free, compulsory, full-time education for all children delivered as a quality public service and up to the minimum age of entry into employment; study and ratification of the Palermo Protocol; ratification of Conventions Nos 29, 105, 181 and regulation of informal labour brokers; an end to re-education through labour and the

forced labour of children that it entails; collation and publication of disaggregated statistics on child labour and its worst forms, and their delivery to the ILO; and continued international cooperation by and for China and the country's children. The Worker members urged China to make a move in that direction, and welcomed indications from the Government to further progress towards compliance.

The Worker members further urged multinational enterprises to take responsibility for labour practices in their supply chains in China and not to pursue business practices which fostered child labour, but instead to promote decent work for adults, as well as contributing to programmes ensuring that all children were safe at school. They also noted that greater freedom of association and collective bargaining would further empower Chinese workers and make a greater contribution in that field.

Lastly, they called upon all involved to place the rights of the child at the heart of their policies and actions and to listen to children, their families and communities in forging effective and child-friendly policies to ensure full conformity with the Convention.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative as well as the discussion that took place thereafter. The Committee noted that the report of the Committee of Experts referred to comments from the International Trade Union Confederation relating to the sale and trafficking of children for economic and sexual exploitation, forced child labour, child beggars, and the need to strengthen labour inspection.

The Committee noted the detailed information provided by the Government outlining the comprehensive measures taken, in collaboration with the social partners, to combat the trafficking of children. These measures included the publication of educational materials on the risks of trafficking, and numerous public education campaigns and conferences regarding the prevention of trafficking, the training of police on anti-trafficking measures, as well as collaboration with several other Governments on the investigation and prosecution of traffickers.

The Committee welcomed the policies and action programmes put in place by the Government, as well as the progress achieved by it to combat the trafficking of children, and encouraged it to continue its efforts in this regard. In order to promote such enhanced efforts, the Committee encouraged the Government to develop comprehensive and consolidated legislation prohibiting trafficking.

Concerning the issue of forced child labour at work-study schools and forced child labour in re-education through labour camps, the Committee noted the Government's indication that such practices were currently being reviewed by the Government. The Committee also noted the concern expressed by several speakers about the situation of children under 18 performing forced labour either in work-study programmes, as part of re-educational and reformative measures or through school-related work programmes. The Committee emphasized the seriousness of such violations of Convention No. 182 and urged the Government to take measures, as a matter of urgency, to ensure that children were not subjected to forced labour in any situation and to provide information on developments in this respect in its next report to the Committee of Experts. In this regard, the Committee encouraged the Government to continue discussions with a view to ratifying Conventions Nos 29 and 105.

While noting that the Government had taken certain measures to protect child beggars, including the establishment of in-house assistance centres to provide such children with free accommodation, food, communication and medical care, the Committee observed that large numbers of child beggars still existed and requested the Government to continue its efforts to protect homeless children and child beggars from the worst forms of child labour.

While noting the Government's strong commitment to implement the Convention, the Committee underlined the importance of free, universal and compulsory formal education in preventing the worst forms of child labour. The Committee invited the Government to take the necessary measures to ensure access to free basic education for both boys and girls, especially in rural or particularly disadvantaged areas.

Finally, the Committee noted with interest that the Government had expanded the authority of labour inspectorates in enforcing the law and had increased both human and financial resources to labour inspectorates. It requested the Government to ensure that regular visits, including unannounced visits, were carried out by the labour inspectorate and that persons who infringed Convention No. 182 were prosecuted and that sufficiently effective and dissuasive penalties were imposed. It therefore urged the Government to strengthen the capacity and reach of the labour inspectorate.

The Committee requested the Government to supply, in its next report to the Committee of Experts, detailed information on the measures to ensure the effective implementation and enforcement of the provisions giving effect to Convention No. 182. That information should include disaggregated statistical data on infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

GABON (ratification: 2001)

A Government representative reasserted the attachment of his country to the ILO standards and supervisory system and wished to reply to all the points raised by the Committee of Experts in their observation.

With regard to the sale and trafficking of children, all of the legislation requested had been sent on time to the ILO Subregional Office in Yaoundé and would be available to the Office. Furthermore, with respect to the supervisory mechanisms, the Council to Prevent and Combat the Trafficking of Children had been created in September 2004, but was not yet functioning. The current relevant technical body was the follow-up committee which supervised the vigilance committees, which were regional structures devoted to overseeing the phenomenon in the interior of the country and taking responsibility for the victims. The current legislation authorized the national authorities, including the labour inspectorate, to arrest anyone employing minors. The Committee of Experts would be kept informed of the activities of all these different bodies.

Among the measures taken by the Government to prevent children from being employed in the worst forms of child labour, the adoption of appropriate national legislation, establishment of a national manual on procedures to deal with the child victims of trafficking, as well as the appropriate institutional infrastructure, were particularly worth mentioning. At the regional level, it was important to mention the signature of the Multilateral Cooperation Agreement to Combat Trafficking in Persons, especially Women and Children in West and Central Africa. Along with these measures, information and awareness-raising campaigns had been organized in collaboration with NGOs and occupational organizations of workers and, every year since 2005, the country had marked the World Day against Child Trafficking.

In an attempt to collect comprehensive national statistics to distinguish between child workers and child victims of trafficking, the Government intended to carry out an analysis of the national situation on child trafficking in Gabon, and a mapping of the trafficking routes and zones in which forced labour involving children was practiced. Furthermore, the Government, with the support of the ILO, had established a new institutional infrastructure to strengthen the fight against all forms of child trafficking and exploitation, including a call centre with a toll free hotline, a shelter for children in difficulty and vigilance committees, in the framework of the LUTRENA/IPEC

project; they were functional and had their own plans of action. There were four shelters for such child victims, most of them located in the capital where 60 per cent of the population lived. In this respect it was important to note that there was no internal trafficking of children on national territory. The children being treated were ones who had been removed from a situation of exploitation by means of specialized structures set up for this purpose. Some 200 child victims had been removed from trafficking between 2003 and 2005, 137 of which were children aged 5 to 16 years; of these 137, 115 were girls who are the ones most affected by trafficking and exploitation.

With regard to the reinsertion of victims of trafficking, the best solution for a child that had been removed from such a situation was to be returned to his or her family, which was why two-thirds of the children who had been reinserted had been returned to their countries of origin or remained in Gabon, in accordance with their wish. The social and medical follow-up of the victims and the measures taken to ensure their rehabilitation and social integration were also being ensured. The children that had been removed from trafficking were enrolled in public schools where they could have the same opportunities as other children. The older children were enrolled in literacy centres.

The Government had also taken certain steps, in particular awareness raising for trade unions in the transport sector and small enterprises, to protect independent workers under 18 years of age from work which, by its nature or the circumstances in which it was carried out, was likely to harm their health or morals. It was also envisaging the possibility of adopting the measures recommended by the Committee of Experts to increase the number of police at terrestrial, maritime and aerial borders, and to set up joint border patrols and open transit centres at the borders of neighbouring countries.

The Government representative concluded by reaffirming the willingness and commitment of his Government to implement the recommendations of the Committee and requested ILO technical assistance to improve the application of the ratified instruments and Convention No. 182 in particular.

The Employer members thanked the Government for the information provided that seemed to address the Committee of Experts' requests. The Government needed to provide this information in report form to the Committee of Experts. The case concerned serious issues regarding the incidence of child labour, trafficking of children within and across borders, the treatment of children rescued from child labour, and investigative matters – all problems which the Government had acknowledged, having ratified the Convention in 2001 and signed a Memorandum of Understanding with IPEC in 2003. There was every indication that the Government was, in a formal way at least, participating in dialogue with the Committee of Experts and the ILO supervisory mechanisms.

He noted that the matter was likely to be ongoing given its serious nature, the large informal economy and its very magnitude. It was, however, vital to ascertain whether the problem was getting better or worse. In 2004, the Committee estimated about 25,000 children working in the country, of which 17–20,000 were victims of trafficking, with 95 per cent of this occurring in the informal economy. However, neither the Committee of Experts' report nor the Government's reply provided more recent comparative data. It was difficult to know what was working and what was not, a question that was at the heart of the Government's obligations under the Convention.

Further information was required on the harmonization initiatives mentioned in the context of a wider subregional project, including two new decrees in 2005, and on the administrative council established to prevent and combat the problem, as well as on its tripartite representation. Further information was also required on the information campaign, which should be spread to other towns across the country. Of equal relevance were the steps being taken under the Convention to provide assistance to children rescued from trafficking, including the provision of medical and social assistance, education and training. The Government had not provided adequate material to the Committee of Experts in this respect, though reference had been made to a procedural manual.

The Committee of Experts' report referred to investigative matters, including the powers and activities of police, border controls and judicial bodies. There was an important need for the Government to make available information on measures being taken, given the migratory nature of the problem. The Employer members believed that regional responses were part of the solution, but only if resources and commitment existed, and if mechanisms to verify implementation were in place. The Government was responding at least on measures taken, but not with precise numbers. They hoped that the next report would provide a fuller picture on progress to date.

The Worker members said that none of the information that had been provided by the Government in this session figured in the report of the Committee of Experts and it would have been preferable to have had it earlier. Despite the measures mentioned, the situation remained alarming. The sale and trafficking of children was a crime against humanity and could threaten the future and the very survival of a country, or even a continent.

The Government of Gabon was among the most influential and respected of the African continent. It was incomprehensible that the Government did not take a political decision to ensure the future of its children. The authorities of Gabon had to realize their economic and political value and take it upon itself to address this violation against the fundamental rights of the child without waiting to be asked, thus taking the lead.

The measures taken by the Government in the framework of the Subregional Project on Combating the Trafficking in Children for Labour Exploitation in West and Central Africa (IPEC/LUTRENA) consisted in the adoption of two decrees; the creation, in collaboration with the social partners, of a Council to Prevent and Combat the Trafficking of Children, a specialized administrative body; the reinforcement of the powers of the labour inspectorate; the initiation of awareness-raising campaigns for families; the establishment of a shelter for victims, including social and medical follow-up and access to free education; and consultations with the countries of origin of the victims.

It was important to emphasize awareness raising for underprivileged families and cooperation with the governments of the countries of origin. Côte d'Ivoire, Mali and Burkina Faso had set up systems to stem child trafficking, which could be of interest to the Government. The speaker concluded by requesting the Government to show genuine political will without which nothing could be achieved.

The Worker member of Gabon said that child labour was a scourge in West Africa and had extended to Asia. Foreign children living in Gabon were very often engaged in the informal economy as domestic workers, street vendors and beggars. Faced with this shameful phenomenon, the Government of Gabon, in collaboration with the social partners, had taken action since 2001 through awareness and denunciation. National campaigns against child labour had been launched in the major economic centres of the country: publicity posters and television advertisements on children's rights and parents' responsibilities; systematic police controls and other enforcement operations. Despite the efforts made by the Government, the problem remained, particularly due to the lack of collaboration from diplomatic representatives of the countries concerned, as well as continued increase in migrant flows. Gabon was a country with a 800 km coastline and impor-

tant virgin forests, unable to deal with this curse undoubtedly caused by migratory flows.

He concluded by calling on the Government to considerer seriously the possibility of availing itself of technical assistance to reinforce security and border controls, to extend awareness-raising campaigns throughout the national territory and to show greater firmness towards those found guilty of such practices.

The Employer member of Gabon remarked that her experience of ILO work and the practical situation in her country confirmed the observations made by the Committee of Experts as far as child labour was concerned. While the current situation in Gabon could not be considered as making progress, the Government should nevertheless be encouraged to request ILO technical assistance. The Government had, in fact, ratified the Convention in particular circumstances and committed to eliminating the worst forms of child labour as well as trafficking of children. The economic activities that led to these worst forms were exclusively illegal activities that were part of the informal economy. Child victims of trafficking forced into the worst forms of child labour were often involved along with their parents who themselves were victims of trafficking or handicapped in some way.

Therefore, technical cooperation provided by the Office could be of multiple types. It could involve actors from countries where trafficking existed to permit integrated field work to sensitize traffickers involved in illegal entry of children into the country. Labour inspectors could also be better trained and therefore better communicate with actors in the informal economy who made use of the worst forms of child labour. Multidisciplinary teams could teach the children involved and their parents about the evils of the phenomenon and of the importance of education in improving living conditions.

After recalling the provisions of the Convention's preamble, she mentioned Article 7 which concerned measures which ratifying States committed to take to ensure the implementation and respect for these provisions. Although it was a destination country for trafficked children, Gabon's efforts in the elimination of the worst forms of child labour should be recognized. She concluded by inviting the Government to supply the Committee of Experts with all the information it had requested.

The Worker member of Senegal noted that the discussion by the Committee of cases of non-respect of ratified Conventions was generally an opportunity for a rich debate, especially where the protection of children was concerned. The Government of Gabon had indicated that its legislation contained provisions, implementation of which was running up against certain obstacles, which thus perpetuated the abuses. It could however no longer remain silent before the fact of children being forced to work and reduced to human servitude or as instruments of pleasure. The law was one thing and practice was another and, consequently, the application of the law had to be taken into account especially if it served to develop consciousness of the problem and was in its initial stages. The egoism and ferocity of traffickers must be opposed by moral indignation brought on by the humiliation and plight of the children. Efforts must also be undertaken to see that justice was done. Children had to be given a real opportunity to have their dignity and rights. The Government should carry out a study on child labour and define a national policy and a plan of action against trafficking of children, taking into account the country's status as a migrant destination. Bilateral agreements with neighbouring countries or countries of origin should also be signed and cooperation undertaken especially to organize repatriation. The speaker concluded by saying that the Government should ensure application of the Convention in order to demonstrate its declared good intentions.

The Worker member of the United Kingdom observed that as indicated by the Government representative, in Gabon two Decrees had been adopted on the issue of child trafficking: Decree No. 0024 of January 2005 concerning supervision, searches and investigations with a view to preventing and combating trafficking of children and Decree 00741 on labour offences. The Committee of Experts had requested copies of these Decrees and until their examination, it would be hard to determine whether Gabon fulfilled its obligations to develop a comprehensive national policy and plan of action against child trafficking, taking into account the special status of Gabon as a destination country of trafficking from West Africa. The report of the Committee of Experts indicated the existence of a tripartite Council to Prevent and Combat the Trafficking of Children and some information was provided on its record in preventing trafficking and rescuing children, but this information did not amount to a comprehensive account on the Council's functioning and effectiveness. In fact, the Government had just indicated to the Committee that the Council was not functioning but at the same time gave details about the rehabilitation of children. All this was very confusing.

If lack of comprehensive information was preventing the Government from adopting and implementing a coherent national policy, then the intention of the Government to undertake a national study on child labour including a section on child trafficking with disaggregated data, should be welcomed. The information given to the Committee by the Government and Gabonese Employer representatives indicated some very serious problems not least concerning the boat children.

Similarly, the report of the Committee of Experts provided no information on the enforcement by the labour inspectorate of Decree No. 741 on labour offences nor explained the role of the labour inspectorate with regard to combating child labour, including its worst forms such as trafficking. This point had been raised also by the Employer member of Gabon. Similarly, there was no information on the activities of the judicial police and officials of the Ministry for the Family and the Protection of Children, nor regarding the Ministry of Labour.

Gabon was a non-core country of the IPEC/LUTRENA Subregional Project on Combating the Trafficking in Children for Labour Exploitation in West and Central Africa. Since the summer of 2006 there had been only indirect technical assistance under the project, for example, a regional workshop on trafficking with gender sensitive approaches or more recently, an ILO Regional Meeting on Trafficking in Persons, which had taken place in Dakar in May 2007. The Committee of Experts had noted the efforts made with a view to the implementation of Phases III and IV of the LUTRENA project but there was no information on the effectiveness of the Monitoring Committee of the Interministerial Commission which was the national structure assisted by LUTRENA. According to the most up to date information from the region, there was no evidence that the Commission had so far taken any formal decisions or actions although its individual members continued to be active and to campaign against child trafficking.

As to the system of dialogue between Gabon and countries of origin of child labourers with a view to eliminating child trafficking, he wondered why the multilateral cooperation agreement which according to the Government had been signed in July 2006 had not been communicated to the Committee of Experts and whether this agreement dealt with assistance to child victims and procedures for repatriation to protect the interests of the victims. Finally, there was nothing in the report on education provision under Article 7(c) of the Convention.

In general, there was evidence that the Government did not lack material resources and might need more technical assistance, but most importantly, it needed more political will and had to send a robust report to the Committee of Experts. The information sent six years after ratification

was insufficient to determine whether Gabon was giving effect to the Convention in law and in practice. If there was information but it was not being communicated, that was unacceptable. If, on the other hand, information was not being communicated to the Committee of Experts because it was not available, then Gabon needed to sort out its internal procedures as a matter of urgency because otherwise, it could not develop and implement a coherent national plan of action against the worst forms of child labour.

The Government representative stressed that the aim of his intervention was to provide supplementary information to the previous report submitted. This was why the text of his intervention had been submitted accompanied by legal texts and other relevant documents. In ratifying the Convention, Gabon had stated its determination to combat the scourge of trafficking of children. This determination had been demonstrated mainly through the organization of seminars and regular awareness-raising campaigns. The efforts made by the Government since ratification should be taken into account. The Government reiterated its determination to continue its efforts to combat child trafficking in Gabon, which was a twisted consequence of Gabonese hospitality, and was ready to cooperate with all countries in West Africa. The difficult phenomenon of trafficking required genuine international cooperation.

The Worker members reiterated that the Government had to send the information in writing on the measures taken so that the Committee could examine and evaluate them. Thus, a report should be sent as soon as possible. The Government should show the political will to conduct a more active and energetic policy against such a scourge as child trafficking. It should supply written information on the results obtained as a result of the measures that the Government representative had presented and it also had to give the families a sense of responsibility so that they would not indulge in such practices. Finally, they suggested that the Government immediately contact and make agreements with the neighbouring countries so as to more effectively fight against child trafficking networks.

The Employer members expressed their appreciation for the Government's good will and underlined three elements. First, the Government needed to do everything within its capacity and capability to eradicate the worst forms of child labour. Second, the Government should put in place a measurement tool to indicate how many children were engaging in the worst forms of child labour and which programmes to combat it were effective. Third, the Government should report to the Committee of Experts the information presented before the Conference Committee so that the Committee of Experts could make an assessment of the situation.

Conclusions

The Committee took note of the detailed written and oral information provided by the Government representative as well as the discussion that took place thereafter. The Committee observed that the report of the Committee of Experts referred to comments from the International Trade Union Confederation relating to the sale and trafficking of children for economic and sexual exploitation.

The Committee noted the detailed information provided by the Government outlining the comprehensive measures taken to prohibit and eliminate the sale and trafficking of children, as well as the action programmes that had been adopted in collaboration with ILO/IPEC to remove children from such situations. The Committee also noted that the Government of Gabon had expressed its willingness to continue its efforts to eradicate such situations with the technical assistance and cooperation of the ILO. In this regard, the Committee urged the Government to undertake a National Study on Child Labour to assess the extent of the worst forms of child labour in the country.

While welcoming the measures taken, the Committee urged that children would no longer continue to be victims of trafficking, and that those responsible would be punished. In this regard, the Committee requested the Government to expand the authority of labour inspectorates in enforcing the law and to increase the human and financial resources of the labour inspectorate. It requested the Government to ensure that regular visits were carried out by the labour inspectorate and that persons who infringed the Convention were prosecuted and faced sufficiently effective and dissuasive sanctions.

Moreover, underlining the importance of free, universal and compulsory formal education in preventing the worst forms of child labour, the Committee invited the Government to take the necessary measures to ensure access to free basic education for both boys and girls.

Finally, the Committee requested the Government to provide detailed information on effective and time-bound measures taken to remove the children who were victims of trafficking from hazardous work and to provide for their rehabilitation and social integration, in conformity with Article 7(2) of the Convention. These measures should include the repatriation, family re-unification and support for former child victims of trafficking. The Committee insisted on the need for cooperation with the States involved.

The Committee requested the Government to provide detailed information in its next report to the Committee of Experts on the effective implementation in practice of the new legislation, including the number of infringements reported, investigations, prosecutions, convictions and penal sanctions applied.

The Worker member of the United Kingdom said one element was missing from the conclusions on Gabon, viz. the need to continue and build cooperation with neighbouring countries in order to combat trafficking.

The Chairperson regretted that this could not be done as the gavel was already down.

Appendix I. Table of reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 15 June 2007

The table published in the Report of the Committee of Experts, page 575, should be brought up to date in the following manner:

Note: First reports are indicated in parentheses.
Paragraph numbers indicate a modification in the lists of countries mentioned in Part One (General Report) of the Report of the Committee of Experts.

Algeria — 18 reports requested

· All reports received: Conventions Nos. 6, 11, 29, 69, 77, 78, 81, 87, 94, 95, 99, 100, 105, 108, 111, 120, 138, 182

Armenia — 14 reports requested

· 7 reports received: Conventions Nos. (29), (81), (95), (98), (100), (105), (122)
· 7 reports not received: Conventions Nos. (17), (18), (111), (135), (151), (174), (176)

Australia — 15 reports requested

· All reports received: Conventions Nos. 10, 11, 29, 81, 87, 98, 99, 105, 112, 123, 131, (155), 156, 158, 173

Bahamas — 14 reports requested

(Paragraph 36)

· 12 reports received: Conventions Nos. 11, 22, 81, 94, 95, 100, 105, 111, 138, 144, (147), 182
· 2 reports not received: Conventions Nos. 26, 29

Belize — 24 reports requested

· 1 report received: Convention No. (23)
· 23 reports not received: Conventions Nos. 11, 26, 29, 81, 87, 88, 94, 95, 98, 99, 100, 105, 111, 115, 138, 141, 144, 150, 151, 154, 155, 156, 182

Bosnia and Herzegovina — 49 reports requested

(Paragraph 32)

· 28 reports received: Conventions Nos. 11, 12, 13, 19, 29, 81, 88, 90, 97, 98, 100, (105), 111, 113, 122, 126, 129, 131, 135, 138, 142, 143, 155, 156, 158, 159, 161, (182)
· 21 reports not received: Conventions Nos. 9, 16, 22, 23, 27, 32, 53, 69, 73, 74, 87, 91, 92, 102, 114, 119, 121, 136, 139, 148, 162

Botswana — 12 reports requested

(Paragraph 36)

· 10 reports received: Conventions Nos. 29, 87, 95, 98, 100, 105, 138, 144, 173, 176
· 2 reports not received: Conventions Nos. 111, 182

Burkina Faso — 21 reports requested

(Paragraph 36)

· 16 reports received: Conventions Nos. 6, 13, 29, 81, 87, 95, 98, 100, 105, 111, 129, 131, 138, 144, 159, 161
· 5 reports not received: Conventions Nos. 11, 141, 170, 173, 182

Central African Republic — 14 reports requested

· 13 reports received: Conventions Nos. 11, 18, 26, 29, 81, 94, 95, 99, 105, 117, 118, 138, 182
· 1 report not received: Convention No. 6

Côte d'Ivoire — 22 reports requested

(Paragraph 32)

- 21 reports received: Conventions Nos. 3, 6, 11, 13, 26, 29, 45, 81, 87, 95, 96, 98, 99, 100, 105, 111, 129, 136, (138), 144, 182
- 1 report not received: Convention No. 159

Denmark - Greenland — 6 reports requested

- 3 reports received: Conventions Nos. 5, 6, 126
- 3 reports not received: Conventions Nos. 11, 29, 105

Djibouti — 29 reports requested

- 24 reports received: Conventions Nos. 6, 9, 11, 12, 13, 14, 16, 17, 18, 29, 44, 45, 52, 77, 78, 81, 89, 94, 95, 98, 99, 105, 115, 120
- 5 reports not received: Conventions Nos. 26, 101, 124, 125, 126

Dominica — 19 reports requested

(Paragraph 36)

- 12 reports received: Conventions Nos. 11, 16, 26, 29, 81, 87, 94, 95, 98, 100, 105, 108
- 7 reports not received: Conventions Nos. (135), 138, (144), (147), (150), (169), (182)

Eritrea — 5 reports requested

(Paragraph 36)

- All reports received: Conventions Nos. 29, 100, 105, 111, 138

Estonia — 9 reports requested

(Paragraph 36)

- All reports received: Conventions Nos. 5, 6, 10, 11, 29, 105, (129), (147), 182

Fiji — 8 reports requested

- All reports received: Conventions Nos. 11, 26, 29, 105, 138, (159), 169, 182

France — 42 reports requested

- 40 reports received: Conventions Nos. 11, 12, 17, 19, 24, 29, 35, 36, 37, 38, 42, 62, 77, 78, 88, 90, 94, 95, 96, 102, 105, 113, 114, 118, 124, 125, 126, 129, 131, 138, 141, 148, 156, 158, (163), (164), (166), (178), (179), 182
- 2 reports not received: Conventions Nos. 81, 98

France - French Guiana — 22 reports requested

- 14 reports received: Conventions Nos. 10, 62, 94, 100, 111, 112, 113, 114, 120, 125, 126, 129, 131, 141
- 8 reports not received: Conventions Nos. 5, 6, 29, 81, 95, 105, 123, 124

France - French Southern and Antarctic Territories — 1 report requested

- All reports received: Convention No. 87

France - Guadeloupe — 30 reports requested

- All reports received: Conventions Nos. 5, 6, 10, 11, 13, 29, 45, 62, 81, 87, 94, 95, 98, 100, 105, 111, 112, 113, 114, 115, 120, 123, 124, 125, 126, 129, 131, 136, 141, 144

France - Martinique — 19 reports requested

- 7 reports received: Conventions Nos. 11, 112, 113, 114, 125, 126, 141
- 12 reports not received: Conventions Nos. 5, 6, 10, 29, 81, 94, 95, 105, 123, 124, 129, 131

France - Réunion — 19 reports requested

- All reports received: Conventions Nos. 5, 6, 10, 11, 29, 81, 94, 95, 105, 112, 113, 114, 123, 124, 125, 126, 129, 131, 141

France - St. Pierre and Miquelon — 19 reports requested

· All reports received: Conventions Nos. 5, 6, 10, 11, 29, 33, 77, 78, 81, 94, 95, 105, 123, 124, 125, 126, 129, 131, 141

Greece — 18 reports requested

· All reports received: Conventions Nos. 11, 17, 19, 29, 42, 77, 78, 81, 90, 95, 102, 105, 124, 126, 138, 141, 156, 182

Grenada — 19 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 8, 11, 14, 16, 26, 29, 81, 87, 94, 95, 98, 99, 100, 105, 108, (111), (138), 144, (182)

Indonesia — 5 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 29, (81), 105, 138, 182

Islamic Republic of Iran — 6 reports requested

(Paragraph 36)

· 5 reports received: Conventions Nos. 29, 100, 105, 122, 182
· 1 report not received: Convention No. 95

Jordan — 7 reports requested

· 6 reports received: Conventions Nos. 29, 105, 124, 138, (147), 182
· 1 report not received: Convention No. 81

Republic of Korea — 9 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 19, 81, 100, 111, 122, 144, 150, 156, 182

Kyrgyzstan — 45 reports requested

· 5 reports received: Conventions Nos. (105), 138, (150), (154), 160
· 40 reports not received: Conventions Nos. 11, 14, 16, (17), 23, 27, 29, 32, 45, 47, 52, 69, 73, 77, 78, 79, 87, 90, 92, 98, 100, 103, 106, 108, 111, 113, 115, 119, 120, 122, 124, 126, (133), 134, 142, 147, 148, 149, (182), (184)

Malta — 23 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 8, 11, 12, 16, 19, 22, 29, 42, 53, 73, 74, 81, 87, 98, 100, 105, 108, 111, 129, 138, 141, 180, 182

Netherlands - Aruba — 26 reports requested

· All reports received: Conventions Nos. 8, 9, 11, 12, 22, 23, 25, 29, 69, 74, 81, 87, 88, 105, 113, 114, 118, 121, 122, 126, 135, 138, 144, 145, 146, 147

Netherlands - Netherlands Antilles — 18 reports requested

· All reports received: Conventions Nos. 8, 9, 11, 12, 17, 22, 23, 25, 29, 42, 58, 69, 74, 81, 87, 105, 118, 122

Panama — 19 reports requested

· All reports received: Conventions Nos. 11, 12, 17, 19, 30, 42, 55, 56, 87, 98, 100, 111, 113, 114, 122, 125, 126, 138, 182

Papua New Guinea — 10 reports requested

(Paragraph 36)

· All reports received: Conventions Nos. 11, 12, 19, 42, 87, 98, 100, 111, 122, 158

Peru — 24 reports requested

· All reports received: Conventions Nos. 11, 12, 19, 24, 25, 35, 36, 37, 38, 39, 40, 44, 87, 98, 100, 102, 111, 112, 113, 114, 122, (144), (147), 156

Russian Federation — 15 reports requested

· 11 reports received: Conventions Nos. 11, 29, 81, 87, 98, 100, 111, 113, 122, 150, 156
· 4 reports not received: Conventions Nos. 95, 126, (137), (152)

Saint Kitts and Nevis — 8 reports requested

(Paragraph 26)

· 1 report received: Convention No. (100)
· 7 reports not received: Conventions Nos. 29, (87), (98), 105, 111, 144, 182

San Marino — 20 reports requested

(Paragraph 26)

· 4 reports received: Conventions Nos. 29, 87, 105, 160
· 16 reports not received: Conventions Nos. 88, 98, 100, 111, 119, 138, 142, 144, 148, 150, 151, 154, 156, 159, 161, 182

Sao Tome and Principe — 12 reports requested

(Paragraphs 26 and 36)

· All reports received: Conventions Nos. 17, 18, 19, 81, 87, 88, 98, 100, 106, 111, 144, 159

Slovakia — 18 reports requested

· All reports received: Conventions Nos. 11, 12, 17, 19, 34, 42, 87, 88, 98, 100, 102, 111, 122, 128, 130, 144, 156, 161

Swaziland — 12 reports requested

(Paragraph 36)

· 11 reports received: Conventions Nos. 11, 12, 19, 29, 87, 96, 98, 100, 111, 138, 144
· 1 report not received: Convention No. 160

Sweden — 20 reports requested

· All reports received: Conventions Nos. 11, 12, 19, 87, 98, 100, 102, 111, 118, 121, 122, 128, 130, 141, 144, 156, 157, 158, 168, (184)

United Republic of Tanzania — 14 reports requested

(Paragraph 36)

· 11 reports received: Conventions Nos. 11, 12, 16, 17, 19, 87, 98, 100, 111, 138, 144
· 3 reports not received: Conventions Nos. 29, 94, 105

United Republic of Tanzania - Tanganyika — 3 reports requested

· All reports received: Conventions Nos. 45, 81, 108

Thailand — 8 reports requested

· All reports received: Conventions Nos. 19, 29, 88, 100, 105, 122, (138), 182

The former Yugoslav Republic of Macedonia — 60 reports requested

(Paragraphs 26 and 36)

· 2 reports received: Conventions Nos. 87, 98
· 58 reports not received: Conventions Nos. 8, 9, 11, 12, 13, 14, 16, 19, 22, 23, 24, 25, 27, 29, 32, 45, 53, 56, 69, 73, 74, 81, 88, 89, 90, 91, 92, 97, 100, 102, 103, (105), 106, 111, 113, 114, 119, 121, 122, 126, 129, 131, 132, 135, 136, 138, 139, 140, 142, 143, 148, 155, 156, 158, 159, 161, 162, (182)

Trinidad and Tobago — 14 reports requested

(Paragraph 36)

· 10 reports received: Conventions Nos. 16, 19, 29, 87, 98, 105, 125, 144, 147, (182)
· 4 reports not received: Conventions Nos. 85, 100, 111, (138)

Turkey — 19 reports requested

· All reports received: Conventions Nos. 11, 42, (68), (69), (73), 87, 88, (92), 96, 98, 100, 102, 111, 115, 118, 122, (133), 144, 158

United Kingdom - Isle of Man — 12 reports requested

· All reports received: Conventions Nos. 11, 12, 17, 19, 24, 25, 42, 87, 98, 102, 122, 126

United Kingdom - Montserrat

18 reports requested

(Paragraph 26)

- 5 reports received: Conventions Nos. 11, 19, 26, 87, 98
- 13 reports not received: Conventions Nos. 8, 12, 14, 16, 17, 29, 42, 58, 82, 85, 95, 105, 108

Grand Total

A total of 2,586 reports (article 22) were requested,
of which 1,949 reports (75.37 per cent) were received.

A total of 353 reports (article 35) were requested,
of which 277 reports (78.47 per cent) were received.

Appendix II. Statistical table of reports received on ratified Conventions as of 15 June 2007

(article 22 of the Constitution)

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	–		406	90.8%	423	94.6%
1933	522	–		435	83.3%	453	86.7%
1934	601	–		508	84.5%	544	90.5%
1935	630	–		584	92.7%	620	98.4%
1936	662	–		577	87.2%	604	91.2%
1937	702	–		580	82.6%	634	90.3%
1938	748	–		616	82.4%	635	84.9%
1939	766	–		588	76.8%	–	
1944	583	–		251	43.1%	314	53.9%
1945	725	–		351	48.4%	523	72.2%
1946	731	–		370	50.6%	578	79.1%
1947	763	–		581	76.1%	666	87.3%
1948	799	–		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1 026	212	20.6%	840	75.7%	917	89.3%
1954	1 175	268	22.8%	1 077	91.7%	1 119	95.2%
1955	1 234	283	22.9%	1 063	86.1%	1 170	94.8%
1956	1 333	332	24.9%	1 234	92.5%	1 283	96.2%
1957	1 418	210	14.7%	1 295	91.3%	1 349	95.1%
1958	1 558	340	21.8%	1 484	95.2%	1 509	96.8%
As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1 100	256	23.2%	838	76.1%	963	87.4%
1961	1 362	243	18.1%	1 090	80.0%	1 142	83.8%
1962	1 309	200	15.5%	1 059	80.9%	1 121	85.6%
1963	1 624	280	17.2%	1 314	80.9%	1 430	88.0%
1964	1 495	213	14.2%	1 268	84.8%	1 356	90.7%
1965	1 700	282	16.6%	1 444	84.9%	1 527	89.8%
1966	1 562	245	16.3%	1 330	85.1%	1 395	89.3%
1967	1 883	323	17.4%	1 551	84.5%	1 643	89.6%
1968	1 647	281	17.1%	1 409	85.5%	1 470	89.1%
1969	1 821	249	13.4%	1 501	82.4%	1 601	87.9%
1970	1 894	360	18.9%	1 463	77.0%	1 549	81.6%
1971	1 992	237	11.8%	1 504	75.5%	1 707	85.6%
1972	2 025	297	14.6%	1 572	77.6%	1 753	86.5%
1973	2 048	300	14.6%	1 521	74.3%	1 691	82.5%
1974	2 189	370	16.5%	1 854	84.6%	1 958	89.4%
1975	2 034	301	14.8%	1 663	81.7%	1 764	86.7%
1976	2 200	292	13.2%	1 831	83.0%	1 914	87.0%
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1 529	215	14.0%	1 120	73.2%	1 328	87.0%
1978	1 701	251	14.7%	1 289	75.7%	1 391	81.7%
1979	1 593	234	14.7%	1 270	79.8%	1 376	86.4%
1980	1 581	168	10.6%	1 302	82.2%	1 437	90.8%
1981	1 543	127	8.1%	1 210	78.4%	1 340	86.7%
1982	1 695	332	19.4%	1 382	81.4%	1 493	88.0%
1983	1 737	236	13.5%	1 388	79.9%	1 558	89.6%
1984	1 669	189	11.3%	1 286	77.0%	1 412	84.6%
1985	1 666	189	11.3%	1 312	78.7%	1 471	88.2%
1986	1 752	207	11.8%	1 388	79.2%	1 529	87.3%
1987	1 793	171	9.5%	1 408	78.4%	1 542	86.0%
1988	1 636	149	9.0%	1 230	75.9%	1 384	84.4%
1989	1 719	196	11.4%	1 256	73.0%	1 409	81.9%
1990	1 958	192	9.8%	1 409	71.9%	1 639	83.7%
1991	2 010	271	13.4%	1 411	69.9%	1 544	76.8%
1992	1 824	313	17.1%	1 194	65.4%	1 384	75.8%

Conference year	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1993	1 906	471	24.7%	1 233	64.6%	1 473	77.2%
1994	2 290	370	16.1%	1 573	68.7%	1 879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1 252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1 806	362	20.5%	1 145	63.3%	1 413	78.2%
1997	1 927	553	28.7%	1 211	62.8%	1 438	74.6%
1998	2 036	463	22.7%	1 264	62.1%	1 455	71.4%
1999	2 288	520	22.7%	1 406	61.4%	1 641	71.7%
2000	2 550	740	29.0%	1 798	70.5%	1 952	76.6%
2001	2 313	598	25.9%	1 513	65.4%	1 672	72.2%
2002	2 368	600	25.3%	1 529	64.5%	1 852	72.1%
2003	2 344	568	24.2%	1 544	65.9%	1 701	72.6%
2004	2 569	659	25.6%	1 645	64.0%	1 852	72.1%
2005	2 638	696	26.4%	1 820	69.0%	2 065	78.3%
2006	2 586	745	28.8%	1 719	66.5%	1949	75.4%

II. Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)

Observations and information

(a) Failure to submit instruments to the competent authorities

A Government representative of Solomon Islands thanked the ILO for the assistance provided in 2005 concerning the elaboration of a general submission document and reports on ratified Conventions. However, in April 2006 civil unrest following general elections had affected the Government's ability to submit ILO instruments to workers' and employers' organizations and the legislature, and to produce reports on ratified Conventions. The speaker emphasized that the failure to report was not due to lack of will, but the result of political instability and financial and material challenges. The Government was pleased to announce that the Cabinet approved on 17 May 2007 the submission documents prepared with the ILO in 2005. The legislature would then discuss the ratification of seven fundamental Conventions which the Solomon Islands had not yet ratified. A new chief labour officer responsible for international labour standards had been appointed who was expected to be assisted on reporting issues by an ILO standards specialist in July 2007. It was also hoped that the officer would benefit from the next training course on international labour standards offered by the ILO Training Centre in Turin. The Government believed that it would soon be in a position to fulfil its submission and reporting obligations.

A Government representative of Somalia recalled that the Transitional Federal Government of Somalia had been struggling since its establishment in December 2004 to restore peace throughout the country. That goal had not yet been achieved. As a result of a long period of instability, the Government had no records for reference purposes and the Ministry of Labour and Human Resources Development lacked the technical capacity to perform all functions of labour administration. ILO assistance on reporting was received in 2005. More recently, an official completed a 2007 training programme on international labour standards at the ILO Training Centre in Turin, which would enable the Ministry to fulfil its reporting obligations. It was hoped that ILO assistance would continue to strengthen the capacity of the Ministry and the workers' and employers' organizations on matters such as needs assessment and labour law review, as well as submission and reporting.

The Committee noted the information and explanations provided by the Government representatives who took the floor. It also took note of the specific difficulties experienced in complying with this obligation mentioned by various speakers. Finally, it took note of the promises made by certain government delegations to comply with their constitutional obligations to submit Conventions, Recommendations and Protocols to the competent authorities in the shortest time possible. The Committee expressed its great concern regarding the delays and failures to submit, and the rise in the number of such cases, as this concerned obligations arising from the Constitution and which were essential for the efficacy of standards-related activities. In this respect, the Committee affirmed that the ILO could offer technical assistance to contribute to the fulfilment of this obligation. The Committee expressed the firm hope that the countries mentioned, in particular Haiti, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan, would supply their reports in the near future, containing information relevant to the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee decided to mention these cases in the appropriate section of its General Report.

(b) Information received

Afghanistan. The instruments adopted by the International Labour Conference between the 71st Session (June 1985) and the 95th Session (June 2006) were submitted to the National Assembly on 18 April 2007.

III. Reports on unratified Conventions and Recommendations (article 19 of the Constitution)

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

A Government representative of Armenia reiterated her Government's commitment to fulfilling all its obligations as an ILO member. The information concerning submission in accordance with article 19 of the ILO Constitution had been transmitted to the ILO in May 2007. As required, the Government had submitted all Conventions and Recommendations adopted by the 80th and subsequent sessions of the International Labour Conference to the National Assembly.

A Government representative of Bosnia and Herzegovina stated that the authorities of her country had made considerable efforts to fulfil their reporting obligations under article 19 of the ILO Constitution. It was expected that, with ILO assistance, the preparation and submission of all outstanding reports, including those under article 19, would be possible before the end of 2007.

A Government representative of Djibouti recalled that his country had ratified no less than 68 Conventions since its accession to independence, and that the burden of work hence exceeded the limited means of its governmental institutions. In that regard, the Government of Djibouti remained vigilant as to the periods during which it would be able to denounce the Conventions that were not of utmost relevance to the country. The Government undertook nonetheless to make every effort to submit the reports due to the Committee.

A Government representative of The former Yugoslav Republic of Macedonia informed the Committee that during the past year, his Government had been focusing, as a priority, on fulfilling its reporting obligations concerning ratified fundamental Conventions. Due to time constraints and lack of resources, the Government had not been in a position to prepare reports on non-ratified Conventions. However, it paid the utmost attention to its obligations under the ILO Constitution and it was hoped that, with ILO assistance, it would be possible to submit all reports before the next session of the Conference.

A Government representative of Kiribati stated that the process of dealing with non-ratified Conventions did not pose any serious problems. With ILO assistance, the Government continued to work with the key stakeholders towards ratification before the next session of the Conference.

The Committee noted the information and explanations provided by the Government representatives who took the floor. The Committee stressed the importance it attached to the constitutional obligation of supplying reports on unratified Conventions and Recommendations. Such reports made it possible to evaluate the situation more fully in the context of the General Surveys prepared by the Committee of Experts. The Committee recalled that the ILO could offer technical assistance to contribute to the fulfilment of this obligation. The Committee urged all member States to comply with their obligations in this respect and expressed the firm hope that the Governments of Albania, Antigua and Barbuda, Armenia, Bosnia and Herzegovina, Cape Verde, Comoros, Congo, Democratic Republic of the Congo, Djibouti, Guinea, Kazakhstan, Kiribati, Kyrgyzstan, Liberia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Tajikistan, The former Yugoslav Republic of Macedonia, Togo, Turkmenistan, Uganda and Uzbekistan would comply in the future with their obligations under article 19 of the Constitution. The Committee decided to mention these cases in the appropriate section of its General Report.

The Worker members recalled that the obligation to submit reports was a key element of the ILO supervisory system. In that regard, they believed that governments not submitting their reports benefited from an unjustified advantage compared to those that fulfilled that obligation, since they de facto eluded examination by the Committee on the Application of Standards.

The Employer members thanked the governments that had submitted outstanding reports in the meantime and those that provided information to the Committee explaining their situation. It was evident that failure to submit instruments to the competent authorities and to report fundamentally undermined the ratification and implementation process. When ILO instruments were not submitted to the competent authorities, ratification could not take place. Information reported for the purpose of General Surveys enabled the Committee of Experts to identify obstacles to application and to provide suggestions for overcoming them. Once a Convention had been ratified, first reports were crucial to enable the Committee of Experts to assess the level of application by the ratifying country and to make comments. Without reporting, the supervisory system as a whole could not function. The ILO should therefore establish contacts with the countries concerned that were not accredited to the Conference. In case of substantial inability of a government to report, the Office should provide technical assistance. In addition, the possibility that countries with strong reporting systems could assist countries lacking such capacity was raised. In conclusion, the Employer members stressed that those matters were among the most important issues discussed by the Committee.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from the following countries: **Angola, Dominican Republic** and **Guyana**.

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

Uzbekistan

Part One: General Report, paras 150, 152, 155, 159, 174
Part Two: I A (a), (c)
Part Two: II (a)
Part Two: III (a)

Bolivarian Republic of Venezuela

Part Two: I B, No. 87

Zimbabwe

Part One: General Report, para. 170
Part Two: I B, No. 87