

CONFERENCE COMMITTEE ON THE APPLICATION OF STANDARDS

EXTRACTS FROM THE
RECORD OF PROCEEDINGS

INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND FIRST SESSION
GENEVA, 2012

COMMITTEE ON THE APPLICATION OF STANDARDS AT THE CONFERENCE

EXTRACTS FROM THE RECORD OF PROCEEDINGS

- GENERAL REPORT
- OBSERVATIONS AND INFORMATION
CONCERNING PARTICULAR COUNTRIES
- SPECIAL SITTING TO EXAMINE DEVELOPMENTS
CONCERNING THE QUESTION OF THE OBSERVANCE
BY THE GOVERNMENT OF MYANMAR OF THE
FORCED LABOUR CONVENTION, 1930 (No. 29)
- SUBMISSION, DISCUSSION AND APPROVAL

INTERNATIONAL LABOUR OFFICE
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Foreword

The Conference Committee on the Application of Standards, a standing tripartite body of the International Labour Conference and an essential component of the ILO's supervisory system, examines each year the report published by the Committee of Experts on the Application of Conventions and Recommendations. Following the technical and independent scrutiny of government reports carried out by the Committee of Experts, the Conference Committee provides the opportunity for the representatives of governments, employers and workers to examine jointly the manner in which States fulfil their obligations deriving from Conventions and Recommendations. The Officers of the Committee also prepare a list of observations contained in the report of the Committee of Experts on which it would appear desirable to invite governments to provide information to the Conference Committee, which examines over 20 individual cases every year.

The report of the Conference Committee is submitted for discussion by the Conference in plenary, and is then published in the *Record of Proceedings*. Since 2007, with a view to improving the visibility of its work and in response to the wishes expressed by ILO constituents, it has been decided to produce a separate publication in a more attractive format bringing together the usual three parts of the work of the Conference Committee. In 2008, in order to facilitate the reading of the discussion on individual cases appearing in the second part of the report, it was decided to add the observations of the Committee of Experts concerning these cases at the beginning of this part. This year, in view of the fact that the Conference Committee was unable to discuss individual cases, the structure of the publication is slightly different than in previous years and reads as follows: (i) the General Report of the Conference Committee on the Application of Standards; (ii) the report of the Committee on the Application of Standards: Observations and information concerning particular countries; (iii) the report of the Conference Committee following the special sitting concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29); and (iv) the report of the Committee on the Application of Standards: Submission, discussion and approval.

Contents

	<i>Page</i>
Foreword.....	v
<i>Record of Proceedings</i> No. 19	
Third item on the agenda: Information and reports on the application of Conventions and Recommendations	
Report of the Committee on the Application of Standards	
PART ONE	
<i>General Report</i>	19 Part I /1
A. Introduction	19 Part I /3
B. General questions relating to international labour standards.....	19 Part I /7
C. Reports requested under article 19 of the Constitution: General Survey on fundamental Conventions	19 Part I /16
D. Compliance with specific obligations	19 Part I /27
E. Discussion of the list of individual cases to be considered by the Committee	19 Part I /32
F. Follow-up discussion on the way forward	19 Part I /46
G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation	19 Part I /48
H. Adoption of the report and closing remarks	19 Part I /52
Annex 1. Work of the Committee	19 Part I /58
Annex 2. Preliminary list of possible cases to be examined by the Committee on the Application of Standards at the ILC in June 2012	19 Part I /72
PART TWO	
Observations and information concerning particular countries.....	19 Part II /1
I. Observations and information concerning reports on ratified Conventions (articles 22 and 35 of the Constitution).....	19 Part II /3
Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations	19 Part II /3
(a) Failure to supply reports for the past two years or more on the application of ratified Conventions	19 Part II /3
(b) Failure to supply first reports on the application of ratified Conventions.....	19 Part II /3
(c) Failure to supply information in reply to comments made by the Committee of Experts	19 Part II /4
(d) Written information received up to the end of the meeting of the Committee on the Application of Standards	19 Part II /5
II. Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution)	19 Part II /6

	<i>Page</i>
Observations and information	19 Part II /6
(a) Failure to submit instruments to the competent authorities	19 Part II /6
(b) Information received	19 Part II /7
III. Reports on unratified Conventions and Recommendations (article 19 of the Constitution)	19 Part II /8
(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations	19 Part II /8
(b) Information received	19 Part II /8
Appendix I. Table of reports received on ratified Conventions (articles 22 and 35 of the Constitution)	19 Part II /9
Appendix II. Statistical table of reports received on ratified Conventions as of 15 June 2012 (article 22 of the Constitution)	19 Part II /13
Index by countries to observations and information contained in the report	19 Part II /15
 PART THREE	
Observations and information concerning particular countries	19 Part III /1
Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)	19 Part III /1
A. Record of the discussion in the Committee on the Application of Standards	19 Part III /3
Document D.5	19 Part III /14
B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar	19 Part III /14
C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) of the Committee on the Application of Standards	19 Part III /23
D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) (International Labour Conference, 100th Session, June 2011)	19 Part III /30
E. Message of the President of the Republic of Myanmar on the occasion of the May Day Ceremony	19 Part III /33
F. Document before the Governing Body at its 312th Session (November 2011) and Governing Body conclusions	19 Part III /35
G. Document before the Governing Body at its 313th Session (March 2012) and Governing Body conclusions	19 Part III /49
Document D.5(Add.1)	19 Part III /77
H. Draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour in Myanmar	19 Part III /77
 <i>Record of Proceedings No. 27</i>	
Report of the Committee on the Application of Standards: Submission, discussion and approval	27/1

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

GENERAL REPORT



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

**Report of the Committee on the
Application of Standards**

PART ONE

GENERAL REPORT

Contents

	<i>Page</i>
A. Introduction.....	3
B. General questions relating to international labour standards	7
C. Reports requested under article 19 of the Constitution – General Survey on the fundamental Conventions	16
D. Compliance with specific obligations.....	27
E. Discussion of the list of individual cases to be considered by the Committee	32
F. Follow-up discussion on the way forward.....	46
G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation	48
H. Adoption of the report and closing remarks	52
Annex 1. Work of the Committee	58
Annex 2. Preliminary list of possible cases to be examined by the Committee on the Application of Standards at the ILC in June 2012.....	72

A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 176 members (117 Government members, 46 Employer members and 13 Worker members). It also included eight Government deputy members, 43 Employer deputy members, and 214 Worker deputy members. In addition, 32 international non-governmental organizations were represented by observers.¹

2. The Committee elected its Officers as follows:

Chairperson: Mr Sérgio Paixão Pardo (Government member, Brazil)

Vice-Chairpersons: Mr Christopher Syder (Employer member, United Kingdom) and Mr Marc Leemans (Worker member, Belgium)

Reporter: Mr David Katjaimo (Government member, Namibia)

3. The Committee held 11 sittings.

4. In accordance with its terms of reference, the Committee was called upon to consider the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Forced Labour Convention, 1930 (No. 29), the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), the Worst Forms of Child Labour Convention, 1999 (No. 182), the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).² The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.³

¹ For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Record* Nos 3–3H. For the list of international non-governmental organizations, see *Provisional Record* No. 2-3.

² Report III to the International Labour Conference – Part 1AI: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1AII: Information document on ratifications and standards-related activities; Part 1B: General Survey on the Fundamental Conventions concerning rights at work.

³ ILC, 88th Session (2000), *Provisional Record* Nos 6-1 to 5.

Opening statements of Vice-Chairpersons

5. The Worker members focused in their statement on the issue of improving the standards-related actions of the ILO and on the approach taken towards the ILO standards policy with a view to creating more social justice by putting the worker back at the centre in a world confronted with immense economic, political and climatic challenges, and with the urgent need to consider a world that was more sustainable. It should be possible to adopt new standards to effectively respond to new challenges concerning the quality of employment and the creation of adequate social protection for all workers. While the revision of certain standards or their coordination might be necessary to respond more usefully to the sustainable development challenge, the adoption of new binding standards must also be envisaged in order to cover new risks in the area of health and safety, the fight against poverty or to guarantee quality of employment. Moreover, without the supervisory mechanisms, the standards adopted would remain a dead letter. The supervisory mechanisms provided for in the ILO Constitution did not have any penal or financial sanctions against the States concerned. The supervisory mechanisms in place were fundamentally good, but they had to be better understood, known and applied. In this regard, the ILO Constitution could be better used.
6. The Committee of Experts had a fundamental role. It prepared the work of the Conference Committee with scientific rigour, independence and objectivity, with a view to ensuring the application of standards in law and in practice. It also entered into a dialogue with governments by means of direct requests. Finally, its work had pedagogical value through general surveys and the identification of cases of progress. The organizations of employers and workers could, on the basis of its report, find legal and practical elements to improve the application of standards. The examination of individual cases by the Conference Committee constituted another fundamental element of the supervisory system. The tripartite nature of this examination, which relied on the work of the Committee of Experts, gave it high authority. In adopting conclusions on these cases, the Conference Committee put pressure on the States concerned.
7. The reporting by governments also constituted a major element and had to be subject to better ownership of all parties involved. This was an onerous task, but if shared with the social partners within the framework of, for example, national tripartite commissions established on the basis of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), it became easier and gained in quality. It was true that the reporting obligations of States were multiple and not limited to those related to the ILO. Coordination between the various institutions concerned was desirable in order to avoid duplication and the ILO could perhaps establish a mapping of mechanisms that had become redundant. Moreover, many member States of the ILO were members of regional organizations which also set standards. It would be appropriate to establish greater coherence in the supervision and the implementation of the obligations common to the ILO and these organizations, as well as institutional collaboration among bodies of tripartite social dialogue in each of these different institutions.
8. With respect to the special supervisory procedures on the application of standards, a better utilization of the complaints-based procedures provided for in the ILO Constitution would allow the Committee of Experts to concentrate more on its pedagogical work and on the analysis of the effective application of standards. Moreover, the correct application of standards required certain tools aimed at ensuring the understanding of these instruments and the ownership of the concepts therein. It was therefore appropriate to support, including through financial recourses, the development of assistance and technical cooperation offered by the Office, and its presence in regions at risk.

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9. The Worker members further affirmed that an effective standards policy should be modern and innovative to respond adequately and with relevance to the present challenges faced by workers in these times of economic crisis and austerity policies. However, the fundamental objectives of ILO standards stood unchanged and the recent economic and financial crisis showed the persistence, if not growth, of threats against workers, which the ILO Constitution, ILO standards and the Philadelphia Declaration had meant to address. Consequently, a modern approach towards standards could not solely be based on quest for simplification in itself, without taking account of the social gains that had been obtained through hard struggles. The ILO standards policy could not be replaced by guidelines on corporate social responsibility, nor just be guided by the need to be competitive.
 10. In conclusion, the Worker members emphasized that: (1) it should be ensured that ILO standards provide effective protection to workers, today and in the future, in their places of work; (2) in the future, the imperative need to invest in sustainable enterprises should be taken into account by all – enterprises, governments and workers; (3) in facing the changes to which the world was confronted, the body of international standards should remain responsive to needs, while at the same time being sufficiently flexible to guarantee their effective application in practice by member States; (4) the conviction that standards and the supervisory mechanism were useful and should be strengthened, and action should be taken to increase the number of ratifications and to improve the application of ratified Conventions; (5) it should be declared that standards-related activities of the ILO remained relevant in tackling future challenges of workers and enterprises; and (6) it should be reaffirmed that the ILO Constitution, the 2008 Declaration on Social Justice in a Globalized World, the 1998 Declaration on the Fundamental Principles and Rights at Work, and the Decent Work Agenda remained valuable in the twenty-first century.
 11. The Employer members expressed appreciation for the productive dialogue that had taken place between Vice-Chairpersons of the Conference Committee and the members of the Committee of Experts in November 2011. The constructive relationship that existed between the previous Vice-Chairpersons had been taken forward by the new Vice-Chairpersons and constructive informal consultations had already taken place. The Employer members recognized the importance of the Committee on the Application of Standards, expressed their commitment to a supervisory mechanism that was relevant, and highlighted the importance of the Standards Review Mechanism and the discussions in the Governing Body in this regard. They also recognized the historic importance of this year's General Survey, because it was the first General Survey to discuss all eight fundamental Conventions. The principles and rights enshrined in the fundamental ILO Conventions were embedded in a number of other United Nations (UN) instruments and mechanisms, including the UN *Guiding principles on business and human rights*, the Organisation for Economic Co-operation and Development (OECD) *Guidelines for multinational enterprises* and the UN Global Compact. In addition, this Committee had the significant task to brief the Conference Committee on the recurrent discussion on the strategic objective of fundamental principles and rights at work (Recurrent Item Committee), on the outcome of the discussions on the General Survey.
 12. Moreover, while the Employer members recognized that the Committee of Experts was an independent body composed of legal experts, they recalled once again that the overall responsibility for the supervision of international labour standards lay with the International Labour Conference (ILC), through this Committee, which had to establish to this end an effective framework, including rules and methods. The Committee of Experts had a mandate to undertake preparatory tasks in this context – that were delegated to the Office – and to facilitate, not to replace, the tripartite supervision of this Committee. The supervision of international labour standards should be at the service of the ILO's tripartite constituents and reflect their needs, including the needs of workers and employers.

Work of the Committee

13. In accordance with its usual practice, the Committee began its work with a discussion on general aspects of the application of Conventions and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the general discussion, reference was made to Part One of the report of the Committee of Experts on the Application of Conventions and Recommendations and to the information document on ratifications and standards-related activities. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.⁴ A summary of this part of the general discussion is found under relevant headings in sections A and B of Part One of this report.
14. The second part of the general discussion dealt with the General Survey concerning the fundamental Conventions and entitled *Giving globalization a human face* carried out by the Committee of Experts. It is summarized in section C of Part One of this report.
15. Following the general discussion, the Committee considered various cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions. Details on these cases are contained in section D of Part One of this report.
16. The Committee was called upon to hold a discussion on the list of individual cases to be considered by the Committee. A summary of this discussion is contained in section E of Part One of this report. Subsequently, the Committee held sittings to follow-up on the possible ways forward. Details of this discussion are contained in section F of Part One of this report. Further to such discussion, a decision was adopted, following tripartite consultation and is reflected accordingly in section G. The adoption of the report and closing remarks are contained in section H of Part One of this report.
17. The Committee held a special sitting to consider the application of the Forced Labour Convention, 1930 (No. 29) by Myanmar. A summary of the information submitted by the Government, the discussion and conclusion is contained in Part Two of this report.

Working methods of the Committee

18. The Chairperson announced, in accordance with Part V(E) of Document D.1, the time limits for speeches made before the Committee. These time limits were established in consultation with the Vice-Chairpersons and it was the Chairperson's intention to strictly enforce them in the interest of the work of the Committee. The Chairperson also called on the members of the Committee to make every effort so that sessions started on time and the working schedule was respected. Finally, the Chairperson recalled that all delegates were under the obligation to abide by parliamentary language. Interventions should be relevant to the subject under discussion and be within the boundaries of respect and decorum.
19. The Government member of Sudan, speaking on behalf of the Government group, reiterated his commitment to the ILO supervisory system, including the work of the Conference Committee on the Application of Standards, and emphasized the importance of a balanced and constructive dialogue on individual cases by this Committee. The final list

⁴ Work of the Committee on the Application of Standards, ILC, 101st Session, C. App/D.1 (see Annex 1).

of cases should be published in due time on the second day of the Committee's work, as currently foreseen in the plan of work of this Committee, or at the very latest on the third day. The events of the last few years had clearly shown that the late publishing of the final list severely hampered the ability of governments to participate in an adequate manner in these proceedings. He further expressed the desire to continue to improve the working methods of the Conference Committee, and was confident that he could count on the understanding of the social partners in this regard in order to contribute to a more meaningful exchange of views and experiences among all parties.

20. The Government member of Brazil, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), supported the statement made by the Government member of Sudan reiterating its commitment to the work of the Committee. He also emphasized that the provisional working schedule of the Conference Committee planned for the adoption of the list of individual cases on the second day of its work, and asked that this deadline be respected.
21. The Government member of Brazil expressed the concern of his Government over the situation in the Committee regarding the publication of the list. He emphasized the need to preserve the supervisory system and called attention to the systemic risks of the current situation. He underlined the need to publish the list in time and reiterated GRULAC's call in this regard.
22. The Worker members stated that they were unable to negotiate a list of individual cases with the Employer members if the Employer members insisted that this list could not contain any cases concerning the right to strike. This unacceptable attitude jeopardized the credibility of the ILO's supervisory system, to which the Worker members remained committed.
23. The Employer members emphasized that it was important to remain dignified in difficult circumstances. The difficulties they faced in relation to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) would become crystal clear in the presentation they would make during the discussion on the General Survey. The Employer members had to act in accordance with their statements in order to be coherent. Thus, the Committee could have had before it a proposed list of 25 cases for discussion on 14 Conventions, including six fundamental, two governance and six technical Conventions. This list was balanced and the Employer members refused to be seen as the party responsible for the current stalemate.
24. The Worker members stated that there had never been a negotiated list.

B. General questions relating to international labour standards

General aspects of the supervisory procedure

Statement by the representative of the Secretary-General

25. First of all, the representative of the Secretary-General indicated that this past year had seen continued engagement between this Committee and the Committee of Experts, as well as the continued evolution of the working methods of this Committee. The Tripartite Working Group on the Working Methods of the Conference Committee had built on its

past achievements, while addressing questions such as how to coordinate with the Working Party on the Functioning of the Governing Body and the ILC. Since its establishment in June 2006, the Tripartite Working Group had held a total of 11 meetings. Document D.1, currently before this Committee, reflected the adjustments made to its working methods on the basis of the recommendations of this Working Group. These adjustments included, for instance, the arrangements for the Employers' and Workers' groups to meet informally to improve the process for the adoption of the final list of individual cases, as well as the continued use of the automatic registration and slotting of cases for discussion by this Committee. The Working Group had also discussed the possibility for the Committee to resume the inclusion of a case of progress among the cases to be discussed, as had been the case until 2008.

26. Regarding the General Survey, the speaker underlined that the current General Survey on the eight fundamental Conventions concerning rights at work represented the first time in the ILO's history that the Committee of Experts had examined all eight fundamental Conventions concurrently. As these eight Conventions enjoyed a high rate of ratification, the comprehensive approach of the General Survey would permit linkages to be made between the four categories of fundamental Conventions, aiding both the Office and constituents in devising new strategies to meet the goal of universal ratification. This General Survey would also complement the recurrent item report on the four categories of fundamental principles and rights at work which would be discussed by the Recurrent Item Committee this year. The outcome of this Committee's discussion would feed into the deliberations of the Recurrent Item Committee so that the Organization could adopt conclusions that take full account of all of the ILO means of action, including standards-related action.
27. The speaker highlighted that the work of the Committee and the Committee of Experts would be influenced by the new reporting cycle which took effect from this year and, from this point forward, reports on the fundamental and governance Conventions would be due every three years, and reports on the technical Conventions would remain due every five years. This change would reduce the workload for both the constituents and the supervisory bodies and it was to be hoped that this would enhance the quality of the reports.
28. Turning to the issue of supervision and technical cooperation, the representative of the Secretary-General emphasized that supervision of the application of international labour standards must go hand in hand with technical cooperation in order to achieve the greatest impact of these standards on the ground. Technical assistance was key in addressing implementation gaps. In this regard, the allocation of US\$2 million in the Special Programme Account fund by the Governing Body for the 2012–13 biennium had enabled the Office to design and implement technical assistance programmes specifically targeted to those member States hampered by persistent reporting or implementation gaps in their international labour standards obligations. Working closely with field specialists and colleagues at the Turin Centre, the International Labour Standards Department had identified 28 countries from all regions that would receive assistance to better implement their obligations under a wide variety of Conventions. Concurrently, some of the resources from the Special Programme Account would be directed at assisting those member States which had a significant reporting backlog.
29. However, the speaker underlined that it was equally important to acknowledge the impressive progress that had already been made by some member States, with the assistance of the ILO. In 2012, the Committee of Experts had noted "with satisfaction" the application of international labour standards by 54 member States. This represented a 35 per cent increase from 2011. Similarly, the Committee of Experts had noted "with interest" the application of international labour standards by 130 member States, which

was a 6.5 per cent increase from 2011. She wished to highlight a few cases in which work by the Office or the ILO supervisory bodies had helped to stimulate progress by member States.

30. This progress had come about as a result of several different types of collaborative action including through the undertaking of missions to member States. These missions had included a technical assistance mission to Zimbabwe in July 2011; two high-level missions to Greece in September 2011 and April 2012; tripartite seminars on the Maritime Labour Convention, 2006 (MLC, 2006) in India, Malaysia and the Philippines between July and October 2011; technical assistance missions to Haiti and Panama in January and February 2012 respectively; and two high-level missions to Bahrain in February and March 2012. Some of these had resulted in concrete, identifiable outcomes. For example, in Panama, a tripartite conflict resolution mechanism had been promoted that focused on solving cases which were before the Committee on Freedom of Association. This type of mechanism, which had first been implemented in Colombia with successful results involving several cases in May 2012, allowed for the resolution of freedom of association issues at the national level, while simultaneously promoting an innovative way to exercise the rights of trade unions.
31. Of course, progress in reducing the implementation gaps was often made independently of the undertaking of missions. This progress was frequently achieved after years of coordinated action and follow-up by this Committee, the Committee of Experts, and the Committee on Freedom of Association. For example, this year the Committee of Experts' report had welcomed changes in legislation in Peru, regarding the right to consultation under the Indigenous and Tribal Peoples Convention, 1989 (No. 169); in Romania, regarding the Right to Organise and Collective Bargaining Convention, 1949 (No. 98); in the Republic of Korea, regarding the Labour Administration Convention, 1978 (No. 150); in Costa Rica regarding the Social Security (Minimum Standards) Convention, 1952 (No. 102); in Azerbaijan concerning the Minimum Age Convention, 1973 (No. 138); and in the Philippines concerning the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), with measures taken by the Government with the adoption of "Guidelines on the conduct of government agencies" relative to the exercise of workers' rights. These Guidelines would also govern the conduct of the armed forces of the Philippines and the police.
32. However, all member States could do more to ensure that the ILO's body of standards was relevant to the modern world of work. Two immediate opportunities for action came to mind. The first was the promotional campaign and plan of action towards widespread ratification and effective implementation of the governance Conventions, namely: the Labour Inspection Convention, 1947 (No. 81); the Employment Policy Convention, 1964 (No. 122); the Labour Inspection (Agriculture) Convention, 1969 (No. 129); and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). A plan of action for the governance Conventions had been adopted by the Governing Body in November 2009, and implementation was ongoing. In support of this plan of action, in 2012 the Office had renewed its promotional campaign asking governments to ratify, as a matter of priority, the governance Conventions.
33. The second opportunity for member States to work towards meeting the objectives of the ILO was through the ratification of the MLC, 2006. The previous six months had seen a flurry of ratifications from Asia, Africa, Europe and the Americas, with the current count sitting at 27. The gross tonnage requirement for the MLC, 2006, had long been surpassed, with over 56 per cent of world gross tonnage. The Convention would thus come into force 12 months after 30 ILO member States had ratified it. The International Labour Standards Department, together with its partners in the Sectoral Activities Department, the Turin Centre and the field offices, had implemented a comprehensive training and capacity-

building programme and had published guidance handbooks on the MLC, 2006. The Office remained ready to assist countries with ratification and implementation issues.

34. There were also increasing opportunities of engaging with non-state entities and economic actors, such as multinational enterprises and trade unions at the global level as called for by the 2008 Social Justice Declaration to promote international labour standards through the international organizations of employers and workers. The Office stood ready to provide effective guidance and advice for the better implementation of rights at work at the enterprise level and across the supply chain.
35. Referring to the increasing tensions and queries over recent years as to the relevance of certain standards, the speaker indicated that extensive tripartite consultations had taken place over the last year on the modalities of a proposed Standards Review Mechanism. She was pleased to report that agreement had been reached in principle between governments and the social partners during the March 2012 session of the Governing Body that would enable the latter to have a substantive discussion on this topic in November 2012. Progress had also been made on the ongoing question of improving the methodology in setting the agenda of the ILC. She wished to express her sincere gratitude to all of the tripartite constituents for their flexibility in accommodating alternative viewpoints as they worked together to resolve these two challenging issues.
36. Finally, the speaker highlighted that NORMLEX, a new information database which combined data that was previously available in the APPLIS, ILOLEX, LIBSYND, and NATLEX databases, had gone live in February 2012. NORMLEX had proved to be very popular among users, enjoying more than 100,000 page views in April 2012, and had received extremely positive feedback from users, 66 per cent of whom were returning visitors. The database was an invaluable research tool. In particular, it allowed member States, employers' and workers' organizations, and the general public to review ratification information regarding labour standards. NORMLEX would also become indispensable for governments looking to meet their reporting obligations, as it contained an easy to use "search" function of all present and previous observations and direct requests from the Committee of Experts. A "country profile" page had been created for each member State, which contained links to national legislation, comments made by the ILO supervisory bodies, observations submitted by the social partners under article 23 of the ILO Constitution, and additional background information on any complaint procedures that were pending. The Office was hopeful that NORMLEX would become an essential instrument for constituents in the coming years as they worked to address the implementation gaps surrounding labour standards.
37. In conclusion, the representative of the Secretary-General emphasized that a new era was dawning where labour standards were enjoying higher visibility than ever before, and playing a prominent role in an international legal order where influences from several diverse fields were converging to meet the current socio-economic challenges and respond to the economic, financial and jobs crises. This was obvious as well in forums outside the ILO. The outcome document from the November 2011 G20 leaders summit contained language specifically calling on the ILO to continue its work in support of a social protection floor and to promote ratification and implementation of the eight core Conventions ensuring fundamental principles and rights at work. This recognition from the G20 leaders, that ILO standards and principles were a critical component of the global recovery, should provide motivation to continue collaboration on improving the body of international labour standards, and their effective application to all aspects of the modern labour market.

Statement by the Chairperson of the Committee of Experts

38. The Committee welcomed Mr Yozo Yokota, Chairperson of the Committee of Experts. He welcomed the opportunity to speak as evidence of the good working relationship between the two Committees which carried out the supervision of international labour standards. These two Committees, one with a tripartite composition and the other composed of independent experts, had been working together to promote, protect and enhance the rights and quality of life of all the workers in the world.
39. The speaker then turned to the meeting of the last session of the Committee of Experts, indicating that the workload had been heavy. The Committee of Experts had welcomed one new member, from Panama. Moreover, he noted that the Governing Body had appointed two other new members in March 2012, which would surely facilitate the work of the Committee of Experts in the future. In addition, the Committee of Experts had enjoyed the opportunity to exchange opinions in a special sitting with the Vice-Chairpersons of this Committee. The exchange of views that took place had been very active, frank and productive. The discussion had focused on issues such as ways to reinforce the complementary relationship between the two Committees in order to promote the effective application of international labour standards by member States. The discussion had also considered possible improvements in the way in which one Committee would take into account the views expressed by the other.
40. The Employer Vice-Chairperson had made comments on the role of the Committee of Experts and the cooperation between it and the Conference Committee, on the question of interpretations by the Committee of Experts and on the development of a method for measuring progress in compliance with standards. In response, a number of Experts had emphasized the independent, impartial and technical role that is required of the work of the Committee of Experts. They had pointed out, however, that workers' and employers' organizations could provide comments on government reports and had expressed the hope that these organizations would continue to do so. Such comments would provide an opportunity for social partners to enhance the Committee of Experts' assessment of the application of ratified Conventions.
41. Referring to collaboration with other international organizations, the speaker indicated that the Committee of Experts had held an annual meeting with members of the United Nations Committee on Economic, Social and Cultural Rights in November 2011, on the theme: "Just and favourable conditions of work". Moreover, in accordance with the arrangements made between the ILO and the Council of Europe, the Committee of Experts had examined 20 reports on the application of the European Code of Social Security and, as appropriate, its Protocol.
42. Turning to the methods of work of the Committee of Experts, the speaker indicated that since 2001, this subject had been discussed in the Subcommittee on Working Methods, to rationalize and streamline the functioning of the Committee of Experts. During the last session, the Subcommittee had undertaken a close examination of the comments made by members of this Committee in June 2011 on specific aspects of the work of the Committee of Experts. The Committee of Experts had reached agreement on a number of points, on the basis of the recommendations of the Subcommittee. Firstly, the Office should continue to provide thorough briefings, individually and collectively, to new members of the Committee of Experts on its work as well as the work of other supervisory bodies, in particular this Committee, as well as its relationship with the Committee of Experts. Secondly, the Committee of Experts had decided to create a table in this year's General Report showing the actions taken by governments as follow-up to the conclusions reached by the Conference Committee at its previous session. Thirdly, the Committee of Experts

reaffirmed that all comments of the social partners were to be taken into consideration. However, it was important to underline that such comments should reach the Office by the designated deadline in order to be adequately reflected in the report of the Committee of Experts. Fourthly, with respect to the issue of the right to strike, the Committee of Experts recalled that the right to strike was reflected in the 1994 General Survey on freedom of association and collective bargaining. It was also dealt with in this year's General Survey on the fundamental Conventions which clearly reflected the views of the social partners. Lastly, while the information on the issue of cases of failure to respond to the comments of the Committee of Experts had been provided in a footnote of the General Report, the Committee of Experts had also decided to present this information in a summary table in 2012 in order to give it more visibility.

43. The speaker then addressed the issue of reporting obligations. At the last session, 3,013 reports under articles 22 and 35 of the ILO Constitution had been requested, and by the end of the session, 2,084 reports (69.1 per cent) had been received by the Office. The Committee of Experts was aware of the difficulties which arose out of a lack of adequate human and financial resources that could be, and in many instances had been, addressed through technical assistance by the Office. The late submission of reports due had been a problem, and the Committee of Experts hoped that, for its next session, a larger number of reports would be submitted within the time limits and would contain the required information.
44. Turning to the General Survey, the speaker highlighted that it dealt with the eight fundamental Conventions concerning four categories of rights at work. While the four categories and eight Conventions dealt with by this General Survey were distinct and specific, the Committee of Experts was of the view that they were closely interconnected, interrelated and complementary. In fact, this was the position clearly expressed in the ILO Declaration on Fundamental Principles and Rights at Work of 1998 and the ILO Declaration on Social Justice for a Fair Globalization of 2008. This position had also been confirmed by the Governing Body when it decided that the 2012 General Survey would cover the eight fundamental Conventions. The 2012 General Survey sought to give a global picture of the law and practice in member States in terms of the practical application of these eight Conventions, describing various positive initiatives undertaken in some countries as well as certain serious problems encountered in the implementation of their provisions. One important issue for the universal application of these eight fundamental Conventions was how to achieve their universal ratification. Out of 185 member States, 135 had ratified all eight fundamental Conventions. This meant that there were 50 member States, including those with the highest populations, that had not ratified all of the fundamental Conventions. It was to be hoped that the 2012 General Survey would provide guidance to non-ratifying member States in identifying obstacles to ratification and possible means to removing them.
45. In conclusion, the speaker wished to thank the Committee for giving him the opportunity to present the General Report of the Committee of Experts and to follow this Committee's discussion on the General Report and the General Survey. He also wished to underline the unanimous view of the members of the Committee of Experts that the two Committees were the core of the ILO's supervisory system and that many persons' right to life, health, safety, personal aspirations and dignity depended on this joint work.
46. The Employer members and the Worker members, as well as all Government members who spoke, welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.

Statement by the Employer members

47. The Employer members reaffirmed their full commitment to a relevant tripartite supervisory mechanism and to relevant tripartite international labour standards, which had a vital role to play in the real world of work. In their view, ILO standards should help employers to both create quality jobs and protect workers. While the human rights of the workforce needed to be protected, business needed to know what it should be doing, so as to determine its ability to do it. This was, and always would be, a balancing act given the environment in which business operated. Accordingly, a one-size-fits-all approach to labour standards did not work in a globalized world.
48. As repeatedly pointed out by the Employer members in the past, tripartite ownership of ILO standards supervision had been lost sight of, since the role of ILO tripartite constituents had been reduced to providing information and giving more visibility to the supervisory activities of the Committee of Experts and the Office. The Employer members quoted the following sentence in the publication of the International Training Centre in Turin entitled *“International labour law and domestic law – Training manual for judges, lawyers and legal educators”* (page 73): “The Committee on the Application of Standards is clearly not as useful for judges and legal practitioners as the Committee of Experts”, reiterating that this statement was fundamentally unacceptable to them. The Employer members believed that ILO standards supervision, like any other ILO activity, should be at the service of ILO’s tripartite constituents, and that the outcome of ILO standards supervision should reflect their needs. As for the needs of the Employers, it was crucial for them to know how the ILO’s Conventions and Recommendations interacted with economic growth and the creation of quality jobs.
49. In the view of the Employer members, ILO standards were politically negotiated texts and, in case of problems of application or ratification, the body that had created those standards should be able to review those matters and take a decision. It was not the role of the Committee of Experts to determine the development of standards application and, while acknowledging that the Committee of Experts might need to interpret and judge in order to accomplish preparatory work for this Committee, the critical issue was that its observations were being viewed by the outside world as a form of soft law labour standards jurisprudence. Moreover, the ILO fundamental Conventions were embedded in several instruments outside the ILO, including the UN Global Compact, the OECD Guidelines, the UN Human Rights Council’s “Protect, Respect and Remedy” Framework, the ISO 26000, etc. The Employer members indicated that the question as to how to respect human rights instruments, in which ILO fundamental Conventions were embedded, was regularly raised by their affiliates. Moreover, many problems of interpretation and application stemmed from the fact that international labour Conventions were politically negotiated to be applied by governments in the first place, and not by employers. The best example to illustrate the issue was the right to strike. For example, out of the 73 observations that had been made by the Committee of Experts on Convention No. 87, 63 observations dealt, at least partly, with various aspects of the right to strike. With reference to their position described during the discussion of the General Survey, the Employer members called for this issue to be brought urgently before the Governing Body as part of the ongoing Standards Review Mechanism discussions.
50. Furthermore, the role of the Office was to serve the tripartite constituents in the framework of the programme and budget agreed upon by the Governing Body. While expressing great admiration for the dedication of the International Labour Standards Department, the Employer members stressed that the Office was not the ILO and that the ILO was the governments, workers and employers. The Office should therefore exercise restraint when referring to or promoting the views of the Committee of Experts, as they could be deemed to be the views of the ILO in other UN or international forums, which would undermine

tripartite relationships and weaken the ILO supervisory machinery. The Employer members also called for this issue to be discussed at the Governing Body.

51. With reference to the current procedure for briefing new members of the Committee of Experts, the Employer members noted that the International Labour Standards Department provided most of the support and was the main contact for the Experts in the Office. However, the Employer members requested that the Experts meet the Employer and Worker spokespersons before starting their work and have far greater interaction with the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV). In this regard, the Governing Body should also consider how to find an urgent way forward to improve the transparency and governance of the Committee of Experts' work. In the Employer members' view, the Committee of Experts should do its work within an agreed tripartite framework. In the past, the Employer members had repeatedly proposed changes to the format of the Committee of Experts' report by giving employers, workers and governments the possibility to set out their views on standards and supervision-related issues, including application and interpretation of ILO Conventions. This would better reflect tripartite ownership thus strengthening the credibility, acceptance and results of ILO standards supervision.
52. Turning to cases of progress, there were 72 cases of progress concerning 54 countries this year, of which many had occurred in the field of child labour (31 cases); but only a few as regards other fundamental Conventions, e.g. only two cases of progress for Convention No. 87. The Employer members considered that these observations helped the outside world understand what worked and what did not and called on this Committee to examine a proper balance of cases that could materially impact upon the critical employment and social policy issues of the time: job creation, social protection and youth unemployment. In their view, the measurement of progress in the application of ratified Conventions needed to be re-examined by exploring, as part of the Standards Review Mechanism within the Governing Body, a new joint methodology of this Committee and the Committee of Experts, taking into consideration the following elements: (i) record cases of progress by individual Conventions; (ii) compare the number of cases of progress in relation to the number of existing or new cases of non-compliance; and (iii) develop qualitative criteria of progress (e.g. seriousness of the problem solved, number of workers or employers benefiting from improvement, etc.). This would have a tangible practical benefit for employers as they entered new labour markets in search of growth opportunities.
53. The Employer members concluded by stating that they looked forward to working with the new Director-General-elect, the Worker members and the Governments to improve the work of the Committee of Experts in relation to the abovementioned concerns.

Statement by the Worker members

54. The Worker members stated that they felt reassured with regard to the implementation of the methodological and political changes introduced in 2010. The new format of the General Survey and the relations with the Recurrent Item Committee were now well understood by everyone. The Committee of Experts had proven its ability to analyse, in an objective and informed manner, the application of Conventions that, while certainly different, were interdependent. The link between the work of this Committee and the Recurrent Item Committee remained an essential issue that could doubtless be improved. It had to be hoped that the work of the latter would result, with or without the tripartite contribution of this Committee, in a strong, common and tripartite will to reaffirm the importance of fundamental rights and principles in the current times of crisis and attempts to reform labour law on the basis of austerity. It was important to reaffirm in the context of the Conference that the problems faced by the ILO were the result of an ineffective growth model that had revealed its limitations and increased inequality, and shown itself unable to

respond usefully to the challenges of a sustainable society. Universal ratification of the eight fundamental Conventions needed to remain a priority for the ILO and its member States.

55. The Worker members requested that all the discussions on General Surveys or on the reports to be provided to the Recurrent Item Committee should be set out in detail in the record, so as to provide a solid basis of information that could be used with a view to drawing lessons from the processes related to the 2008 Declaration. With regard to methods of work, positive experience had been acquired and relations between the Conference Committee and the Committee of Experts were becoming increasingly constructive.
56. The Worker members expressed the wish to address the cases of progress in a different manner, by devoting a separate discussion to them during the first week of the Committee's meeting, based on arrangements to be specified, which would be equivalent to adding an item to the agenda. It was particularly important to be able to highlight the positive practices emphasized by the Committee of Experts. The Worker members also emphasized the completeness and user-friendliness of the NORMLEX database, which contained information on reporting, the comments of the supervisory bodies and the points on which governments should focus their efforts. In addition, the information document on ratifications and standards-related activities contained valuable information on the special procedures and on technical assistance and cooperation, the added value of which should be emphasized. Lastly, the Worker members thanked the Chairperson of the Committee of Experts, welcomed the appointment of Ms Dixon as an Expert and noted the appointment of two new Experts.

Statements by Government members

57. The Government member of Canada, speaking on behalf of the group of governments of industrialized market economy countries (IMEC) expressed her appreciation for the work of the Committee of Experts and noted that it was not operating at full capacity, which was unfortunate given the enormity of its contribution to the standards-related work of the ILO. IMEC hoped that the Director-General would quickly fill all vacancies on the Committee of Experts and called on the new Director-General to ensure that the essential work of the International Labour Standards Department was among his top priorities so that it had adequate resources to meet its continually increasing workload, especially with respect to the fundamental Conventions.
58. The Government member of the United States expressed full support for the statement that was read on behalf of the IMEC group. She emphasized the importance that her Government attached to the work of the International Labour Standards Department in support of fundamental principles and rights at work. The dedicated and tireless efforts of the Standards Department in helping the supervisory bodies to assess the application of the fundamental Conventions and helping governments to overcome difficulties were critical to the most essential aspect of the ILO's mission. The speaker echoed IMEC's message to the new Director-General that the Standards Department should have adequate resources.

C. Reports requested under article 19 of the Constitution

General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008

59. The Committee held a discussion on the General Survey on the fundamental Conventions in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008,⁵ prepared by the Committee of Experts on the Application of Conventions and Recommendations. In an effort to align the General Survey with the recurrent item report, the Governing Body decided that the General Survey would cover the eight fundamental Conventions. In that respect, it considered that the fundamental principles and rights at work set out in the fundamental Conventions were mutually supportive rights which would logically best be considered in a holistic manner.

Opening remarks

60. The Employer members emphasized that their priorities, in light of the 2008 Declaration, were job creation for all and the protection of workers fulfilling those jobs. They reaffirmed that one of the main pillars of the 2008 Declaration was “sustainable enterprises”, which were the basis for decent work, employment creation and economic growth. It was therefore to be regretted that there was not a single reference in the General Survey to that perspective, which reduced the practical value and relevance of the General Survey. They therefore called on the Office and the Committee of Experts to give proportionate consideration to the needs of sustainable enterprises in preparing future General Surveys.
61. The Employer members added that the General Survey showed that progress had been made in the implementation of the fundamental Conventions in many respects, which was encouraging, although much remained to be done. They could therefore support the great majority of the General Survey. They recalled in that respect that the Committee of Experts was an independent body entrusted with examining the application of ILO Conventions and Recommendations by member States. However, overall responsibility for the supervision of ILO standards lay with the ILC, in which the governments, employers and workers from all member States were represented. The Committee of Experts therefore had a mandate to undertake the preparatory work in that context, but not to replace the tripartite supervision carried out by the Conference Committee on the Application of Standards. The Employer members emphasized that the supervision of standards, like all other ILO work, had to be at the service of the tripartite constituents and to reflect their tripartite needs.
62. The Worker members reaffirmed the importance of the fundamental Conventions, which set out human rights and were essential tools for the development of democracy. The General Survey showed the indivisible nature and the complementarity of the fundamental Conventions, which were linked to a body of international and regional instruments protecting human rights. At the heart of the fundamental Conventions were those on freedom of association, which were the basis for all the other labour rights, as emphasized

⁵ ILC, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, *Giving globalization a human face*, Report III (Part 1B), 101st Session, Geneva, 2012.

in the Social Justice Declaration of 2008. And yet, the establishment of free and pluralist trade unions was impaired in many countries, as illustrated by the examples of associated work cooperatives in Colombia and the attempts by the Greek Government to replace trade unions by workers' associations. While welcoming the General Survey, the Worker members expressed disquiet at its title, *Giving globalization a human face*. They did not believe that there could be anything in common between globalization and a human face. Globalization did not bring justice, but rather a constant decrease in rights, increased social exclusion, inequality between men and women and anti-union practices. Throughout the world, workers, young persons and women were suffering, and in many cases were under the threat of poverty due to a financial crisis for which they were not responsible. Globalization had also served as a pretext in many countries for the establishment of export processing zones, where the most basic workers' rights were denied. Nevertheless, the General Survey provided a complete vision of the manner in which the fundamental Conventions were applied throughout the world and the difficulties encountered. Moreover, the General Survey attached importance to the gender dimension and clearly demonstrated that women were becoming increasingly vulnerable as a result of globalization and were the first victims of non-compliance with the fundamental Conventions.

63. The Government members welcomed the General Survey which, for the first time in the ILO's history, provided a global overview of all eight fundamental Conventions in an interrelated manner as a follow up to the 2008 Declaration. The General Survey provided an excellent overview of the protection of fundamental principles and rights at work at the national level and of the challenges to the full implementation of the fundamental Conventions. At the same time, it provided a detailed compilation of the interpretations by the Committee of Experts of those Conventions, and was to be welcomed as the first General Survey covering Convention No. 182.
64. Many Government members emphasized that the eight fundamental Conventions, including those adopted many decades ago, remained relevant and well-equipped to deal with existing, emerging and even as yet unforeseen issues relating to fundamental principles and rights at work. They agreed that the fundamental Conventions were interrelated and mutually reinforcing and expressed strong commitment to the fundamental principles and rights at work, particularly to prevent a downward spiral in labour conditions and to build the global economic recovery. They welcomed the links between fundamental principles and rights at work and the overall United Nations human rights framework, as well as their broad recognition in many international and regional texts. Fundamental principles and rights at work were an important part of international action aimed at consolidating and supporting democracy, the rule of law, human rights and the principles of international law. As indicated in the General Survey, ensuring respect for fundamental principles and rights at work resulted in undeniable benefits for the development of human potential and for economic growth in general, and therefore contributed to global economic recovery. Failure to respect these principles and rights at such a critical time would represent not only a moral failure to uphold universally recognized rights, but would also jeopardize economic strategies to ensure growth and recovery, as well as social justice. Several Government members added that technical assistance was a key dimension of the ILO supervisory system and was important in helping governments advance towards better application of these fundamental Conventions and in removing obstacles to ratification. It was also recalled that greater attention should be paid throughout the work of the ILO to the comments of the supervisory bodies, and that the social partners should play a more active role in technical cooperation projects, in which they should be involved from the design stage.
65. The Government member of Canada, speaking on behalf of IMEC, reiterated strong commitment to the fundamental principles and rights at work. Noting that in many

instances the General Survey condensed material from previous Surveys, she requested clarification on whether the present General Survey was intended to stand alone, or whether it was to be read in combination with previous Surveys. She appreciated the format of the General Survey, which was accessible to a wide audience, the continued use of positive developments and examples of good practice to illustrate change, and the inclusion of the relevant dissenting views on the interpretation of Conventions.

Promoting the ratification and application of the fundamental Conventions

66. The Employer members, with reference to the call to achieve universal ratification of the fundamental Conventions by 2015, observed that the reasons why certain countries had not ratified the Conventions were unlikely to disappear within the next three years. In their view, the objective of universal ratification of the eight Conventions by 2015 was therefore unrealistic. The main effort should therefore be on promoting the application of the fundamental Conventions, rather than their ratification, particularly as there were countries that gave effect to Conventions in their national law, even though they had not ratified them, while others failed to apply Conventions that had been ratified.
67. The Worker members welcomed the positive developments outlined in the General Survey in relation to the fundamental Conventions, including the increasing number of ratifications and the fact that many countries had adapted their legislation accordingly. The fundamental Conventions were also being used as a starting point for the development of rights at the regional level, and were increasingly being utilized in collaboration with the United Nations and in trade agreements, where the respect for fundamental Conventions was a condition for public procurement, as well as in framework agreements with multinational enterprises. However, in that regard, they firmly condemned the schizophrenia of the international financial institutions and of certain member States in economic coordination bodies, such as the G20, which were calling for compliance with ILO Conventions when, in some cases, they had failed to ratify Convention No. 87. They added that too many countries were lagging behind in terms of ratification and implementation. Over half of the world's population lived in countries that had not ratified Conventions Nos 87 and 98, and even where they had been ratified, many countries envisaged numerous exceptions. That was exacerbated by the fact that workers in the informal economy were not covered by the legislation giving effect to the Conventions, while the growth in precarious forms of employment impaired the development of freedom of association and collective bargaining. When all the exceptions and exclusions were taken into account, far too much of the world's population still lacked any protection under the fundamental Conventions. The Worker members therefore fully endorsed the suggestion by the Committee of Experts that a tripartite forum should examine for all countries the extent to which precarious labour relations had an impact on trade union rights. It was particularly important to focus on the need for equal treatment for workers employed under temporary contracts. Moreover, the very concept of labour needed to be thoroughly examined, with special attention to the issue of subcontracting in the global economy, which resulted in much of the work being carried out in the informal economy. In view of the increasingly vague distinction between wage workers and the self-employed, the question also arose of the application of the fundamental Conventions to self-employed workers.
68. The Worker members observed that the persistent economic problems resulting from the financial crisis of 2008 had resulted in the adoption of measures by countries, often under the influence of the international financial institutions, which further undermined the fundamental rights of workers, particularly in the public sector. Several Worker members described the situation in their countries resulting from the crisis. In Greece, since May

2010, the industrial relations system was being methodically eradicated and the fall in workers' living standards was being compounded by the deconstruction of labour institutions. New legislation was methodically dismantling core labour rights and demolishing the social state, the national minimum wage had been cut by 22 per cent, and by 32 per cent for young workers, while employers in small and medium-sized enterprises were now allowed to form workers' associations under their control, and to conclude agreements with them that were binding for the rest of the workplace. In the Netherlands, one third of the workforce was in atypical employment and the number of self-employed workers had increased by over 10 per cent since the economic crisis.

69. The Worker members agreed with the indication in the General Survey that the fundamental labour standards would remain a dead letter if the necessary investments were not made to give them effect. Yet such investment was largely lacking and, in view of the budgetary constraints faced by many countries, the situation was liable to get worse. Moreover, ILO technical assistance was being short-circuited by austerity programmes. The whole problem was bound up with the implementation of the Conventions on labour inspection although, as indicated by the Committee of Experts, labour inspection was just one component in a global policy in which other factors played a crucial role: permanent monitoring; adequate supervision by the administration and its supervisory services, including supervision of the informal economy; the availability of sufficiently dissuasive sanctions in the event of infringements; an efficient and independent justice system that was accessible to workers and could take fairly swift legal action; as well as appropriate action by national social partners in collaboration with the supervisory authorities. It was also increasingly clear that the strengthening of international cooperation, particularly between inspection services in the various countries, was essential for the proper application of the fundamental Conventions.
70. The Government member of Denmark, speaking on behalf of the European Union (EU) and its Member States, the accession country Croatia, the candidate countries, Iceland, The former Yugoslav Republic of Macedonia, Montenegro and Serbia, the countries of the stabilization and association process and potential candidates, Albania and Bosnia and Herzegovina, the Republic of Moldova as well as Ukraine and Georgia, reaffirmed the EU's full commitment to the fundamental principles and rights at work, which had been embodied in the legislation of all EU Members and the Charter of Fundamental Rights. The fundamental principles and rights at work were also part of the EU's collective action on the international scene aimed at consolidating and supporting democracy, the rule of law, human rights and the principles of international law. The EU and its Member States were strongly attached to the principles of freedom of association and collective bargaining, and shared the view that the rights of workers' and employers' organizations could only be exercised in a democracy, and in a climate where human rights were recognized, free from violence, pressure or threats against the leaders and members of those organizations. They were also committed to the abolition of forced labour, with particular attention to members of the most vulnerable groups. They were strongly committed to the abolition of child labour and the protection of young people at work, and noted with concern that child labour affected 215 million children in the world. The rights of the child were actively promoted and protected as an integral part of the EU's external human rights policy, including through development cooperation. They also fully supported the principles of equality and non-discrimination and the need to monitor closely the impact of austerity measures on the employment situation of vulnerable groups. They therefore regretted that some ILO member States, including the States with the highest populations, had not yet ratified the eight fundamental Conventions. The worldwide ratification and implementation of the eight core Conventions should be encouraged and supported. The violation of fundamental principles and rights at work must not be used as a legitimate comparative advantage, and labour standards should not be used for protectionist trade purposes.

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71. The Government member of France added that the goal of universal ratification of the fundamental Conventions by 2015 was directly linked to the quest for sustainable and fairer globalization, linking economic and social progress. The eight fundamental Conventions together made up a regulatory framework that was conducive to economic development and social justice. The content of Conventions Nos 87 and 98, which had the lowest ratification rates of the fundamental Conventions, provided the basis for addressing all fundamental rights through social dialogue and collective action. While recognizing that the diversity of institutional systems and the histories of the various countries prevented immediate universal ratification, the General Survey represented an opportunity to reflect on solutions that would allow for the elimination of obstacles to ratification, with the aim of making further progress in terms of decent work, especially with regard to the informal economy. In this connection, technical assistance from the Office and cooperation programmes, such as the Programme to Support the Implementation of the ILO Declaration on Fundamental Principles and Rights at Work (PAMODEC), to which the French Government gave particular support, provided assistance to beneficiary countries and the social partners for ratification and for the implementation of the ILO standard-setting policy.
72. The Government member of Switzerland regretted to note from the General Survey that, in certain areas, little progress had been made, in particular concerning the ratification of the Conventions on freedom of association and collective bargaining, despite their importance for democracy and economic and social development. Stronger political will and the increased provision of resources for technical cooperation were necessary to attain ratification and universal implementation of the eight fundamental Conventions, which established the ground rules for a genuine social dimension to globalization.
73. The Government member of the United States agreed with the assessment in the General Survey that the ratification of ILO Conventions was testimony to the commitment of member States to the rights and principles contained in the Conventions, and provided certainty and transparency in implementation and monitoring. Her Government had not so far been able to ratify many of the fundamental Conventions but stressed that ratification was not an end in itself. She recalled that the United States was bound by rules, drawn up with the social partners, establishing that it could not ratify an ILO Convention unless, or until, its law and practice were in full compliance with its provisions. Nonetheless, law and practice in the United States were in general conformity with non-ratified fundamental Conventions. She furthermore noted that US laws and regulations were continually scrutinized with an eye to ensuring that they adequately protect and promote workers' fundamental rights. Moreover, in recent bilateral trade agreements, the United States and its trading partners had pledged to adopt and maintain the rights contained in the ILO Declaration on Fundamental Principles and Rights at Work, 1998. In view of the importance of technical assistance in advancing the application of the fundamental Conventions and removing obstacles to ratification, she would welcome recommendations from the ILO for appropriate tripartite technical assistance.
74. The Government member of Bahrain, speaking on behalf of the Governments and Labour Ministers of the Member States of the Gulf Cooperation Council (GCC), namely Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates and Yemen, attached particular importance to the need to guarantee good conditions of work and the payment of wages without any discrimination. As their labour markets depended greatly on temporary contract workers, the GCC countries had organized permanent consultations with the countries of origin of these workers to find common solutions to issues affecting them and to elaborate the relevant labour laws.
75. The Government member of Morocco indicated that, in accordance with the 1998 Declaration, his country had reinforced its legislative framework and enshrined human

rights in the 2011 Constitution, and particularly the right to non-discrimination, freedom of association, including the right to be a member of a trade union or a political party, the right to collective bargaining and the right to strike, which meant that these rights benefited from a stronger position in the hierarchy of norms. Emphasis should be placed on the important role of technical cooperation in providing clarifications and developing tools aimed at supporting the application of ILO Conventions, and particularly the principle of equal remuneration for work of equal value.

76. The Government member of Algeria reaffirmed that the principles established in the fundamental Conventions, all of which had been ratified by Algeria, had been enshrined in the national Constitution of 1989 and had been implemented by national labour legislation. Emphasizing the complementary nature of the fundamental and governance Conventions, and particularly the Labour Inspection Convention, 1947 (No. 81), and the need for effective labour inspection to ensure compliance with the principles set out in the fundamental Conventions, he said that the Algerian authorities had endeavoured to provide the labour inspection services with increased resources to improve their performance.
77. The Government member of Senegal was heartened by the increasing interest shown by the international community in the fundamental Conventions, although much still remained to be done to achieve full implementation. The question of the supervision of the application of these Conventions was a key aspect of standard-setting activity, and the implementation of procedures aimed at solving application issues which had been identified was vital too. The speaker concluded by emphasizing that Senegal, following the example set by the ILO's standard-setting work, was constantly taking initiatives to pursue the goal of social development, and the support given by the Office in this area was substantial.
78. The Government member of India emphasized the pressing need for the protection of fundamental principles and rights at work in the context of globalization and financial crisis. However, although ratification of the fundamental Conventions was very important, the main thrust should be on the realization of the principles enshrined therein. Some of the Conventions, such as those on child labour, presupposed time-bound action and universal access to education, the cost of which would be astronomical to place all the world's estimated 215 million child labourers in school. Although all countries were bound to respect and implement the fundamental Conventions, the pace of implementation would have to be determined by the resources, economic status and specific circumstances of each country. In that sense, the 2015 time line for achieving universal ratification was unrealistic and the number of ratifications should not be the sole yardstick for measuring the situation in a country. Prospects for progressive ratification should be examined, taking into account national diversities and complexities. A detailed analysis should be carried out within the framework of the Standards Review Mechanism of why some of the fundamental Conventions had not been ratified by countries comprising over half of the global population and emphasis should be placed on capacity building and technical cooperation to create the necessary conditions for ratification.
79. The Government member of the Russian Federation welcomed the increase in the ratification of the fundamental Conventions, which had been made possible by the work of the Committee of Experts and the Conference Committee. He called on the governments that had not yet done so to ratify all the fundamental Conventions, and emphasized that compliance with Conventions Nos 87 and 98 was particularly significant in view of the global economic crisis and its consequences. Particular importance should be given by the ILO to the application of further measures for the eradication of all forms of discrimination at work, including discrimination in the remuneration of men and women workers.

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80. The Government member of Norway emphasized the need to strengthen labour inspection and social dialogue in the process of the implementation of the fundamental Conventions at the national level. She drew attention to the need to focus on women workers, workers in the informal economy and vulnerable groups of workers, as well as issues of equity and non-discrimination. Greater attention should also be paid throughout the work of the ILO to the comments of the supervisory bodies, and the social partners should play a more active role from the design stage in technical cooperation projects.
81. A Worker member of the Bolivarian Republic of Venezuela indicated that his country recognized fundamental workers' rights in the Organic Labour Act, which gave effect to the eight fundamental Conventions, and that it had achieved economic growth for the past few years while recognizing all the fundamental principles and rights at work. Collective agreements had been, and were being, negotiated in many sectors, and working hours had been reduced to 40 a week, with two rest days. Another Worker member of the Bolivarian Republic of Venezuela added that, through the establishment of workers' rights in law, the new model of production developed with the participation of the workers and an equitable distribution of wealth, her country was now recognized as one of the Latin American countries with the lowest levels of inequality.

Freedom of association and collective bargaining

82. The Employer members, with reference to the comments by the Chairperson of the Committee of Experts concerning the discussion of the right to strike in relation to the 1994 General Survey, emphasized that, as indicated in the present General Survey, they had clearly articulated their objections during the 1994 discussion to the interpretation by the Committee of Experts of the right to strike. While the Employer members acknowledged that a right to strike existed, as it was recognized at the national level in many jurisdictions, they did not at all accept that the comments on the right to strike contained in the General Survey were the politically accepted views of the ILO's tripartite constituents. As the Employers' group had consistently highlighted year after year, they fundamentally objected to the Committee of Experts' opinions concerning the right to strike being received or promoted as soft law jurisprudence. There was no mention of the right to strike in the text of Convention No. 87, and the determinative body to decide such rules recognized by the ILO was the Conference, not the Committee of Experts. Under article 37 of the ILO Constitution, only the International Court of Justice (ICJ) could give a definitive interpretation of international labour Conventions. The situation was exacerbated because General Surveys were important and were published and distributed worldwide without any prior approval by the Conference Committee. The fundamental Conventions were embedded in many international processes and instruments, such as the UN Global Compact, the OECD Guidelines for Multinational Enterprises and ISO 26000. The Employer members therefore objected in the strongest terms to the interpretation by the Committee of Experts of Convention No. 87 and the right to strike, to the use of the General Survey with regard to the right to strike and to being placed in such a position by the General Survey. They indicated that, to maintain the credibility and coherence of the Employers' group, their views and actions in all areas of ILO action relating to the Convention and the right to strike would be materially influenced.
83. In more general terms, the Employer members agreed with the comments of the Committee of Experts that, in the absence of a democratic system in which fundamental rights and principles were respected, freedom of association could not be fully developed. There were situations of the failure to apply Convention No. 87 outlined in the General Survey, such as the denial of the right to organize to certain categories of persons, restrictions on the holding of free elections in representative organizations, restrictions on the categories of persons who could hold office in organizations, restrictions on the

independence and functioning of organizations, the requirement of excessive numbers of members to establish organizations, which went to the heart of the Convention and were also experienced by some employers. Moreover, the Committee of Experts had rightly emphasized that employers were also protected by the freedom of association instruments.

- 84.** An Employer member from Denmark noted that he represented public employers, although he did not represent the State, and that he wanted to comment on the impact of Conventions Nos 87 and 98 on public employers. The Committee of Experts had created arbitrary distinctions in interpreting the right to strike, which forced it to make special rules for the public sector. Public employers would not follow the creative inventions of the Committee of Experts, as the right to strike depended on national legislation, not on international ILO Conventions. The Committee of Experts' interpretation of Convention No. 98 was problematic in that it allowed minority unions to conclude agreements when no union comprised a majority of workers. While minority unions could negotiate agreements, Employers retained the right to refuse.
- 85.** The Worker members, with reference to the remarks of the Employer members, reaffirmed that the right to strike was an indispensable corollary of freedom of association and was clearly derived from Convention No. 87. Moreover, the Committee of Experts had once again advanced a well thought-out argument on why the right to strike was quite properly part of fundamental labour rights. It was important to recall that the Committee of Experts was a technical body which followed the principles of independence, objectivity and impartiality. It would be wrong to think that it should modify its case law on the basis of a divergence of opinions among the constituents. While the mandate of the Committee of Experts did not include giving definitive interpretations of Conventions, for the purposes of legal security it nevertheless needed to examine the content and meaning of the provisions of Conventions and, where appropriate, to express its views in that regard.
- 86.** The Worker members said that the right to strike was part of the ordinary exercise of freedom of association. Without that right, workers would not be in a position to exert any influence in collective bargaining. Questioning the right to strike as an integral part of freedom of association would mean that other rights and freedoms were meaningless in practice. The fundamental labour rights and their interpretation within the context of the supervisory process were essential elements in ensuring the durability of social rights and civil liberties.
- 87.** The Worker member of Peru added that the right to strike was sacred, inalienable and non-negotiable and thousands of workers had lost their lives or suffered torture defending that right. The Worker member of Brazil said that the right to strike was as important as the right to work and the right to decent wages.
- 88.** The Worker members welcomed the reference in the General Survey to their concerns on the direction taken by the case law of the European Court of Justice regarding the relationship between the right to strike and the free movement of services. They expressed pessimism concerning the so-called Monti II Regulation and noted that European case law was running counter, not just to the principles of freedom of association, but also to the right to collective bargaining. Although the Committee of Experts had noted that its mandate was limited to the shortcomings of member States and did not extend to regional organizations, national policy could not possibly be divorced entirely from regional policy. The question therefore arose as to whether the supervisory machinery should also cover problems at the regional level, and not only in Europe.
- 89.** Several Worker members referred to restrictions on trade union rights in their countries. The Worker member of the United States indicated that, in the United States in 2011, the authorities in certain states had used budget deficits resulting from the financial crisis to

justify efforts to cut the wages and benefits of teachers and other public sector workers and to eliminate or restrict their collective bargaining rights. Employers in the United States were extremely hostile to trade unions and continued to use anti-union tactics to put workers under pressure not to join unions. In the context of continued high unemployment and weak economic growth, certain private sector employers had used lockouts to pressure workers to accept wage and benefit concessions, greater numbers of temporary workers and subcontracted work. It was also noted that in Senegal, civil service status, reserved for a minority, removed collective bargaining and consultation rights from workers, who were not therefore able to negotiate their pay. In the Republic of Korea, trade union law had recently been revised in a retrogressive manner. Workers who took the lead in union activities and collective action risked dismissal, imprisonment or lawsuits for the compensation of damage. Certain workers' confederations had been repeatedly threatened with the cancellation of their registration because of the high numbers of precarious workers in their membership, and when subcontracted workers tried to exercise the right to organize, the subcontract could be cancelled, which had the same effect as collective dismissal.

90. Several Government members recalled that the right to strike was well established and widely accepted as a fundamental right. The Government member of the United States expressed appreciation of the Committee of Experts for its continuing efforts to promote better understanding of the meaning and scope of the fundamental Conventions, including the right to strike. The Government member of Norway added that her country fully accepted the position of the Committee of Experts that the right to strike was a fundamental right protected under Convention No. 87.

Forced labour

91. The Employer members observed that Conventions Nos 29 and 105 remained extremely relevant and they welcomed the comprehensive information provided in the General Survey on their application in law and practice. However, there was no room for complacency, as problems still existed, particularly in terms of a lack of commitment to taking effective action for the elimination of forced labour and the mechanisms for the enforcement of its prohibition. Moreover, the Employer members noted a tendency in the General Survey to expand the definitions of forced labour to new areas, such as prison labour and overtime. They warned that such extensions ran the risk of inadvertently trivializing the problem. In the case of prison labour, they expressed the view that the definition provided by the Committee of Experts of the notion of voluntariness was too narrow. Moreover, while an approximation to a free labour relationship could be an indicator of an absence of forced labour in those circumstances, there were other viable indicators. It would probably be advisable to define more closely the limits of voluntariness. In relation to overtime, it should be emphasized that, although excessive overtime hours did not constitute decent work, nor did they amount to forced labour if the worker was free to leave the employment relationship. With reference to the prohibition by Convention No. 105 of forced labour as a punishment for having participated in strikes, they added that the Convention was not an instrument for regulating strikes, nor did it prohibit sanctions for strikes, but only the exaction of forced labour as a sanction for having participated in strikes, whether or not the strikes were legal.
92. The Worker members said that forced labour, which was the antithesis of decent work, was not limited to certain countries or sectors, but was to be found throughout the world in such forms as human trafficking, new forms of migration, the privatization of prisons, and even in the progress of "quid pro quo" social security policies (under which workers who were unemployed or living in poverty had to perform work of public interest in exchange for their benefits).

Elimination of child labour

93. The Employer members welcomed the first General Survey to cover Convention No. 182, and the first for over 30 years on Convention No. 138. It was timely to look at developments in relation to the elimination of child labour and the wealth of information provided on the implementation of the two Conventions was appreciated. It was clear that child labour was a problem that affected the future of nations. Most children who were engaged in work had little opportunity to pursue their education and training, which meant that in later life they would find it very difficult to obtain anything other than work requiring low skill levels and offering low rates of remuneration. Action to combat child labour should therefore be closely related to education and training measures. They noted the many examples of the efforts made by ILO member States, in both law and practice, but observed that the measures taken were often insufficient. In particular, legislation was ineffective in prohibiting child labour in the informal economy, where it was most prevalent. In certain countries, the legislation on child labour failed to cover such sectors as domestic work, agriculture and commerce. Moreover, although one of the principal means of enforcing the prohibition of child labour was through labour inspection, the respective services often lacked the necessary material and human resources and specific training. It should be recalled that the social partners had an important role to play in combating child labour, but that employers, in particular, were often not sufficiently consulted.
94. The Employer members called for an immediate end to the involvement of state institutions in many of the worst forms of child labour, including the compulsory recruitment of children into national armed forces, the compulsory mobilization of children in the context of school programmes and the complicity of government officials in the trafficking of children.
95. The Worker members acknowledged that significant progress had been made in a range of countries, particularly in relation to the worst forms of child labour, and that many of the time-bound programmes implemented had been effective. However, according to the 2010 Global Report, a very large number of children worldwide continued to work (215 million), many under the age of 15 (153 million) and in hazardous forms of work (116 million), particularly in the informal economy, agriculture and domestic work. The Committee of Experts had rightly emphasized the new or additional risks arising out of the globalization of the labour market, the ongoing problem of human trafficking, the recruitment of child soldiers in conflict zones and the role of the Internet in encouraging sex tourism and the sexual exploitation of children.

Equality, non-discrimination and equal remuneration

96. The Employer members observed that discrimination at work was not only a violation of a human right, but that it also hindered the development of workers and the utilization of their full potential, and therefore constituted a barrier to the promotion of sustainable enterprises. A diverse workforce enabled employers to recruit the most talented workers from a broad pool of candidates and was accordingly beneficial to enterprises and enabled the workforce to offer its whole range of experiences, perspectives and cultural understanding. However, they observed that the lack of implementation of the anti-discrimination Conventions was primarily related to societal perceptions based on historical attitudes and stereotypes which were difficult to change and sometimes required a long period of adaptation. In view of the consequences of anti-discrimination standards on employers' activities, they considered that the related policies should not place a burden on enterprises which might impair their sustainability and their ability to create jobs.

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97. With regard to the principle of equal remuneration for work of equal value, the Employer members underlined the importance of flexibility in the application of Convention No. 100 at the national level. It should be recalled that governments were entitled to use any combination of means at their disposal for the application of the principle, although they were not necessarily required to do more than legislate. The value of collective bargaining in that respect was that it allowed workers and employers to take into account business and employment needs, while drafting equal pay plans and anti-discrimination measures. With reference to the concept of equal remuneration, they observed that the dilemma lay in the fact that there was no generally agreed correct system for establishing the value of a job. The comments of the Committee of Experts that factors such as skills, responsibility, effort and working conditions were relevant in determining the value of jobs, and that the overall value of a job could be determined only when all factors were taken into account, left a certain ambiguity in the concept. Such ambiguity highlighted the difficulty of attempting to create a “one-size-fits-all” definition of equal value, and suggested that greater discretion should be allowed to make such determinations at the national level.
98. The Employer members added, with regard to the monitoring and enforcement of Conventions Nos 100 and 111, that neither Convention required a shifting of the burden of proof to the employer, which had proven to be an extremely heavy bureaucratic burden for employers in countries where it existed. They emphasized that much had been done by the business community to apply the principles of equality set out in the two Conventions, especially through collective agreements, the adoption of voluntary codes of conduct, wage mapping and action plans. They therefore called for consistent and flexible anti-discrimination standards.
99. The Worker members welcomed the special attention paid by the Committee of Experts to the wage gap between women and men, which could only be tackled if the factors underlying segregation in the labour market were addressed at the same time. With regard to Convention No. 111, they recalled that Article 1 of the Convention did not envisage any specific restrictions and applied to any discrimination which had the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation. However, in practice, many countries established limitative lists, or limited the scope of application to their own nationals. It was becoming increasingly important to extend the scope of the Convention to combat new forms of discrimination, such as genetic discrimination and discrimination based on lifestyle choice. It was also important to prohibit discrimination based on trade union activities and to establish specific protection measures, such as the reversal of the burden of proof and employment protection through special judicial and administrative procedures.

Final remarks

100. The Employer members thanked the Committee of Experts and were able to support 95 per cent of the General Survey. They noted the rich discussion and the obvious interest in and recognition of the importance of the fundamental Conventions.
101. The Worker members, with reference to the comments by the Employer members concerning the absence of any reference in the General Survey to the concept of sustainable enterprises, said that emphasis should also be placed on durable and decently remunerated employment, the right to social protection in the broad sense of the term and the guarantee of quality jobs that respected workers, their health, security and family environment. All those rights depended on the effective application of the eight fundamental Conventions and were beneficial for employers and governments through the promotion of greater social cohesion.

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- 102.** The Worker members re-emphasized the crucial nature of the right of freedom of association and collective bargaining to the application of the other Conventions. The eight fundamental Conventions dealt with human rights and were essential instruments for developing democracy. Moreover, it was important to reaffirm that the right to strike was clearly derived from Convention No. 87 and was an obligatory corollary of freedom of association. The Committee of Experts was a technical body operating in accordance with the principles of independence, objectivity and impartiality. It could therefore not modify its jurisprudence in light of diverging and evolving points of view. In that respect, the Committee of Experts had indicated in its report to the Conference in 1990:

The Committee has already had occasion to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function ..., the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. ... The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently for the certainty of law required for the proper functioning of the International Labour Organisation.

- 103.** The Worker members, turning to the substance of the General Survey, strongly endorsed the appeal for special attention to be devoted to vulnerable categories of workers, notably domestic workers, migrant workers and informal sector and agricultural workers, and to the growing problems they faced in exercising their fundamental rights and freedoms at work. Concerning atypical forms of work, the Worker members requested for a tripartite meeting of experts to be organized on the subject by the ILO. With regard to the elimination of all forms of forced labour and, although Conventions Nos 29 and 105 were among the most widely ratified, they recalled that various forms of forced or compulsory labour continued to exist. Governments should therefore develop a comprehensive juridical policy framework to combat all forms of forced labour, which not only established punitive measures, but also encompassed the protection of victims and compensation for the damage suffered. They added that the fundamental principle of gender equality and the elimination of discrimination in employment was a human right to which all men and women were entitled, and that it had an important bearing on the exercise of all other rights. A discussion should perhaps be held on new forms of violation of equality, with a view to the possible development of a modern instrument reflecting changes in society and comprising a list of new forms of discrimination and suggestions as to how they might be remedied.
- 104.** In conclusion, the Worker members encouraged the ILO to pursue its campaign to promote the ratification and observance of the fundamental Conventions with a view to establishing, by 2015, a social framework that was conducive to peace, stability, economic development, prosperity and social justice.

D. Compliance with specific obligations

- 105.** The Chairperson explained the working methods of the Committee for the discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.
- 106.** The Employer members indicated that the supervisory system depended on reports by the governments on compliance with Conventions. The system could not function without their regular submission. They noted the institutional and infrastructural constraints due,

for instance, to political unrest, which resulted in lack of human and financial resources and communications between ministries. The Office could provide relevant technical assistance and hoped that the governments would avail themselves of this possibility. They stated that the governments had to consider their responsibility for reporting upon consideration of ratifying Conventions. The group observed a general improvement compared to last year in the situation of discharge by member States of their reporting obligations under articles 22 and 35 of the ILO Constitution, as indicated in the General Report of the Committee of Experts. They, however, emphasized that further efforts were needed.

- 107.** The Worker members emphasized the fact that the obligation to send reports before the deadline and with useful information had to be respected by all governments. The regularity of reporting and the quality of replies influenced greatly the work of the Committee of Experts. If the reports were of high quality, the supervisory mechanism could attain its objectives, which was to the maximum benefit of workers and the defence of their rights. The progress observed at the moment as regards sending reports was insufficient and the governments concerned had to take all measures necessary to fulfil their obligations in this regard.
- 108.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 109.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 31 (failure to supply reports for the past two years or more on the application of ratified Conventions), 37 (failure to supply first reports on the application of ratified Conventions), 40 (failure to supply information in reply to comments made by the Committee of Experts), 89 (failure to submit instruments to the competent authorities), and 98 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

Submission of Conventions, Protocols and Recommendations to the competent authorities

- 110.** In accordance with its terms of reference, the Committee considered the manner in which effect was given to article 19, paragraphs 5–7, of the ILO Constitution. These provisions required member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 111.** The Committee noted from the report of the Committee of Experts (paragraph 87) that considerable efforts to fulfil the obligation to submit had been made in certain States, namely: Cape Verde, Central African Republic, Kenya, Mongolia and Qatar. In addition, the Conference Committee received information about the submission to parliaments from many governments and in particular from Cambodia, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan as well as the ratification of the Maritime Labour Convention, 2006, by Saint Kitts and Nevis; and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187), by Togo.

Failure to submit

112. The Committee noted that in order to facilitate its discussions, the report of the Committee of Experts mentioned only the governments which had not provided any information on the submission to the competent authorities of instruments adopted by the Conference for seven sessions at least (from the 90th Session in June 2002 to the 99th Session in June 2010, because the Conference did not adopt any Conventions and Recommendations during the 93rd (2005), 97th (2008) or 98th (2009) Sessions). This time frame was deemed long enough to warrant inviting Government delegations to the special sitting of the Conference Committee so that they may explain the delays in submission.
113. The Committee noted the regrets expressed by several delegations at the delay in providing full information on the submission of the instruments adopted by the Conference to parliaments. Some governments had requested the assistance of the ILO to clarify how to proceed and to complete the process of submission to national parliaments in consultation with the social partners.
114. The Committee expressed great concern at the failure to respect the obligation to submit Conventions, Recommendations and Protocols to national parliaments. It also recalled that the Office could provide technical assistance to facilitate compliance with this constitutional obligation.
115. The Committee noted that 33 countries were still concerned with this serious failure to submit the instruments adopted by the Conference to the competent authorities, that is, **Bahrain, Bangladesh, Belize, Colombia, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, Fiji, Georgia, Guinea, Haiti, Iraq, Ireland, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan and Uganda**. The Committee hoped that appropriate measures would be taken by the governments and the social partners concerned so that they could bring themselves up to date, and avoid being invited to provide information to the next session of this Committee.

Supply of reports on ratified Conventions

116. In Part II of its report (Compliance with obligations), the Committee had considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2011 meeting of the Committee of Experts, the percentage of reports received was 67.8 per cent (compared with 67.9 per cent for the 2010 meeting). Since then, further reports had been received, bringing the figure to 77.4 per cent (as compared with 77.3 per cent in June 2011, and 77.6 per cent in June 2010).

Failure to supply reports and information on the application of ratified Conventions

117. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two years or more by the following States: **Chad, Djibouti, Equatorial Guinea, Grenada, Nigeria, Sierra Leone and Somalia**.
118. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries:

State	Conventions Nos
Bahamas	– since 2010: Convention No. 185
Equatorial Guinea	– since 1998: Conventions Nos 68, 92
Guinea-Bissau	– since 2010: Convention No. 182
Kazakhstan	– since 2010: Convention No. 167
Kyrgyzstan	– since 1994: Convention No. 111 – since 2006: Conventions Nos 17, 184 – since 2009: Conventions Nos 131, 144 – since 2010: Conventions Nos 97, 157
Nigeria	– since 2010: Convention No. 185
Sao Tome and Principe	– since 2007: Convention No. 184
Seychelles	– since 2007: Conventions Nos 147, 161, 180
United Kingdom (St Helena)	– since 2010: Convention No. 182
Vanuatu	– since 2008: Conventions Nos 87, 98, 100, 111, 182 – since 2010: Convention No. 185

- 119.** It stressed the special importance of first reports on which the Committee of Experts based its first evaluation of compliance with ratified Conventions.
- 120.** In this year's report, the Committee of Experts noted that **43** governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of **537** cases (compared with 669 cases in December 2010). The Committee was informed that, since the meeting of the Committee of Experts, 15 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.
- 121.** The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2011 from the following countries: **Bahamas, Barbados, Burkina Faso, Burundi, Chad, Comoros, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Equatorial Guinea, Ghana, Grenada, Guinea, Guyana, Haiti, Iceland, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Nigeria, Pakistan, San Marino, Sao Tome and Principe, Sierra Leone and Slovakia.**
- 122.** The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Afghanistan, Bahrain, Burkina Faso, Chad, Denmark (Greenland), Iceland, Ireland, Nigeria, Pakistan, Seychelles and Sudan.**

Supply of reports on unratified Conventions and Recommendations

- 123.** The Committee noted that **160** of the **282** article 19 reports requested on fundamental Conventions had been received at the time of the Committee of Experts' meeting. This is 56.23 per cent of the reports requested.
- 124.** The Committee noted with regret that over the past five years none of the reports on unratified Conventions and Recommendations, requested under article 19 of the Constitution, had been supplied by: **Afghanistan, Cape Verde, Guinea-Bissau, Samoa, Sierra Leone, Somalia, Turkmenistan and Vanuatu.**

Communication of copies of reports to employers' and workers' organizations

125. Once again this year, the Committee did not have to apply the criterion: “the Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated”.

Application of ratified Conventions

126. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 61 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national legislation or practice with the provisions of a ratified Convention. There were 72 such cases, relating to 54 countries; 2,875 cases where the Committee of Experts was led to express its satisfaction with progress achieved since it began listing them in 1964. These results were tangible proof of the effectiveness of the supervisory system.
127. This year, the Committee of Experts listed in paragraph 64 of its report, cases in which measures ensuring better application of ratified Conventions had been noted with interest. It noted 325 such instances in 130 countries.
128. At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it was for the Committee of Experts to examine these measures, the present Committee welcomed them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

Specific indications

129. The Government members of **Afghanistan, Bahrain, Bangladesh, Burkina Faso, Cape Verde, Chad, Colombia, Congo, Denmark (Greenland), Ethiopia, Ghana, Guinea, Guyana, Iceland, Ireland, Nigeria, Pakistan, Papua New Guinea, Seychelles, Sudan, Suriname** and **Uganda** had promised to fulfil their reporting obligations as soon as possible.

Special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29)

130. The Committee held a special sitting concerning the application by Myanmar of Convention No. 29, in conformity with the resolution adopted by the Conference in 2000. A full record of the sitting appears in Part Two of the report.

Participation in the work of the Committee

131. The Committee wished to express its gratitude to the 43 governments which had collaborated by providing information on the situation in their countries.

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132. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Bahamas, Barbados, Belize, Burundi, Comoros, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Fiji, Georgia, Grenada, Guinea-Bissau, Haiti, Iraq, Kazakhstan, Kiribati, Kyrgyzstan, Libya, Mongolia, Mozambique, Rwanda, Saint Lucia, Samoa, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia, Solomon Islands, Somalia, Tajikistan, Turkmenistan, United Kingdom (St Helena) and Vanuatu.** The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
133. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Bahamas, Belize, Dominica, Equatorial Guinea, Grenada, Guinea-Bissau, Saint Lucia, Samoa, Somalia and Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Discussion of the list of individual cases to be considered by the Committee

134. With regard to the adoption of the list of individual cases for discussion by the Committee in the second week, the Worker members emphasized the fact that only the Workers and the Government representatives were present at the sitting on Friday, 1 June 2012, after 8.30 p.m. They wished to provide some explanation regarding the attempts made in reaching an agreement on a list of 25 individual cases. Unfortunately this had not been possible, since the conditions put forward by the Employer members were unacceptable. The Worker members considered that it was not their responsibility to explain those conditions. As to the substance of the matter, the issue raised by the Employer members was identical to the one that they had referred to previously, namely that the Committee of Experts had taken the initiative to provide explanations concerning the right to strike in the General Survey, and that was something that the Employer members could not accept. The Worker members considered, however, that the Committee of Experts worked in complete autonomy. As the Committee of Experts had emphasized in its annual report, it was "an independent body composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States". It was not possible to assess its independence in a different manner than had previously been done. The fact was that it had not been possible to reach consensus between the Employer members and the Worker members. The Worker members would have liked to propose a list including cases to which they attached particular importance and which raised serious issues for the workers of the countries concerned. It had unfortunately proven impossible to reach an agreement with the Employer members regarding such a list. The Worker members deplored the situation because it showed that tripartism and social dialogue did not always enable positive and constructive solutions to be found. Consequently, they had looked for a practical solution to this impasse and had proposed a "default list", in other words a list drawn up in the absence of one negotiated and approved by the groups. They had proposed starting with the examination of the double footnoted cases, following the French alphabetical order from the letter K onwards: Mauritania (Convention No. 81); Dominican Republic (Convention No. 111); Senegal (Convention No. 182); Fiji (Convention No. 87); and Guatemala (Convention No. 87). The Worker members had also proposed to examine 20 cases following the same alphabetical order on the basis of the preliminary list. The Worker members reaffirmed that this list was not the one they would have preferred and that it was a "default list". They expressed the wish to have the possibility of making other comments at the start of the examination of individual cases. In conclusion, the Worker

members emphasized the fact that they had not created this situation. They felt that they were victims of a situation which had been shaped by others, one in which they had not played an active role.

135. The Chairperson invited the Government members to make comments regarding the statement of the Worker members and the situation faced by the Committee.
136. The Government member of Zimbabwe informed the Committee that it would not be appearing before the Committee in the case of a “default list”.
137. The Government member of the United States stated that she was beyond disappointment and foresaw that many other governments would wish to make statements at a later stage. She wondered whether the fact that the Employer members were no longer present in the room, meant that they would not participate in the discussion of a “default list”.
138. The Government member of Brazil, speaking on behalf of GRULAC, expressed his deep frustration about the whole situation, which was offensive and disrespectful to governments. He recalled the statements that had been previously made by the Government group and GRULAC underlining the importance of having a list of individual cases on time, and considered that still not having such a list severely hampered the constitutional functions of the ILO.
139. The Government member of Greece supported the statement made by the Government member of Brazil and, noting that the Employer members were not present, requested indications from the Office on the way forward.
140. The Worker members requested clarifications regarding the manner in which the outcome of the Committee’s discussion would be reported to the Recurrent Item Committee. In the absence of joint conclusions, the groups could consider submitting their conclusions separately.
141. The representative of the Secretary-General in reply to the various questions raised, indicated that the Office had first to reflect on possible ways forward. In the afternoon, the Committee had agreed on the brief summary of the discussion on the General Survey. The revised version of this document (document D.8(Rev.), which included the comments made by the Worker and Employer Vice-Chairpersons, would be communicated to the Recurrent Item Committee on Saturday afternoon, 3 June 2012. The Committee had not agreed on a proposed outcome but it was already scheduled in the programme that the Officers would brief the Recurrent Item Committee on the outcome. The Office had not been informed that the Employer members would leave the room and had been taken by surprise. The Government members had been extremely patient and she thanked them for this, as well as for their respect for the institution.
142. On Saturday afternoon, with regard to the ongoing efforts to prepare a mutually agreeable list of cases, the Chairperson announced that he had taken the initiative to convene an informal meeting with all regional coordinators and the Vice-Chairpersons but unfortunately this meeting had produced no results. He also indicated that the different questions put forward by several Government members regarding the manner in which the Committee would proceed with its work would be answered at the Committee’s next sitting on Monday, 4 June.
143. The Government of Brazil, speaking on behalf of GRULAC, said that they had held a meeting at which GRULAC reiterated its commitment to the supervisory system but noted that once again the list of individual cases was not ready in time. He repeated the group’s view that the fact that the list was not ready was offensive and disrespectful vis-à-vis the

governments. Its position was therefore that, if no list was presented before the end of the day (and he was referring to a complete list), then the group did not want any list at all. The situation that had arisen showed that the procedures needed to be reviewed by the Governing Body. He concluded by reiterating GRULAC's firm support for the respect of the plan of work and for the position of the Government group.

- 144.** On Monday, 4 June 2012, the Employer and Worker members, as well as several Government members, made the following statements.
- 145.** The Employer members provided the following explanations concerning the situation that had arisen with regard to the list of cases. In relation to the interpretation of the right to strike, they referred to the publication of the Committee of Experts' General Survey on the eight ILO fundamental Conventions in advance of the 101st Session of the International Labour Conference. The General Survey was a guide to the Conference Committee to assist it with its work when supervising the application of ratified labour standards by member States of the ILO. The General Survey, like the report of the Committee of Experts, was not an agreed or authoritative text of the ILO tripartite constituents, namely, the Governments, Employers and Workers. Outside of the ILO, this important distinction was either misunderstood or forgotten and General Surveys were seen as being the position of the ILO, which they were not. The Employer members had, for many years, consistently stated this position concerning General Surveys and the reports of the Committee of Experts. The role of the International Labour Office was to serve its tripartite constituents to the best of its abilities. The ILO was the Governments, Workers and Employers. Both the General Survey and the report of the Committee of Experts were created with the assistance of the International Labour Office. The Governments, Employers and Workers were not involved in their creation or publication. The first opportunity for the Governments, Employers and Workers to consider these publications as groups was at the International Labour Conference.
- 146.** The eight fundamental Conventions were important not only within the ILO, but also because other international institutions regularly used them in their activities. The fundamental Conventions were embedded in the UN Global Compact, the OECD Guidelines for Multinational Enterprises, and the UN Human Rights Council's "Protect, Respect and Remedy" framework. The ILO's supervisory machinery related to member States only, not to businesses, so it was vital that, when other international institutions used the fundamental Conventions, such use was correct. A correct understanding of the fundamental Conventions was imperative for businesses because they were used in international framework agreements, transnational company agreements and in European framework agreements with global trade unions, where they were often not defined. Accordingly, that year's General Survey had particular contextual importance for the Employer members. Within the General Survey, the commentary on Convention No. 87 concerning freedom of association included interpretations by the Committee of Experts on the exercise of the right to strike.
- 147.** Interpretations of a right to strike by the Committee of Experts were fundamentally unacceptable to the Employer members. The Employer members stated that they had made it clear last week to the Conference Committee that they were of the view that the Committee of Experts' position regarding the right to strike outlined in that year's General Survey did not reflect the views of the Employer and Worker members in the Conference Committee. The Employers' group had a long-held policy position in the ILO on this matter. They had repeatedly expressed their opposition to any attempt by the Committee of Experts to interpret the ways by which the right to strike, where it was recognized in national law, could be exercised. This issue was complicated by the fact that Convention No. 87 itself was silent on the right to strike and, in the view of the Employer members, was therefore not an issue upon which the Committee of Experts should express any

opinion. The mandate of the Committee of Experts was to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87. The General Survey was simply meant to be used by the Conference Committee to inform its work, leaving it for the tripartite constituents to determine, where consensus existed, the position of the ILO, with regard to the supervision of Conventions. Further, under article 37 of the ILO Constitution, only the ICJ could give a definitive interpretation of international labour Conventions. If the Constitution were to be applied, given the absence of any reference to a right to strike in the actual text of Convention No. 87, then internationally accepted rules of interpretation required Convention No. 87 to be interpreted without a right to strike. In addition, it should be noted that the principle of freedom of association contained in Convention No. 87 had a separate supervisory procedure: namely the Committee on Freedom of Association (CFA). The Employer members had also objected for many years about the use of CFA cases by the Committee of Experts when examining Convention No. 87, the use of CFA cases when interpreting the right to strike, and the use of the Committee of Experts' interpretations of the right to strike in the CFA. The Employer members were critical of the confusion and lack of certainty that the supervisory system created.

148. In the view of the Employer members, Convention No. 87 cases that concerned a nationally recognized right to strike should only be supervised by the CFA only in order to ensure certainty and coherence. They objected to any view that the Committee of Experts' interpretations of the right to strike were legal jurisprudence, as the Committee of Experts did not have a judicial mandate within the ILO. The Committee of Experts did not have a determinative role within the ILO supervisory machinery. The Committee of Experts did not supervise labour standards; rather the ILO tripartite constituents did. Referring their interpretations of the right to strike within Convention No. 87 to the ICJ was therefore inappropriate. The CFA produced recommendations to the Governing Body for adoption. The Governing Body did not have a judicial role either; it also did not supervise labour standards. For the same reason, referring the CFA recommendations to the ICJ was also inappropriate.
149. The interpretation of the right to strike was important because the Employer members asserted that it was for national governments to establish their own rules/practices concerning the right to strike when considering how to resolve national breakdowns in industrial relations. It was important in the context of the international human rights debate that a correct use of Convention No. 87 was made, because an incorrect inclusion of the right to strike risked the Committee of Experts' interpretation of the right to strike becoming an internationally accepted human right to strike, which would restrict the ability of national governments to define their right to strike. This restricted the role of governments in, for example, the circumstances when a lawful strike could be called and the definition of essential services. This was unacceptable to the Employer members. There was no legal requirement for governments that had ratified Convention No. 87 to address the Committee of Experts' interpretation of the right to strike. The Employer members could not agree to the Committee of Experts' interpretation of the right to strike because of the risk that it would be misused.
150. Regarding this year's Conference, the Employer members stated that, given their longstanding objections to the Committee of Experts' interpretation of the right to strike, they sought to clarify the mandate of the Committee of Experts with regard to the General Survey. They brought this important issue to the attention of the Worker members and, together, they had negotiated and formulated the following draft clarification: "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an agreed or determinative text of the ILO tripartite constituents." The Employer members' proposal was that the International Labour Office would be instructed to immediately insert the clarification in future hard copy and ILO

website publications of this year's General Survey and the report of the Committee of Experts. It was not possible to simply remove the Committee of Experts' interpretations as the International Labour Office had already published the General Survey containing the Committee of Experts' interpretation of the right to strike. They had made it clear that without the abovementioned clarification in respect to the General Survey, in order for the Employer members' consideration of the cases in the Committee to be coherent, they could not accept the supervision of Convention No. 87 cases that included interpretations by the Committee of Experts regarding the right to strike. After much confidential negotiation with the Worker members, regrettably, those negotiations had irretrievably broken down. The Employer members considered, in this connection, that it was inappropriate to lift the veil on those negotiations, as they were and remained of a confidential nature.

- 151.** The Employer members highlighted that on Friday, 1 June 2012, after the negotiations had irretrievably broken down, the Employer Vice-Chairperson returned to the Committee room, as he was informed that the Worker Vice-Chairperson had done so. His position was that the negotiations had failed so there was confusion concerning why it was necessary to return to the Committee room. During the period he was in the room, he observed officials of the International Labour Office in discussions with Worker and Government members of the Committee. It was important to be aware that Employer members had made it clear that the list of cases to be supervised could only be agreed in direct negotiation with the Worker members. The Government members could not be involved as they had a conflict of national interest. The International Labour Office could not be involved as it was not an ILO constituent and had to be impartial. Members of the Employers' group had been waiting in the Committee room from 5 p.m. awaiting confirmation concerning the negotiations. The Employer Vice-Chairperson informed the Employer members that the negotiations had failed. At 8.31 p.m., when the meeting was 91 minutes past its scheduled close of 7 p.m., as no one from the International Labour Office had communicated to him what was happening, he had then informed the Deputy Director of the International Labour Standards Department that the Employer members were leaving the Committee room for the evening. The Employer members had then left. There had been no meeting of the Conference Committee occurring at the time so it had not been a walk-out. The Employer members had left the room after the scheduled close and while private meetings involving others had been happening, of which the Employer members had known nothing about. Many other delegates had either left or were leaving. The Employer members had attended the next scheduled meeting.
- 152.** On Saturday, 2 June 2012, following a request from the Government regional coordinators for an informal meeting with the Employer and Worker Vice-Chairpersons, the Employer Vice-Chairperson had attended the informal meeting and explained that he would not negotiate a list of cases with the involvement of the Government members. He had confirmed that he would provide a statement of the Employer members' position with regard to the failed negotiations for a list of cases.
- 153.** The Employer members then proposed a possible way forward for the Conference Committee, and formulated the following suggestions:
- The Employer members remained supportive of the application of labour standards provided there was respect for genuine tripartism of the ILO constituents.
 - The proposed clarification to clearly appear in all International Labour Office and Committee of Experts documentation prepared for a debate and discussion by the International Labour Conference or the Governing Body.
 - An urgent review of the working methods and mandate of the international labour standards supervisory system (including its interaction with other areas of the ILO),

including the Committee of Experts, the Conference Committee and the International Labour Office, was required.

- The Employer and Worker Vice-Chairpersons to meet with the Committee of Experts before they started their work each year and for the Committee of Experts to have far greater interaction with employers' and workers' bureaux within the ILO in order to strengthen cooperation and governance. The Committee of Experts should have a tripartite agreed framework in which to do its work. In past years, the Employer members had proposed changes to the format of reports of the Committee of Experts with a view to have tripartite views better reflected. More precisely, the Employer members proposed that there should be possibilities for Employers, Workers and Governments to set out in the reports of the Committee of Experts their views on standards supervision-related issues, including on the application and interpretation of particular Conventions.
- An urgent review of the International Labour Standards Department of the International Labour Office was required. The role of ILO officials required respect for the tripartism and impartiality in their work. Their role was to support and facilitate the work of the ILO tripartite constituents, which required neutrality and balance. It required staffing with politically neutral international civil servants that supported the work of the Committee of Experts, not the Committee of Experts supporting the work of the Office. Neutrality would help create mature and respectful international industrial relations between the Governments, Employers and Workers.
- Respect for the relationships with other international agencies to ensure that the views of the ILO were those of the tripartite constituents.

154. In conclusion, the Employer members stated that the ILO was now facing a multifaceted crisis concerning the interpretation of the right to strike in connection with Convention No. 87. It was not acceptable for anyone to be confused or misled as to the true status of any ILO text simply because it bore its logo or was silent as to its proper status. This was now more than just an issue involving the General Survey as it affected the Convention No. 87 cases to be supervised in the Conference Committee. The absence of an express right to strike in Convention No. 87 meant that the Committee of Experts was effectively making policy, which was outside of their mandate. Policy-making was the exclusive domain of the Governments, Employers and Workers. The Committee of Experts could advise on application, not determine application on behalf of the ILO and certainly not determine new rights and obligations regarding a right to strike within Convention No. 87. It was important that all Governments, Employers and Workers alerted their constituents and relevant authorities as to the true status of the Committee of Experts' interpretation of the right to strike.

155. The Worker members emphasized that the situation seen today had never before been experienced in the history of the Committee on the Application of Standards. They added that the present statement was the outcome of long discussions in the Workers' group of the Committee which, alarmed by the course of events, had called for a statement that was clear and strong, but nevertheless constructive. In the view of the Worker members, the Committee needed to proceed with its work and the cases should be discussed without delay, as requested vigorously by the Government members present on Friday evening and Saturday afternoon.

156. The Worker members said that a rereading of the records of the Committee for previous years showed that for a few years the issue of the choice of individual cases had become a very difficult exercise, and not only in view of developments in the political and economic situation in many member States. Considerations related to the supervisory machinery

itself had been raised by the Employer members, who had started to express the wish to weaken the supervisory methods in 2010. Yet, in 2009, the spokesperson for the Employers' group had indicated the following: "The Employer members pointed out that the participation of the Chairperson of the Committee of Experts in the work of the Committee reflected the essential fact-finding role of the Committee of Experts in relation to the work of the Conference Committee. Without the help of the Committee of Experts, this Committee could not function." (*Record of Proceedings* No. 16, paragraph 42). This was clearly true and, as recalled the previous Friday by Mr Yokota, Chairperson of the Committee of Experts, the Committee of Experts took everything into account when drawing up its reports. It had a global vision of the information provided and on that basis it carried out an analysis of law and practice.

157. The Worker members emphasized that in 2010 the Employer members had mounted a first major challenge against a large number of principles that were commonly accepted and recognized as guarantees of the Committee's work as a supervisory body of the application of ratified ILO Conventions. The Employer members had clearly indicated, on several occasions, that in their view the tripartite governance of the supervision of the application of standards was compromised, or at least that there was a faulty line in this process of tripartite governance.
158. The Worker members had emphasized in 2011 that the list had to be drawn up together, that is with the Employer members, and that it was together that they had to reach a compromise, as a veto had no place in the process, either directly (by rejecting a particular country) or indirectly (by establishing restrictive rules). They had specified that the rule could not be that one of the parties always had to give way, and it was to be regretted that methods of work based on consensus were increasingly difficult to achieve.
159. The Worker members affirmed that this year they had been very brutally confronted by the fact that the Employer members were contesting the mandate of the Committee of Experts, essentially in relation to the interpretation of the right to strike under Convention No. 87. It should be clarified that that this challenge to the General Survey and the mandate of the Committee of Experts only came from the Employer members, who had no right to make comments in the name of this Committee against the supervisory system. The direct consequence had been that an explicit veto had been expressed in relation to the possible examination of individual cases in which the right to strike might be raised during the discussion.
160. The Worker members considered that the confrontation had been brutal for the following reasons. As happened every year, significant preparatory work had been carried out within the Workers' group. The preparatory work was carried out seriously because, for the Worker members, the discussion of the most serious individual cases at the Conference was a unique occasion. It was the only time that they could describe openly and without fear the numerous violations of the rights accorded to them by ILO standards. The report of the Committee of Experts had been published on 28 February 2012. The General Survey had been published on the same date. The electronic versions of those documents had been published on the Web on 2 March 2012. Yet, during the 313th Session of the Governing Body, held in March 2012, the Employers had not at any time given an indication of any possible criticisms concerning the role of the Committee of Experts, nor on it exceeding its mandate in its interpretation of the right to strike. It had only been on Friday, 1 June 2012, during the discussion of the General Report, that the Employer members had clearly indicated, in the context of the present Committee, their vision on this divergence of views. However, based on the published reports, the preparatory work of the Workers' group had commenced in March 2012 in regional coordination meetings, and then in an international meeting held in Brussels on 2 April. It had culminated in May in a series of open, frank and sincere confidence building contacts with the spokesperson of the Employer members

of the Committee. On that occasion, without any reservations, he had put forward his group's list of cases, with no comment on the mandate of the Committee of Experts, or on any reservations concerning the discussion of Convention No. 87. A preliminary list of 49 cases had accordingly been drawn up and forwarded by the ILO to governments on 8 May 2012.

161. In the Worker members' view of the approach to the work of supervising the application of standards, they considered very sincerely that the contribution of the Employers' group, through their spokesperson, who had made suggestions for cases to be included in the provisional list, had meant that preparatory work similar to that of the Workers' group had been undertaken. That was particularly the case as it was known that the list was to be forwarded to governments.
162. The Worker members were very willing to recognize that in certain countries the rights of employers were also violated and that the Employer members valued more technical subjects. Clearly, there was no obligation to engage in preparatory work, as understood by the Worker members. Each group was free to organize its own work. However, taking the supervisory machinery seriously required preparatory work, for the members themselves and for those involved in the discussion process. That was why the Worker members were certain that they could work constructively as soon as they arrived at the Conference. They had never imagined that the drawing up of a final list of 25 cases to be discussed in the Committee would be as dramatic as it had been this year. They had never thought that they would be driven to make the proposal that they had put forward on Friday evening.
163. The Worker members emphasized that their objective had clearly been to come together and, on a basis of consensus, to place emphasis on the most serious cases and to give a very clear signal to the governments on the list concerning the serious nature of their failings. It was clear that coming up with a preliminary list of 49 cases had already been very frustrating for many Worker members present in the Committee. Even though they had understood that the case concerning their government would not be raised, many colleagues had nevertheless made the journey to the Conference in Geneva, which was the only forum in which their voices could be heard and where they could participate effectively in the discussions.
164. The Worker members recalled that, as indicated by the Worker member of Colombia on Friday: the process of drawing up the final list of cases had always been difficult, but the list was not a spoil of war and did not require the taking of hostages, that wisdom always prevailed and that an agreed list would certainly be presented to governments. Many of the Workers' group still expected such consensus, as a serious political indication of continued belief in social dialogue, the functioning of the ILO supervisory procedures and therefore in its standards.
165. The Worker members said that they had gained the impression that, for the Employer members, the present session of the Committee on the Application of Standards had already ended, that everything would return to normal tomorrow and that in 2013 work would continue as if nothing had happened. However, reflection would be required on the way forward. The Employer members had put forward proposals, but that was the task of the Governing Body, which would have to consider the latest events without delay, as the Conference Committee was not the place to discuss them. Being made aware of them before the Conference would have made it possible for the Committee to go ahead with its supervisory work, instead of creating a crisis situation that was prejudicial to everyone.
166. The Worker members stated that, more than anyone, they wanted to come through the storm. Employers needed workers and their representatives, and should not forget that. Without social peace, without counterparts, it would be the law of the jungle and no longer

a question of productivity or growth. The Worker members wondered whether the intention was to override the social pacts which governed industrial relations in many countries.

- 167.** The Worker members emphasized that governments were shocked, which was understandable. But the Worker members were also shocked and were the losers: because they had played by the rules of the game and, as early as March, certain colleagues had already given up the hope of seeing their situation discussed out of solidarity with other colleagues, to whom they had given priority; because they had been taken hostage in a so-called struggle between the Employer members and the Committee of Experts; because the discussion of the role of the Committee of Experts and its competence to give an interpretation of the right to strike did not lie with the Committee on the Application of Standards, but with the Governing Body; because, as a result of the sabotage of the supervisory machinery, it was the rights of workers that were being disregarded; and because workers and their families were the primary victims of the fact that the serious situations that they were experiencing could not be discussed.
- 168.** The Worker members raised the question of what the Employer members wished to gain through this strategy that had been developed over time, and certainly since the Committee's work in 2010. On that occasion, the Worker members had already had to react to the same attacks as those reiterated on this occasion, without warning, at the beginning of the Committee's work. The Worker members wondered if the Employer members were seeking to finish the Committee of Experts, and if the Committee on Freedom of Association would be the next victim. Yet it should be recalled that those bodies were appointed through a tripartite procedure.
- 169.** The Worker members recalled that, on Friday evening, in the absence of a negotiated list, at the risk of shocking many Worker colleagues present in the room, the Worker Vice-Chairperson had had to make a proposal to the Committee. That had been done for the benefit only of the Government members, as the Employer members had left the room without warning, even though the Chairperson had not adjourned the sitting. There had been no negotiated list because the conditions that had been imposed by the Employer members upon the Worker members were unacceptable. In the absence of a final list, the Worker Vice-Chairperson had therefore proposed that 25 cases should be discussed from the long list forwarded to governments on 8 May. A first group would be composed of the five cases with double footnotes. A second group would be made up of 20 cases taken from the long list, starting from the letter K and following the French alphabetical order. This proposal was based on the working methods that had been agreed to in document D.1. The selected method for drawing up the list, based on the pure logic of the French alphabetical order, had been and remained a very delicate matter. It should however be recalled that the list, whether long or short, was one of the elements of the supervisory system itself since, through the list, a clear signal was sent to governments that the situation of non-compliance with ILO Conventions could not continue on their territory. Inclusion on the long list was an indication that pressure was mounting and that the international community was aware of the gravity of the situation of disregard for workers' rights. It had been the only solution to go forward with dignity.
- 170.** Following those explanations, the Worker members wished to put on record that what was occurring in the Committee was not their will. At no time had there been agreement on the list, as some were trying to make people believe. At no time had the Worker members broken off the dialogue or acted in bad faith. The Worker members were in no way responsible for the challenges raised by the Employer members concerning the role of the Committee of Experts and their authority to interpret the links between Convention No. 87 and the right to strike. Moreover, they did not support such a challenge. The Worker members had not been informed of those types of arguments before the Conference, during

the Governing Body in March, nor during the contacts to draw up the preliminary list, or at any other time or by any means.

171. The Worker members concluded that the imposition was not acceptable of such purely exorbitant conditions which went beyond the competence of this Committee, as they were of a political nature. They could not accept such arbitrary edicts based on factors over which, within the Committee, they had no power and which would have the consequence that the cases selected in May might never be discussed. All of that was to be regretted and gave rise to immense wastage: many trade unions and employers' organizations invested time and money in the work of the Committee, as did governments. They could not be sent home empty-handed. The wastage was particularly incomprehensible in view of the calls made by the Employer members for the ILO to make greater savings. The Worker members called on all parties to exercise wisdom and remained open to any solution that was approved and obtained through constructive negotiation.
172. The Government member of Sudan, speaking on behalf of the Government members, regretted that there was no list of individual cases to be discussed at the Committee on the Application of Standards. He considered that a further discussion on the substantive issues raised by the Employer and Worker members had to take place in an appropriate forum. The speaker also considered that this situation clearly showed that there was a need to review the working methods of this Committee.
173. The Government member of Pakistan, speaking on behalf of the Asia and Pacific group (ASPAG), stated that his group valued very much the supervisory mechanism for promoting and supervising ILO standards. For many years, through this system, the governments had received necessary guidance from the social partners that had helped them to overcome challenges in realizing ILO's fundamental principles and values at work. At the same time, governments also felt the need to further streamline the system to make it efficient and fair. They felt that there was a need to establish criteria that allowed the selection of cases by the social partners in a more objective and timely manner. Such a reform would certainly help not only to bring transparency but also to establish sanctity and efficacy of this supervisory system. He indicated that as a result of last year's events and developments during the proceedings of the Committee this year, such reform was inevitable and had to be given priority. At the same time, ASPAG felt that unnecessary delay in the finalization of the list of individual cases this year had caused immense inconvenience for governments. ASPAG therefore called for this particular issue to be addressed before handling individual cases in the Committee on the Application of Standards in the future.
174. The Government member of Niger, speaking on behalf of the Africa group, supported the analysis by the Government group of the absence of the list of individual cases and felt that this regrettable situation highlighted the need to review the working methods for the preparation of the list of cases, which needed more transparency and objective criteria. The current situation should lead to urgent reflection on the revision of the whole of the supervisory system for international labour standards. In the future, it would be essential to communicate the list of individual cases well before the start of the work of the Conference in order to enable the governments to prepare their replies. Lastly, in view of this year's delay, no list could be objectively examined during the current session of the Committee.
175. The Government member of Brazil, speaking on behalf of GRULAC, stated that GRULAC had always been consistent in its position. Since July 2011, the group had been stating that any repetition of the events that had occurred in the Committee at the 100th Session of the Conference should be avoided and that the list should be published in accordance with the plan of work, on the second day of the Committee's session. This request, that deadlines be respected, was repeated at the Governing Body in both November 2011 and March 2012.

GRULAC had shown some flexibility regarding the publication of the list on the third day of the Committee's session, at the latest. On the fourth day of the Committee, in a display of goodwill and flexibility, it had asked for the list to be published that day at the latest. The group had shown consistency in its position and its commitment towards the ILO supervisory system and the constitutional mandate of the Committee. It considered that the current situation was totally unacceptable and stated that there was a need to review the Committee's procedures. The current degree of uncertainty was having a damaging effect on its credibility. The preparation of the list was a prerogative of the social partners. As with any prerogative, it had to be exercised with responsibility and with respect towards governments. These procedures had shown a lack of respect towards governments once again, since they had had no time to prepare or to participate in debates. In conclusion, the speaker reiterated the need for respecting the deadline for the publication of the list and for modifying the Committee's procedures with a view to improving objectivity and transparency and ensuring greater respect for the Government members.

176. The Government member of the United States, speaking on behalf of IMEC, indicated that at the opening sitting of the Committee, IMEC had joined in a unified call by the Government group for prompt adoption of the list of individual country cases. The subsequent deadlock that had prevented the adoption of a list was totally without precedent in the 85-year history of the Committee. It was both disappointing and distressing.
177. It was the firm, long-standing position of IMEC that the governments should not get involved in the development of the list of cases. This position had not changed. For the record, there had been no involvement of governments in the negotiations of the list of cases, and at no time did the governments request to be part of them. The Conference would need to understand that this problem had not been caused by governments.
178. Although governments did not participate in developing the list of cases, they were a key component of this Committee. Governments ratified and implemented Conventions, and then agreed to discuss issues of compliance with the Workers and Employers' groups at the International Labour Conference. The situation at this Conference had put governments in an extremely difficult position, and IMEC regretted that at times there was a distinct lack of courtesy shown towards them.
179. It was the prerogative of the social partners to agree to a final list of individual country cases. While the social partners had the right to agree on the criteria for the list, IMEC did not believe that it was appropriate for the Employer and the Worker members to make agreement on a list conditional upon external issues on which governments had a role in the discussion and decision-making process.
180. It was IMEC's view that the role of the Committee on the Application of Standards was to consider the Experts' report on individual cases, and not to question the status of that report. The issues that had been raised by the Employer members needed to be dealt with in an appropriate forum, but IMEC did not consider that the Committee on the Application of Standards was the appropriate one, and wished to request the ILO Legal Adviser to explain the available options.
181. There were a number of reasons why IMEC was deeply distressed about the failure of the social partners to adopt a list of individual country cases. First, the failure to adopt a list of cases had prevented this Committee from executing the critically important work of supervising countries in the application of labour standards as required by the ILO Constitution and previous decisions of the International Labour Conference. Secondly, the ILO supervisory system was unique and was an essential element of the Organization's mandate and mission. The ILO supervisory mechanisms had long been cited as the most advanced and best functioning of the international system. Not only did the present

situation reflect poorly on the Committee, but also it had serious ramifications for the ILO supervisory system as a whole, and risked irreparable damage to the credibility of the entire Organization.

- 182.** IMEC had a long history of supporting the independence, impartiality and objectivity of the Committee of Experts, as well as its autonomy. The group could understand that there would be occasions when members or groups within the Committee on the Application of Standards would have views that differed from those of the Committee of Experts, and all members had the fundamental right to express those views. However, it was regrettable that the events of the past few days had resulted in a situation that potentially had put the credibility of the ILO and the supervisory system in jeopardy.
- 183.** The question at this point was where this Committee would go. In this connection, IMEC was encouraged that, in the previous week, the Chairperson of the Committee of Experts specifically indicated in his presentation to this Committee a willingness to continue constructive dialogue with this Committee on issues that were at the heart of this present conflict. In addition, the question on the right to strike within the context of Convention No. 87 was a long-standing issue which had not been resolved through tripartite dialogue to date. IMEC noted that article 37 of the ILO Constitution provided that legal clarification on such questions could be sought from the ICJ.
- 184.** The speaker concluded by stating that governments needed to be involved in discussions and decisions on issues other than the negotiation of the list, and in this regard, IMEC welcomed the opportunity to work with the social partners to resolve the concerns raised by the Employer members. IMEC wished to reiterate its strong commitment to the ILO supervisory system and the role of the Committee on the Application of Standards. It was also committed to moving forward in a positive, constructive manner in the spirit of tripartism.
- 185.** The Employer members stated that regretfully, from this point forward, they were working on the basis that there would not be a list of individual cases this year. They also agreed that there was a need for further discussions with regard to the issues that had been raised. They recalled that the International Labour Conference was the supreme body of the ILO and it was for that body to find a solution and that the matter should not be referred to the Governing Body. There was a clear need to agree on the working methods of this Committee and reforms were necessary. Moreover, they insisted on the fact that the behaviour, actions and negotiations of the Employer members had been done in good faith. They reiterated that the Employer members had always intended to respect the governments' time frames, and that the continued negotiations, which had extended past the intended deadline of Thursday afternoon, were not meant to cause any discourtesy to governments. When discussing the working methods, consideration should be given to communication in view of the size of this Committee. Finally, they reiterated that they still had a strong commitment to the Conference Committee and to genuine tripartism.
- 186.** The Worker members emphasized the fact that they could not agree to the inclusion of a disclaimer in the General Survey, which was the result of analyses undertaken by the Committee of Experts. The Worker members considered that it was not the place of the Committee on the Application of Standards and certainly not the Employer members and Worker members alone to discuss such a disclaimer as a discussion of this kind fell within the competence of all ILO constituents. This approach had been confirmed by many governments. Nevertheless, without taking this into account, the Employer members continued to insist on the insertion of such a disclaimer. The Worker members might eventually agree to a joint statement on the divergence of views on the role and mandate of the Committee of Experts. They could thus envisage discussing this divergence of views where it should be discussed, namely in the Governing Body. It would therefore be the

responsibility of the Governing Body to develop a plan to address the subject. The ILO Constitution also provided for the competence of the ICJ for the interpretation of Conventions. The Worker members regretted enormously that the Employer members could not agree to such an approach. They concluded that genuine tripartite social dialogue could not take place within a situation of deadlock.

The reply of the representative of the Secretary-General

- 187.** The representative of the Secretary-General, in response to the comments made by the Employers members, confirmed that the Committee on the Application of Standards had never faced a situation like the current one since its creation in 1926. The Committee was the apex of the supervisory mechanism under a constitutional mandate, but, this year, it had completed its work only partially, having performed its mandate under article 19 of the ILO Constitution, but having failed to do so with respect to article 22 of the Constitution.
- 188.** The International Labour Standards Department had provided its support to the supervisory system, and would continue to do so in total neutrality, balance and impartiality. The Office was governed by article 9 of the ILO Constitution, the Staff Regulations of the Office and the Standards of Conduct of the International Civil Service. Article 9 of the Constitution provided that in the performance of their duties, the staff was required not to seek or receive instructions from any government or other authority external to the Organization. Article 1.1 and 1.4 of the Staff Regulations required all officials not to seek or accept instructions in regard to the performance of their duties from any government or other authority external to the International Labour Office. They had to be subject to the authority of the Director-General and had to be responsible to him in the exercise of their functions. It was recalled that the work of the International Labour Standards Department had never been questioned to date by any official bodies of the Organization. On the contrary, it had been congratulated on numerous occasions by all the supervisory bodies, including the groups of the Conference Committee in the past.
- 189.** She indicated that it was clear that the principles and recommendations of the Committee of Experts, the Committee on Freedom of Association, and the recommendations of the Conference Committee were views and recommendations, and were accordingly not binding. However, they had enormous moral authority. International labour Conventions and Recommendations clearly had more legal authority than any recommendations by a supervisory body.
- 190.** The principles on the right to strike of the Committee of Experts had a tripartite origin: the Committee on Freedom of Association. It was difficult to understand how these principles could be contested within the framework of the Committee of Experts, but accepted in the context of the Committee on Freedom of Association. She then referred to a publication entitled *Employers' organizations and the ILO supervisory machinery*, a joint publication by the International Labour Standards Department and the International Training Centre in Turin in cooperation with the Bureau for Employers' Activities, which had been signed by the Secretary-General of the International Organisation of Employers (IOE), the Director of the Bureau for Employers' Activities and by the Director of the International Labour Standards Department, and indicated that employers had put forward a number of principles related to the right to strike within the context of the supervisory bodies.
- 191.** The weakening of the ILO supervisory machinery would hinder the action for the Office to resolve problems experienced by employers' and workers' organizations in a number of countries. She wished to express the view that many employers' organizations had been able to exist and thrive because of the work of the Committee of Experts together with that of the Conference Committee. The failure to discuss individual cases was in no one's

interest, as workers' and employers' organizations had come to the Conference to have their concerns examined, as provided for by the Standing Orders of the International Labour Conference.

192. Numerous options had been proposed to address the issues relating to the right to strike. It had to be borne in mind that any decision to refer the question of the right to strike to the ICJ, as provided in article 37(1) of the ILO Constitution, could have the effect of making the principles on the right to strike obligatory, while they were now only soft law. She emphasized the need not to forget that the members of the Committee of Experts were appointed through a tripartite process by the Governing Body. She concluded by stating that it was a sad day for the supervisory system and that she shared the concerns expressed during the sitting of the Committee.

The reply of the Chairperson of the Committee

193. The Chairperson expressed his deep regret about the current situation. Nonetheless, he expressed optimism that this situation should allow for reflection and for a solution to be found. The social partners had the same goals of social justice, peace and welfare and trust between them was not lost.

The reply of the Legal Adviser

194. The Legal Adviser, speaking in response to the question raised by IMEC as to what options were available to the Conference Committee to deal with the issues raised by the Employer members on the supervisory machinery and how this could be done in the appropriate forum, presented two options. First, a specific chapter could be created in the report of the Committee on the Application of Standards reflecting the content of the discussion and the different views expressed on the functioning of this Committee, including those in relation to the reports of the Committee of Experts. The specific chapter could terminate with a request for the Conference to decide to ask the Director-General to communicate that chapter to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency. The terms of this request could be further defined in the proposed decision and could include suggestions on the manner in which the Conference would further review the matter following action taken by the Governing Body within its mandate, including any relevant proposals on reform in relation to the functioning of the Conference Committee. Secondly, Committee members concerned could submit the text of a proposed resolution for this Committee to submit to the Conference together with its report. This resolution could note the different views expressed at this session and call for a review of the matters raised and the functioning of the Conference Committee's working methods, including in relation to the reports of the Committee of Experts. It could invite the Governing Body to take up this issue as a matter of urgency, in the context of its ongoing work relating to reform of the Conference or in any other appropriate manner. Such a resolution would be submitted and discussed in accordance with article 63 of the Standing Orders of the Conference.

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195. The Chairperson indicated that he was forced to close the discussion due to the failure to adopt a list of cases to be discussed during this session of the Conference Committee.

F. Follow-up discussion on the way forward

196. The Government member of Sudan, speaking on behalf of the Government group, stated that the Government group was not at this time in a position to discuss the substantive and procedural issues in relation to the functioning of the Conference Committee and the reports of the Committee of Experts. The Government group had noted the options presented by the representative of the Legal Adviser and recommended that a specific chapter be included in the report of the Committee on the Application of Standards reflecting the content of the discussion on those issues as well as the different views expressed. The Government group suggested that the specific chapter should terminate with a request for the International Labour Conference to decide to ask the Director-General to communicate that chapter of the report to the Governing Body, with a further request for its appropriate follow-up as a matter of urgency.
197. The Government member of Belarus supported the statement of the Government group and added that the specific chapter was an important issue which should be brought to the attention of the International Labour Conference.
198. The Employer members were optimistic that, after reflection upon the situation, the Committee would find a way forward, since the tripartite constituents had one common aim – social justice. They appreciated the legal opinion given by the Legal Adviser and anticipated that further questions would be raised by the Committee. However, the Employer members expressed the concern that both options elaborated upon in the legal opinion necessitated further delay in seeking a solution and required this Committee, despite being a sovereign body and the apex of the supervisory system, to refer the matter to a lower body, the Governing Body. In their view, the problem would not be solved before the Governing Body but rather returned to the International Labour Conference at a later stage. It was thus preferable to find a solution now rather than to perpetuate the crisis. Therefore, the Employer members submitted the proposal to add the following text as an introductory paragraph to the General Survey and the report of the Committee of Experts:

Appendix V (Article 408 of the Treaty of Versailles) to the *Record of Proceedings* of the International Labour Conference in 1926 explained the necessity of a technical committee of experts (later named the Committee of Experts on the Application of Conventions and Recommendations (CEACR)) as follows:

“The functions of the Committee would be entirely technical and in no sense judicial.”

“It was agreed however that the Committee of Experts would have no judicial capacity nor would it be competent to give interpretations of the provisions of the Convention nor to decide in favour of one interpretation rather than of another.”

At the 103rd Session of the Governing Body in 1947, it was explained that the CEACR would “carry out an examination of the annual reports submitted by the Governments ... in preparation for the examination of these reports from a wider angle by the Conference” and that this served as an “indispensable preliminary to the over-all survey of application conducted by the Conference through its committee on the Application of Conventions” (paragraph 36, Annex XII, Minutes).

199. The Employer members underlined that this text had been agreed upon in 1926 and reaffirmed in 1947 and that nothing had changed since. They raised the question as to why no agreement could be reached on the insertion of such a text at present. While acknowledging that the current situation was very difficult for governments and that they needed time to consult with their capitals, the Employer members reiterated that there was an urgent need to respond to this key question and discuss the issue immediately. On 7 July 2011, the Bureau for Employers’ Activities had submitted the views of the IOE concerning the right to strike in advance of the elaboration of the General Survey, indicating in particular that:

The right to strike is not provided for in either Convention Nos 87 or 98, and was not intended to be. The legislative history of Convention No. 87 is indisputably clear that, “the proposed Convention relates only to freedom of association and not to the right to strike”. Furthermore, as was emphasized by the Employer spokesperson during the final discussion of Convention No. 98 in 1949, “the Conference Chairman declared irreceivable the two amendments aimed at incorporating a guarantee for the right to strike, as they were not put in the scope of the Convention. The Speaker thus expressed the opinion that the passage in question constituted a factual error with respect to the historical basis of the right to strike being fundamentally inherent in these Conventions”.

- 200.** The Employer members felt that they had raised the issue of the right to strike consistently for numerous years and that they had been ignored in this respect. The content of the General Survey and its use, or misuse, by the outside world had made it imperative for the Employer members to seek clarification of the situation, as it was vital for governments, employers and workers to be clear on what was the right to strike in relation to the ILO. The Employer members indicated that, should the Conference Committee reach an agreement as regards the immediate insertion of the above introductory paragraph into the General Survey and the report of the Committee of Experts, this would address their concerns with regard to the status of these reports, in which case they would be prepared to discuss the five “double-footnoted” cases, which dealt with the most serious violations of ratified Conventions.
- 201.** In conclusion, the Employer members believed that there were lessons to be learnt by all members of the Committee as to communication and management of similar crisis situations. As regards the concern expressed by Government members, that this issue should have been raised in advance before the Governing Body in a tripartite way, the Employer members responded that the matter had not been on the agenda of the Governing Body and that the International Labour Conference was a sovereign body. The Employer members reiterated their preference that the current situation, which had been brought to a head by this year’s General Survey and its use in the outside world, and not by other factors, be resolved in this tripartite sovereign body without delay. There was no bigger industrial relations issue in the world of work than the right to strike, and the General Survey had created the need to resolve the issue urgently so that there would be certainty among tripartite constituents.
- 202.** The Worker members emphasized that from the outset of the work of the Committee they had shown a genuinely constructive attitude, going beyond mere words and putting proposals on the table. However, the current impasse was due to unacceptable, even illegitimate, conditions which had been imposed with regard to drawing up the list of individual cases, notwithstanding the fact that the prime task of the Committee was to examine the cases on that list.
- 203.** The Worker members thanked the Legal Adviser for the replies to the questions raised by IMEC concerning the options available before the Committee. With regard to the explanations given, some points needed further consideration and other questions should be asked, with the proviso that the asking of those questions in no way meant that the Worker members accepted any legal solution or gave their agreement with regard to any specific procedure. Repeated reference had been made to article 37 of the ILO Constitution, which stated as follows: “Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.” The ICJ had been established by article 92 of the United Nations Charter and it had both contentious and advisory jurisdiction. It was only States that could submit contentious cases to the ICJ. Advisory proceedings could be instituted by the General Assembly and the Security Council, as well as by other UN

bodies and organizations, including the ILO, subject to the agreement of the General Assembly. States could not initiate advisory proceedings before the ICJ.

204. The Worker members asked the Legal Adviser to clarify the following points:

- whether the ICJ jurisdiction was contentious or advisory in the context of the application of article 37 concerning the interpretation of the Constitution and Conventions, since paragraph 2 of article 37 appeared to provide for both options;
- how to institute proceedings before the ICJ;
- the procedure to be followed for bringing any proceedings before the ICJ and the usual time frame in which the ICJ dealt with questions or disputes relating to the interpretation of Conventions; and
- the specific ways in which member States would incorporate the judgments or advisory opinions of the ICJ in their national jurisprudence and ensure the observance thereof by jurisdictions at all levels.

205. Furthermore, the Worker members raised the question whether the ICJ already had occasion to rule on questions of interpretation of ILO Conventions and thereby completely undo the analysis undertaken by the Committee of Experts.

206. The Worker members also emphasized that the possibility of inserting a “caveat” or “disclaimer” or even a “caution” or “introductory paragraph” in documents originating from the Committee of Experts and based on the reporting obligations under articles 22 and 19 of the ILO Constitution, namely General Surveys and reports of the Committee of Experts, had been referred to several times. That request from the Employer members had no support whatsoever from the Worker members. Indeed, according to the Employer members, the General Survey and the report could not be seen as texts that were authoritative for the tripartite constituents of the ILO. This gave rise to a number of questions: Who had competence to decide on the insertion of such a “caveat”? Could the initiative be taken by the Worker members or the Employer members acting alone and of their own accord? Was a consensus between Worker members and Employer members sufficient? What was the role of Government members? Was an agreement needed among all the tripartite constituents of the ILO? Could one of the constituents impose the “caveat” on the others and, in the event of their refusal, would the work of the Conference Committee be adjourned definitively and thereby jeopardized? Since these issues were highly sensitive, the Worker members asked the Legal Adviser to make a statement in that regard in due course.

207. Finally, the Worker members proposed that the Tripartite Working Group on the Working Methods of the Conference Committee be convened in November 2012 to examine the consequences of the discussions that had taken place within the Committee and to discuss possible action with an eye to the next session of the International Labour Conference in 2013.

G. Decision paragraph submitted by the Chairperson of the Committee following tripartite consultation

208. The Chairperson submitted, following tripartite consultation, a proposed decision paragraph, which read as follows:

The Committee noted that different views were expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration as found in paragraphs 21, 54, 81–89, 99–103 and 133–224 of this report.

The Committee recommended that the Conference: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through informal tripartite consultations prior to its November 2012 session.

- 209.** The Employer members fully supported the proposed decision paragraph and reiterated their optimism that, with calmness and after reflection upon the problems that had arisen, the tripartite constituents would find a solution together. They were relieved and proud that this Committee was taking tripartite responsibility for finding a solution to the clarification of the mandate of the Committee of Experts and the proposed insertion of an introductory paragraph into the reports of the Committee of Experts so as to avoid any misunderstanding in the world of work. It was and would remain the position of the Employer members that the Committee of Experts' mandate was that which had been historically agreed upon on a tripartite basis.
- 210.** Acknowledging the difficulties that the situation had created for the Government members, the Employer members stressed that they had always been, and in the future would always be, willing to supervise those cases that the Committee of Experts considered the worst cases of workers' rights violations. Reaffirming that all members of the Committee could learn from the communication and committee management issues that had arisen this year and could do better in the future, they renewed their total commitment to this Committee and its important work. They indicated that they were looking forward to working with the Worker and Government members during the informal consultations towards a clarification for everyone on the key political, social and economic issue of the right to strike, as there was no bigger industrial relations issue at the national level. The Employer members expressed their resolution and renewed hope that, at next year's Conference, the Committee would announce as of the first day the solution found by the tripartite constituents and that the Government members would be provided with the final list of individual cases by Thursday of the first week.
- 211.** The Worker members stated that they wished to be constructive so that everything could be put in place for the Committee's meetings in 2013 and thereafter. However, being constructive was not the same as being happy or satisfied with this proposal, which was too solemn and impersonal to be able to give justice to workers. The proposal was very important for safeguarding the mission of the ILO and, above all, for preserving the supervisory machinery for the application of standards, even if it did not make up for the fact that far too much time had been lost and that, at the end of the day, none of the cases on the list had been dealt with. It now fell to the Governing Body to take up the complex issue promptly and to good effect.
- 212.** The Worker members emphasized that they would never be able to take a positive view of the events that had stained the Committee's activities over the past week. Nevertheless, the ILO must live and constantly evolve in order to better achieve the objective of social justice that it had embraced since the Declaration of Philadelphia. The previous day, after long and trying negotiations, a proposal had been submitted by the Chairperson for the Committee's approval, according to which the differences of opinion between Worker and Employer members concerning the reports of the Committee of Experts, which had been noted and would be duly recorded, should be resolved as a matter of urgency and, in any case, within a period of time that would allow the required institutional deadlines for the work of this Committee in 2013 to be observed. In that regard, it was important for the questions put to the Legal Adviser to be duly reflected in the record.

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- 213.** The Worker members indicated that the proposal had been submitted to the Workers' group and had given rise to heated discussions. There had been immense distress at the events that had occurred. While accepting the proposal and, consequently, the procedure that it envisaged, a number of comments needed to be made. The difficult negotiations and the events that had occurred, including the preliminary contacts, the timing of which had been recalled previously, would leave a negative impression in the memory of the Worker members, as the confidence between the partners had been very seriously tested and even nearly broken. The past days' events would also remain entrenched in the memory of the ILO staff. In that regard, emphasis should be placed on the statement made by the Director-General that morning to the plenary of the Conference, in which he had vigorously defended the integrity of the ILO staff and the impartiality of the experts entrusted with supervising the application of Conventions and Recommendations.⁶
- 214.** The Worker members emphasized that the return of the Worker representatives to their countries would be painful, and at times marked by fear. They had come here to describe cases of violation of their rights guaranteed by the ILO's Conventions, and yet they would return empty-handed, without any conclusions from the Committee, without the support of the international community to build up their courage again when facing harassment, aggression, murder and the violation of their basic right to be treated with dignity by governments and national and international companies. What would the Worker members say to the family and colleagues of Manuel de Jesús Ramírez, the Guatemalan trade union leader murdered on 1 June 2012, on the very day that the Committee was beginning its work? What would they say to the workers of Fiji and their representatives, confronted in their country by a military government which showed no respect for the rights of workers, and for whom the only hope that remained was the ILO and the Committee on the Application of Standards? What would they say to the workers of Greece, Turkey, Colombia, Swaziland, Belarus and other countries? Should one minute's silence be requested in memory of the 25 cases that would not be examined? How would these workers understand the attack against the Committee of Experts, which was described by the IOE press release as an "legitimate request for official clarification regarding the status of the observations" of the Committee of Experts. How would they be able to understand that the attack had had the effect of preventing the list of cases from being examined?
- 215.** The Worker members recalled that since the very first interventions by the Employer members opposing the interpretation of the foundations of the right to strike by the Committee of Experts, they had emphasized that this issue lay within the sole and unique competence of the Governing Body and had proposed that the matter should be referred to it. That proposal would have allowed for the examination of the "list" submitted to the Committee by the Worker members. In addition to the five cases with double footnotes, the list had contained several cases submitted by the Employer members. It should not be forgotten that many employers' organizations had been able to exist and prosper as a result of the work of the Committee of Experts and the Conference Committee on the Application of Standards. The failure to examine the list of cases during the Conference benefited neither the workers nor the employers. Indeed, the failure of the Committee's work would benefit all those who challenged the effectiveness of the ILO and its standard-setting function.
- 216.** The Worker members stated that they would stick to the agreement reached because they had always respected the ILO and had followed the rules of the game of tripartism and social dialogue. It was crucial to continue seeking constructive solutions in spite of

⁶ The full text of the Director-General's statement can be found in the *Provisional Record* No. 7, p. 3.

divergence of views and difficult clashes. However, the work entrusted to the Governing Body needed to have a proper framework. The ILO's specificity stemmed from its tripartism which was unique among UN agencies and anything else would be inconceivable. The Committee of Experts, which had been the cornerstone of the supervisory system since 1926, retained the confidence of the Worker members, and its opinions, which although were not legally binding, still had and would always enjoy a high moral authority. As long as these opinions were not contradicted by the ICJ, they remained valid and commonly agreed upon. This essential prerequisite had to be accepted, in particular to ensure the legal certainty necessary for the proper functioning of the ILO. The criticisms addressed to the Committee of Experts with respect to their abuse of authority as regards the interpretation of Convention No. 87 in relation to the right to strike were excessive and indirectly constituted a denial of the jurisprudence of the Committee on Freedom of Association, which was itself a tripartite body. The right to strike was not only a national matter to be dealt with and assessed according to economic or time-bound considerations. Besides Conventions Nos 87 and 98, there was also the International Covenant on Economic, Social and Cultural Rights, as well as several regional texts such as the Charter of Fundamental Rights of the European Union, the European Social Charter, the Convention for the Protection of Human Rights and Fundamental Freedoms and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").

- 217.** The Worker members requested the Committee, after consultation with the Employer members, to consider the following proposal:

In view of the fact that the Committee on the Application of Standards was not in a position to discuss any of the cases enumerated in the preliminary list and in order to avoid any further disruption of the functioning of the ILO supervisory mechanisms, the Committee requests the governments included in the preliminary list⁷ to send a report to the Committee of Experts to be examined at its next session.

- 218.** In conclusion, the Worker members underlined that it was only the ILO which allowed for a dialogue that moved forward the rights of the most vulnerable. They indicated that they would work today, tomorrow and thereafter on the observance of the agreement reached.
- 219.** The Employer members agreed with the proposal made by the Worker members provided that it was acceptable to the Government members.
- 220.** The Government member of Canada, speaking on behalf of IMEC, endorsed the proposal brought forward by the Worker members.
- 221.** The Government member of the Bolivarian Republic of Venezuela stated that he respected the position of each of the governments that featured on the preliminary list and understood the reasoning given by the Worker members. With that proposal, which had been put before the Committee at the last minute, and on the basis of all that had happened during the Committee's meetings, the urgent need to discuss and establish clear, objective and transparent standards and procedures for the Committee's methods of work had been demonstrated once again. Doing so could not be put off any longer if the credibility and seriousness of the Committee on the Application of Standards was to be ensured; otherwise, the legitimate rights of governments would continue to be eroded, in the sense that the tripartism of this Organization would be called into question even more.

⁷ See Annex 2.

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222. The Government member of Cuba, having listened to the proposal made by the Worker members, indicated that she did not oppose it, but expressed concern regarding the last minute nature of this proposal, which could not be subject to consultations among Government members. These events demonstrated the lack of transparency of this Committee's working methods and the urgent need for reform. She sought clarification as to what purpose it would serve this year for the Committee of Experts to examine the information submitted by the governments on the preliminary list.
223. The Government member of the Islamic Republic of Iran reiterated his Government's full commitment to the ILO supervisory system, including the work of this Committee, as well as the importance it attached to the fair and objective, apolitical and impartial analysis undertaken by the Committee of Experts in the context of the well-defined mandate. His Government deeply regretted the non-adoption of the final list of individual cases and the unexpected closing down of the work of this Committee. The recent apologetic events had severely hampered the ability of governments to adequately participate in the proceedings of this irreplaceable mechanism and had therefore adversely affected the fulfilment of the mandate of this Committee. This year's events would go down into the history of the ILO as unfortunate and unforgettable events tarnishing the reputation of its once highly boasted supervisory body and clearly showed the need for a proper review of the procedures on this matter by resuming the work of the Tripartite Working Group on the Working Methods of the Conference Committee established in June 2006, that had held a total of 11 fruitful meetings. Finally, the speaker trusted that this Committee could rely on the constructive collaboration of the social partners on this important matter.
224. The Government member of Brazil expressed the concern of his Government over the situation in the Committee regarding the publication of the list. He emphasized the need to preserve the supervisory system and called attention to the systemic risks of the current situation. He underlined the need to publish the list in time and reiterated GRULAC's call in this regard.
225. The representative of the Secretary-General, in response to the request from the Government member of Cuba, emphasized the importance the Committee of Experts attached to the work of the Conference Committee and the diligence with which it was taking into account the comments made by this Committee. This year's report of the Committee of Experts contained a special section on all the cases previously discussed in the Conference Committee. Given the respect and the deference the Committee of Experts had to this Committee, it was certain that they would take to heart the request by the Conference Committee to examine the cases on the preliminary list, if these reports were submitted in due time, notably by 1 September 2012. She indicated that a number of countries had already provided information that was meant to be submitted to this Committee, and some governments would need to confirm whether this was the most up-to-date information, or whether new information needed to be provided.
226. The Chairperson observed that there was no disagreement from the Government members on the proposals that appear in paragraphs 207 and 216, and as a result, these proposals were adopted.

H. Adoption of the report and closing remarks

227. The Committee's report was adopted as amended.
228. The President of the Conference said that there were clear synergies between the discussions on youth employment, the social protection floor, the fundamental principles

and rights at work and the transcendental mandate of the Committee on the Application of Standards. The Committee was a fundamental part of the ILO's regular supervisory machinery which had been of inestimable value in the development of international labour law and had given unique prestige to a supervisory system of the application of standards that was the most successful that had existed throughout history. He recalled the words of Nicolas Valticos, who had said that the ILO's founders had set up from the first days a precise mechanism to monitor compliance with the standards to be drawn up by the Organization and that it was acknowledged that the ILO's supervisory functions were the most highly developed in the international arena due to the participation of employers' and workers' organizations, and the qualities of independence and expertise of the members of the supervisory bodies. He added that, on the occasion of the 85th anniversary of the Committee, it had been emphasized that the Conference Committee still offered "a potential that has not been totally exploited. Its tripartite and universal nature, its parliamentary role and its undeniable authority confer upon it an importance that is of great significance and make it the cornerstone of the ILO supervisory system". He reaffirmed that it would be difficult to understand the functioning of labour and constitutional law without the influence of the jurisprudence of the ILO supervisory bodies. The General Survey on the ILO's fundamental Conventions, entitled "Giving globalization a human face", could be considered unprecedented in the ILO and in the world of work as it emphasized the interdependence and complementarity of the fundamental Conventions and their universal applicability, thereby offering an ILO response to globalization. However, he expressed concern at the difficulties surrounding the work of the Committee and hoped that the situation would result in reflection and that solutions would be found that would enable the social partners to find a direction in the context of their views and mandate. He made a call for the dialogue that had served the Committee with a view to preserving and strengthening a unique body in the international arena and he offered his support for any initiative that would reinforce the future work of the Committee.

- 229.** The Worker members said that this year their concluding remarks would be different, as they would not have to evaluate the conclusions adopted by the Committee during its discussions of individual cases. They strongly deplored the serious incidents that had prevented the Committee's work from being carried out. However, a common solution had been found and would need to be given effect in good faith and rapidly. Firstly, it was now for the Governing Body to follow up rapidly the decision adopted by the Committee on 6 June 2012. The differences of views between the Worker and Employer members concerning the reports of the Committee of Experts would have to be resolved on an urgent basis, and in any case sufficiently in advance to allow the timetable of preparations to be followed for the holding of the Committee on the Application of Standards in 2013. Secondly, the 49 countries that were on the preliminary list were expected to provide a report, at the latest by 1 September 2012, containing replies to the comments of the Committee of Experts with a view to avoiding any interruption in the continuity of the supervisory bodies.
- 230.** The Worker members recalled that the General Survey and the work of the Committee on the Recurrent Discussion were linked under the process established in the ILO Declaration on Social Justice for a Fair Globalization of 2008. The Social Justice Declaration needed to be taken seriously and was not just one more procedure. It emphasized the unique comparative advantage and the legitimacy of the ILO based on tripartism and the rich and complementary practical experience of its tripartite constituents in addressing economic and social policies affecting the lives of people. It had been adopted to reinforce the capacity of the ILO in relation to the objectives of the Declaration of Philadelphia and was based on the four strategic objectives that were of equal value. The recurrent discussion this year had addressed compliance with, promotion and implementation of the fundamental principles and rights at work, while the General Survey covered the same fundamental principles and rights at work, as set out in the eight fundamental Conventions.

In order to emphasize the links between the supervisory work entrusted to the Committee on the Application of Standards under articles 19 and 22 of the ILO Constitution, and that of the Committee on the Recurrent Discussion, the Committee on the Application of Standards had been expected to transmit common conclusions to the Committee on the Recurrent Discussion. However, the attack carried out by the Employer members against the General Survey had prevented the Committee on the Application of Standards from presenting its views to the Committee on the Recurrent Discussion, which had not therefore been able to work fully within the framework envisaged by the 2008 Declaration. That raised a political issue that the Office would have to evaluate when assessing the impact of the 2008 Declaration. They greatly regretted the impact of the incidents in the Committee on the Application of Standards on the work of the Committee on the Recurrent Discussion. And yet, it had seemed that tripartite consensus could have been achieved on a message to be transmitted to the Committee on the Recurrent Discussion. In practice, the Employer members did not appear to be opposed to Convention No. 87 as such. Their concerns were related to the fact that, in the view of the Committee of Experts and of the Worker members, the right to strike was based on the Convention. They therefore considered that the interpretation by the Committee of Experts of the right to strike was exaggerated and unjustified. Apart from that, the Convention was unchallenged and was also the basis of the right to organize of employers. Over and above that, could the Committee reaffirm that the eight fundamental Conventions were more topical than ever in the context of the global economic crisis and the other challenges affecting the well-being and livelihoods of workers in all regions? Could the members of the Committee say jointly that, in the context of the crisis and the austerity plans of many governments, it was essential for recovery measures to be designed taking into account the fundamental Conventions? Was it not possible to issue a joint invitation to the Governing Body to prepare a plan of action covering the period up to 2015 for universal ratification of the fundamental Conventions, targeting in particular the 48 member States that had not ratified all of the fundamental Conventions and encouraging States with the highest populations to ratify the eight Conventions? Could a joint request not be made for sufficient resources to ensure the provision of technical assistance by the Office on issues relating to ratification and application in practice? Would it not be possible to make a joint call for an effective increase in social dialogue on the implementation of the fundamental Conventions and for social dialogue to be more effective? The failure of the Committee's work in relation to the eight fundamental Conventions was a matter of concern for the future. The General Survey in 2013 would cover the standards on social dialogue in the public service. The General Survey for 2014 would be on wages. Would fresh difficulties arise? Would it be claimed that wages should not be protected and were no more than an economic variable in the quest for profit?

- 231.** The Worker members, with reference to the geopolitical context of the violation of workers' rights, said that they could not remain silent concerning the cases that had not been examined by the Committee. However, they would not endeavour in a few minutes to make up for all the work that had not been carried out by the Committee. The sole objective was to do justice in a very incomplete manner to the Worker members who had come to Geneva in the hope of being able to speak about their everyday experience of repeated violations of their rights as guaranteed by ILO Conventions. They would be returning home empty handed, without being able to describe the practices in their countries in relation to the application of the Conventions ratified by their governments. They would be returning without the Committee's conclusions, even though they were often the official signal of the support of the international community and of its wish to help them with a view to bringing an end to situations of harassment, aggression, murder and the violation of their rights. The Worker members indicated that they had organized within their group, at their own initiative, an examination of some of the five so-called double footnote cases, as well as certain other very serious cases in meetings that the other groups had been free to attend. That had not constituted an examination of the cases, but

had placed the degradation in the situation of workers the world over in context. Their list of cases had included several of the 27 Member States of the EU, and particularly Spain for the Termination of Employment Convention, 1982 (No. 158), Romania for the Protection of Wages Convention, 1949 (No. 95), and Greece for the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). The World of Work Report 2012, published recently by the ILO, indicated that the narrow vision among many countries in the Eurozone concerning budgetary rigour was deepening the employment crisis and could even result in a new recession in Europe. The priority given to a combination of budgetary austerity and drastic labour market reforms had resulted in a dangerous employment crisis in Europe. The European Commissioner for Employment, Social Affairs and Inclusion, Lazlo Andor, had very recently confirmed that approach when he had wondered whether the medicine proposed in many Member States of the European Union was “curing or killing the patient”. The examination of the three cases would have provided an opportunity to assess the practical impact of the reform policies adopted in many European Union countries. It would have shown whether such reform policies still allowed governments to consider that they were in compliance with ILO Conventions. The three cases concerned wages and their negotiation, measures relating to the termination of the employment relationship and their negotiation and, in more general terms, attacks on the autonomy of the social partners and the development of the decentralized bargaining model at the enterprise level. In addition to those cases, reference would have been made to government attacks against workers in the name of budgetary orthodoxy and rigour at any price in public finances. The question would have arisen of the deregulatory role of the European and international financial institutions, which believed themselves above ILO Conventions and placed governments under pressure. The ITUC’s 2012 annual report on violations of trade union rights, published a few days ago, highlighted the violations of Convention No. 87 that the Worker members had placed on their preliminary list of cases. The Committee of Experts had also commented on those cases, on some occasions emphasizing the recurrent and almost traditional nature of the failures noted.

- 232.** The trade union rights of workers were violated throughout the world, which was why the issue arose each year of the selection of too many cases concerning Convention No. 87, without even referring to the question of strikes. The Worker members assured the Committee that they would like not to have to select so many of those cases. They referred to the situation in export processing zones, which was not limited to certain geographical areas, but applied at the sectoral level, as well as the experiments with solidarist associations in Europe which were being carried out with the sole objective of destroying the trade union movement. They also referred to the cases of Fiji and Guatemala – where physical reprisals against Worker members were to be feared – as well as those of Myanmar, Swaziland, Zimbabwe, Turkey, Algeria, Belarus (which was a historical case for the Committee, and where nothing was changing) and Colombia where, although there had been some progress, 29 trade unionists had died in 2011. They also referred to the case of Egypt and recalled that in 2011, the Ministry of Manpower and Migration had emphasized the value of social dialogue between governments, employers and workers with a view to achieving social peace and creating a climate conducive to economic development. One year later, none of that had been achieved. The Worker members also referred to the case of Mexico in relation to the Occupational Safety and Health Convention, 1981 (No. 155), which had been examined by the Committee for several years, including in 2011, where nothing had changed. They also recalled that 2011 had been spectacular in being characterized by democratic movements in the countries of the Middle East and North Africa, including Egypt, as noted previously. In the view of the Worker members, it would also have been important to highlight the persistent violations of Convention No. 111 in Saudi Arabia, which was a model for all of the Arab Emirates. Moreover, discussion of other cases would also have been fully justified. They indicated that they were still concerned at the numerous violations of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), and that the case of Paraguay appeared to them to be

particularly significant in relation to violations of the rights of indigenous and tribal peoples. The Government and Employer members had accepted the idea of requesting the governments on the preliminary list to supply a report by 1 September 2012. The cases referred to previously were a sample of the most worrying cases for which a full report was required. The Worker members indicated that they had been mortified by the discussions. The preparation of a final list of cases had been impossible in 2012. The solution for the future depended on the work entrusted to the Governing Body following the agreement reached within the Committee. A solution would need to be found by March 2013.

- 233.** In conclusion, the Worker members thanked the Chairperson and Rapporteur of the Committee, the Chairperson and members of the Committee of Experts. They also thanked the Government members of the Committee for their cooperation. Without their support, it would not have been possible to reach an agreement. The result obtained was owned by the tripartite members of the Committee, and it was to be hoped that it would mark the beginning of the path towards a lasting solution. Finally, they called on the members of the Committee to approve its report so that it could be submitted to the Conference Plenary.
- 234.** The Employer members stated that this had been an unusual year for the Committee, and refuted rumours suggesting that any victory had been won. Nobody had won this year. The purpose of this Committee was to discuss individual cases on alleged violations of ratified Conventions. There had been no list of individual cases this year. The Employer members would also have liked to have cases to be heard in this Committee, such as Serbia (Convention No. 144), Uruguay (Convention No. 98) and Uzbekistan (Convention No. 182); all tripartite constituents had wanted to have cases heard. The Employer members indicated that they had won nothing and emphasized that all social partners had failed in this regard. However, they had been able to raise an important point on the work of the Committee of Experts and of the Conference Committee. Responding to earlier comments that these issues should have been raised earlier, they indicated that they had actually been doing this for many years. Referring to the discussion of the Conference Committee held in 1991, they highlighted that the Employers members, had, at that time, raised the issue and had noted that dialogue could include both criticism and praise; they had also noted that, in their view, the interpretation that Convention No. 87 included the right to strike was not correct. Similar issues had been raised again by the Employer members in both 1994 and in 1998. The reports of the Conference Committee also showed that since 2000, the Employer members had consistently stated that the Committee of Experts should not extend to definitive interpretations of ILO Conventions and that its interpretation that Convention No. 87 implicitly included the right to strike was, in their view, wrong. Convention No. 87 never contained this right.
- 235.** The Employer members concluded by thanking the Chairperson, the Representative of the Secretary-General and the Secretariat, and also thanked the Worker members, and especially the Worker spokesperson for his collaboration. The speaker further thanked the Governments for having to put up with everything, and emphasized that it had never been the intention of the Employer members to cause any inconvenience.
- 236.** The Chairperson of the Committee indicated that, with the end of its work, the Committee was entering a sabbatical period that called for reflection, planning and preparation for the future. The Committee had given indications that changes were necessary. For the first time, the examination of individual cases had been interrupted. Nevertheless, the Committee's objectives, which were the quest for peace, equality and liberty for a better world, were continuing without interruption. The difficult task of finding solutions to make a leap forward and to improve the work of the Committee was a tripartite challenge that would start immediately and it was hoped that more positive results would be achieved in the future. The eyes of the world were on the Committee, and this year it had not had any answers to offer. Countries would not be benefiting from technical assistance to improve

compliance with standards as a result of the discussions of the Committee. He emphasized that it was not the time to think in terms of winners and losers. Everybody had the responsibility to carry forward a constructive discussion on the questions that had arisen and which were reflected in the report adopted by the Committee. It would be necessary to rebuild confidence within the Committee, recuperate and improve the basis for its work and to work for the benefit of standards by pursuing the common objective of peace, social justice, decent work, sustainable enterprises and freedom at all levels. He thanked the members of the Committee, the Secretariat and the interpretation services for their cooperation and work during the session.

Geneva, 12 June 2012

(Signed) Mr Sérgio Paixão Pardo
Chairperson

Mr David Katjaimo
Reporter

Annex 1

INTERNATIONAL LABOUR CONFERENCE

C. App./D.1

101st Session, Geneva, May–June 2012

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document sets out the manner in which the work of the Committee on the Application of Standards (hereafter referred to as “the Committee”) is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in an annual report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the *Provisional Records* of the Conference and as a separate publication, to improve the visibility of the Committee’s work.¹

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body’s adoption of a new strategic orientation for the ILO standards system in November 2005,² consultations began in March 2006 regarding numerous aspects of this system,³ including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee was set up in June 2006 and has met 11 times since then. The last meeting took place on 12 November 2011. On the basis of these consultations, and the recommendations of the Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal briefing session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of cases. Changes have been made to the organization of work so that the discussion of individual cases could begin on the Monday morning of the second week, and improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In June 2008, measures were adopted to address those cases in which Governments were registered

¹ The reports thus published can be found at: http://www.ilo.org/global/standards/WCMS_165970/lang--en/index.htm.

² See documents GB.294/LILS/4 and GB.294/9.

³ See para. 22 of document GB.294/LILS/4.

and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases. Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum.⁴

In November 2010, the Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference.

Since June 2010, important arrangements have been implemented to improve time management.⁵ In addition, modalities have been established for discussion of the General Survey in light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.

Since the 100th Session (June 2011) of the Conference, the tripartite Working Group met once in November 2011 and reached the following main conclusions:

- (i) Adoption of the list of individual cases: It was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations.
- (ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: The importance of this issue was reaffirmed, notwithstanding the difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Convention.
- (iii) Possibility for the Conference Committee to discuss cases of progress: It was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee's report, but that the practice had been temporarily suspended in 2008 due to concerns about time management. The issue would be kept under review.
- (iv) Possible improvements in the interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent item report by the Committee for the Recurrent Discussion: It was recognized that until the new discussion modalities which had been agreed upon took effect in 2014,⁶ the process followed during the 100th Session (June 2011) should be continued during the 101st Session (May–June 2012). This process had proved to be satisfactory, although a time management question might arise in light of the comprehensive nature of this year's General Survey, which covers the application of the eight fundamental Conventions.

⁴ See below, Part V, D, footnote 13 and Part V, F.

⁵ See Part V, B – Supply of information and automatic registration – and E.

⁶ At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration took the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that should take place in 2014.

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- (v) Automatic registration of individual cases: modalities for selecting the starting letter for the registration of cases: There was consensus to continue the experiment begun in June 2011 when the Committee had used the A + 5 model to undertake the automatic registration of individual cases based on a rotating alphabetical system, to ensure a genuine rotation of countries on the list.
 - (vi) Other questions: the question of the impact of the deliberations of the Working Party of the Governing Body and the International Labour Conference on the work of the tripartite Working Group: It was recalled that the tripartite Working Group reported to the Conference Committee on the Application of Standards. However, the work of the Conference Committee could also be influenced by the Working Party of the Governing Body. In such circumstances, it was decided that although there was no need for the tripartite Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, to follow-up as necessary upon questions raised by the Working Party.

II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

- (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
- (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
- (c) the measures taken by Members in accordance with article 35 of the Constitution.

III. Working documents

A. Report of the Committee of Experts

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–41), and in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 43–968). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi–xx), and by country (pages xxi–xxx).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments.⁷

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference.⁸ The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf.⁹ A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 1012–1024).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009, 2010 and again in 2011, the Committee clarified the general approach in this respect that has been developed over the years.¹⁰

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to enable governments to emulate these in advancing social progress and to serve as a model for other countries to assist them in the implementation of ratified Conventions.¹¹ At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005.¹²

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the eight fundamental Conventions in light of the 2008 Declaration on Social Justice for a Fair Globalization, including the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), the Discrimination (Employment

⁷ See paras 23–27 of the Committee of Experts' General Report (101st Session of the International Labour Conference, Report III (Part 1A)).

⁸ See paras 52–54 of the Committee of Experts' General Report.

⁹ See para. 44 of the Committee of Experts' General Report.

¹⁰ See paras 59, 60 and 63 of the Committee of Experts' General Report. See also Appendix II of the present document.

¹¹ See paras 65–67 of the Committee of Experts' General Report.

¹² See paras 68–69 of the Committee of Experts' General Report.

and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

- (i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 971–986);
- (ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning the fundamental Conventions) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix – pages 397–400);
- (iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 998–1011).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

C. Other information

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

- (i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;
- (ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts.

IV. Composition of the Committee, right to participate in its work and voting procedure

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

V. Schedule of work

A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the third time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns the eight ILO fundamental Conventions and will be discussed by the Committee on the Application of Standards, while the recurrent report on fundamental principles and rights at work will be discussed by the Committee for the Recurrent Discussion on Fundamental Principles and Rights. In order to ensure the best interaction between the two discussions, and in the light of the experience of last year, it is proposed to maintain the adjustments made in 2011 to the working schedule for the discussion of the General Survey – they are reflected in the document C. App./D.0. As in June 2011, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion on Fundamental Principles and Rights. In addition, the Officers of the Committee on the Application of Standards could present information regarding their discussion of the General Survey to the Committee for the Recurrent Discussion on Fundamental Principles and Rights.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–41).

B. Discussion of observations

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

Cases of serious failure by member States to respect their reporting and other standards-related obligations¹³

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

¹³ Formerly “automatic” cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

Individual cases

A draft list of observations (individual cases) regarding which Government delegates will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007 and 2008.

Supply of information ¹⁴ and automatic registration

1. *Oral replies.* The Governments which are invited to provide information to the Conference Committee are requested to take note of the preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed over the second week by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter "K", thus continuing the experiment started in 2011.

Cases will be divided into two groups: the first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 53 of that Committee's report. The second group of countries will constitute all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of Governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

¹⁴ See also section E below on time management.

-
- (a) through the *Daily Bulletin*;
 - (b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies.* The written replies of Governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C and Part V, E). These written replies are to be provided at least two days before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the Government, without duplicating them.* The total number of pages is not to exceed five pages.

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

C. Minutes of the sittings

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which Governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

D. Special problems and cases

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

-
- None of the reports on ratified Conventions has been supplied during the past two years or more.
 - First reports on ratified Conventions have not been supplied for at least two years.
 - None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.
 - No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference ¹⁵ to the competent authorities, in accordance with article 19 of the Constitution.
 - No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.
 - The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.
 - The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country. ¹⁶

¹⁵ This year the sessions involved would be the 90th (2002) to 99th (2010).

¹⁶ In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

- In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite the Governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.
- Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.
- On the last day of the discussion of individual cases, the Committee shall deal with the cases in which Governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a Government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning Governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

2. *Application of ratified Conventions.* The report will contain a section entitled “Application of ratified Conventions”, in which the Committee draws the attention of the Conference to:

- cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

E. Time management

- Every effort will be made so that sessions start on time and the schedule is respected.
- Maximum speaking time for speakers are as follows:
 - Fifteen minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
 - Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.
 - Ten minutes for Government groups.
 - Five minutes for the other members.
 - Concluding remarks are limited to ten minutes for spokespersons of the Workers’ and the Employers’ groups, as well as the Government whose case is being discussed.
- However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.
- These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.
- During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.
- In view of the above limits on speaking time, Governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).
- Before the discussion of each case, the Chairperson will communicate the list of speakers already registered.
- In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

**F. Respect of rules of decorum and
role of the Chairperson**

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

Appendix I

Criteria for footnotes ¹

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers’ health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government’s response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

¹ See paras 47, 48, 49, 50 and 51 of the Committee of Experts’ General Report.

Appendix II

Criteria for identifying cases of progress ¹

At its 80th Session (November–December 2009), at its 81st Session (November–December 2010), and at its 82nd Session (November–December 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

- (1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.
- (2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.**
- (3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.
- (4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.
- (5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.
- (6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Since first identifying cases of **satisfaction** in its report in 1964, ² the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions.** In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979. ³ In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners.** In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in

¹ See paras 59, 60 and 63 of the Committee of Experts' General Report.

² See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

³ See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

Annex 2

Preliminary list of possible cases to be examined by the Committee on the Application of Standards at the ILC in June 2012

	Country	Convention No.
1	Algeria	87
2	Bangladesh	87
3	Belarus	87
4	Botswana	151
5	Cambodia	87
6	Canada	87
7	China - Hong Kong Special Administrative Region	97
8	Colombia	87
9	Costa Rica	98
10	Cuba	87
11	Democratic Republic of the Congo	29
12	Dominican Republic*	111
13	Egypt	87
14	Ethiopia	87
15	Fiji*	87
16	Georgia	98
17	Greece	98
18	Guatemala*	87
19	Guinea	149
20	Guyana	142
21	Honduras	87
22	Iceland	159
23	India	122
24	Indonesia	87
25	Islamic Republic of Iran	95
26	Iraq	98
27	Republic of Korea	111
28	Kuwait	29
29	Malawi	129
30	Mauritania*	81
31	Mauritius	160
32	Mexico	155
33	Myanmar	87
34	Nigeria	98
35	Pakistan	138

	Country	Convention No.
36	Paraguay	169
37	Romania	95
38	Saudi Arabia	111
39	Senegal*	182
40	Serbia	144
41	Spain	158
42	Sri Lanka	100
43	Swaziland	87
44	Syrian Arab Republic	105
45	Turkey	87
46	United Kingdom	122
47	Uruguay	98
48	Uzbekistan	182
49	Zimbabwe	87

* The double footnoted countries are in para. 53 of the General Report of the Committee of Experts 101 (III 1(A)).

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING
PARTICULAR COUNTRIES



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

Report of the Committee on the Application of Standards

PART TWO

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Contents

	<i>Page</i>
I. Observations and information concerning reports on ratified Conventions (articles 22 and 35 of the Constitution).....	3
Discussion of cases of serious failure by member States to respect their reporting and other standards-related obligations.....	3
(a) Failure to supply reports for the past two years or more on the application of ratified Conventions.....	3
(b) Failure to supply first reports on the application of ratified Conventions	3
(c) Failure to supply information in reply to comments made by the Committee of Experts	4
(d) Written information received up to the end of the meeting of the Committee on the Application of Standards	5
II. Submission to the competent authorities of the Conventions and Recommendations adopted by the International Labour Conference (article 19 of the Constitution).....	6
Observations and information	6
(a) Failure to submit instruments to the competent authorities	6
(b) Information received	7
III. Reports on unratified Conventions and Recommendations (article 19 of the Constitution).....	8
(a) Failure to supply reports for the past five years on unratified Conventions and Recommendations	8
(b) Information received	8
Appendix I. Table of reports received on ratified Conventions (articles 22 and 35 of the Constitution).....	9
Appendix II. Statistical table of reports on ratified Conventions as of 15 June 2012 (article 22 of the Constitution).....	13
Index by countries to observations and information contained in the report.....	15

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

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

The Employer members indicated that the supervisory system depended on reports by the governments on compliance with Conventions. The system could not function without such reports being submitted regularly. They noted the institutional and infrastructural constraints due, for instance, to political unrest, which resulted in a lack of human and financial resources and a lack of communication between ministries. The Office could provide relevant technical assistance and the Employer members hoped that the governments would avail themselves of this possibility. The Employer members indicated that the governments had to consider their responsibility for reporting when considering ratifying Conventions. They observed a general improvement compared to last year in the discharge by member States of their reporting obligations under articles 22 and 35 of the ILO Constitution, as indicated in the General Report of the Committee of Experts on the Application of Conventions and Recommendations. They, however, emphasized that further efforts were needed.

The Worker members emphasized the fact that the obligation to send reports before the deadline and with useful information had to be respected by all governments. The regularity of reporting and the quality of replies influenced greatly the work of the Committee of Experts on the Application of Conventions and Recommendations. If the reports were of high quality, the supervisory mechanism could attain its objectives, to the maximum benefit of workers and the defence of their rights. The progress observed at the moment as regards sending reports was insufficient and the governments concerned had to take all measures necessary to fulfil their obligations in this regard.

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

A Government representative of Guyana explained that while the Government had been unable to submit all reports due, the Government had submitted 15 reports in April this year. He then referred to various assistance of the Office in this regard, and indicated that a specialist would visit Guyana for two weeks in July this year with a view to assisting the preparation of reports. The Government expressed its commitment to the fulfilment of its reporting obligations.

A Government representative of Nigeria indicated that, following a request made by his Government, capacity-building training had taken place and two officers had benefited from this training. As a result, 20 out of the 26 reports outstanding had been prepared and would be handed in during the current session of the Conference. They were working on the remaining reports, which had been sent to the social partners for comment and endorsement. He also indicated that five outstanding labour bills were currently under review before the National Assembly and that his Government would report as soon as possible on the outcome regarding these bills. Finally, he

requested that more assistance be provided for the training of officials in his country.

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

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

In these circumstances, the Committee expressed the firm hope that the Governments of Chad, Djibouti, Equatorial Guinea, Grenada, Guyana, Nigeria, Sierra Leone and Somalia which, to date, had not presented reports on the application of ratified Conventions, would do so as soon as possible, and decided to note these cases in the corresponding paragraph of the General Report.

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

A Government representative of Seychelles explained that first reports for the Medical Examination (Seafarers) Convention, 1946 (No. 73), the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), and the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180), had not been submitted due to the ongoing review of the national legislation which regulates maritime labour standards. A consultant had been hired but due to the unavailability of persons with the technical expertise, the revision exercise had taken longer than anticipated. The new consultant who was presently revising the Act was also conducting a legal gap analysis of the Maritime Labour Convention, 2006 (MLC, 2006), in collaboration with the ILO. She also informed the Committee of the intention of her Government to ratify the MLC, 2006, during the course of this year. With regard to the Occupational Health Services Convention, 1985 (No. 161), she indicated that the first report has not been submitted due to the unavailability of information, data and technical expertise to finalize the report. She added that the findings of the Occupational Health and Safety (OHS) profile portrayed deficiencies in the OHS system especially in terms of compiling and recording information relevant to the Articles of the Occupational Health Services Convention. The speaker also explained that the Government of Seychelles was expected to introduce reforms in the public inspectorate health services, and a more efficient national occupational health data system. She indicated that the Seychelles and the ILO had agreed to hold a national reporting workshop this year with the aim of identifying focal persons in relevant ministries to assist the Ministry of Labour with the reporting obligations.

The Government representative of Nigeria indicated that the report requested had been finalized and that he was

ready to submit it during the current session of the Conference.

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

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

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

- **Bahamas**
 - since 2010: Convention No. 185;
- **Equatorial Guinea**
 - since 1998: Conventions Nos 68, 92;
- **Guinea-Bissau**
 - since 2010: Convention No. 182;
- **Kazakhstan**
 - since 2010: Convention No. 167;
- **Kyrgyzstan**
 - since 1994: Convention No. 111;
 - since 2006: Conventions Nos 17, 184;
 - since 2009: Conventions Nos 131, 144;
 - since 2010: Conventions Nos 97, 157;
- **Nigeria**
 - since 2010: Convention No. 185;
- **United Kingdom (St Helena)**
 - since 2010: Convention No. 182;
- **Sao Tome and Principe**
 - since 2007: Convention No. 184;
- **Seychelles**
 - since 2007: Conventions Nos 147, 161, 180;
- **Vanuatu**
 - since 2008: Conventions Nos 87, 98, 100, 111, 182;
 - since 2010: Convention No. 185.

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

A Government representative of Iceland indicated that, as of 1 January 2011, two ministries, the Ministry of Social Affairs and the Ministry of Health had merged to form the Ministry of Welfare. This merger had affected the conduct of work related to ILO matters, but now the function was fully operational and the Government would therefore submit all reports due by the next session of the Conference.

A Government representative of Ireland stressed that while some replies to comments were still outstanding, this should in no way be interpreted as a lack of commitment by her Government towards the ILO, which recognized the importance of the Committee of Experts' comments. The current situation was due to resource constraints but she assured the Committee that all the reports due would be submitted in the coming months.

A Government representative of Denmark indicated that the Government of Greenland had limited human resources to meet the reporting obligations. He added that the question of applicability of a number of ILO Conventions to Greenland had been raised, and was currently under examination. He indicated that all reports due would be submitted by the next session of the Committee of Experts on the Application of Conventions and Recommendations.

A Government representative of Liberia insisted on the fact the her Government was not overlooking its commitment and reporting obligations towards the ILO and explained that a change of government and changes in the labour law could explain the delay in submitting reports. She reaffirmed her Government's commitment to work with the ILO to solve the pending issues regarding reporting obligations.

A Government representative of Guinea indicated that the Government had been restructured several times, thereby engendering some delay in the communication of reports within the set deadlines. He also noted that the Government had trained new officials in the various ministerial departments. He thanked the ILO for its technical assistance provided to the Government. The speaker expressed his Government's commitment to submitting the outstanding reports by the next session of the International Labour Conference.

A Government representative of Uganda expressed the need for assistance in strengthening labour administration, despite various developments that had been taking place at the ministerial, inter-ministerial and tripartite levels. She asserted that the submission of all reports due would be completed by September this year.

A Government representative of Thailand expressed her Government's appreciation to the ILO for providing a scholarship for distance learning on international labour standards reporting. She indicated that progress had been made with regard to the Abolition of Forced Labour Convention, 1957 (No. 105), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182); and that the report on Convention No. 105 had been submitted in February this year. The reports on Conventions Nos 138 and 182 were currently being translated from Thai to English after the content of reports had been approved on a tripartite basis and should be submitted in the next couple of months.

A Government representative of Ghana clarified that the main challenge in reporting was the bureaucratic procedure through which the reports had to pass. All reports due should have been submitted well before the commencement of the Conference, but it was not possible. She was confident that a positive outcome in this regard would be reported before the end of the Conference. Another challenge was that all officers currently responsible for the reporting were new and the Office's assistance was requested in this respect to build their capacity.

A Government representative of Burkina Faso indicated that his Government had not been in a position to send its reports for reasons linked to changes in human resources involving senior officials, as well as a change of procedure concerning the body responsible for preparing reports. From now on, all reports would be submitted to the Council of Ministers for approval. At present, all reports were pending before that Council prior to being sent to the ILO. He reiterated his Government's commitment to send all reports due on time. His Government also requested ILO assistance to train senior officials in charge of preparing reports.

A Government representative of Pakistan indicated that after a process of transformation through structural and constitutional reforms and the enactment of a new Industrial Relations Act 2012, all reports were now being prepared, which would be submitted as early as possible. He

emphasized, however, the difficulty in this process due to the lack of financial and human resources, as well as two years of floods at an unprecedented scale.

A **Government representative of Slovenia** indicated that all the reports due with replies to the comments of the Committee of Experts on the Application of Conventions and Recommendations had been submitted during the current session of the Conference.

A **Government representative of Chad** explained that the Government had not submitted the requested reports for a few years due to the insufficient attention to the application of labour law, evidenced in weak enforcement of legislation by the technical services concerned, and the frequent turnover of personnel in recent years. He also explained that there was a lack of competent staff. As the staff left for retirement, young members had been recruited, but they had to build capacity to perform their tasks. For these reasons, the assistance of the Office was required to help the Government fulfil its reporting obligations.

A **Government representative of Nepal** indicated his Government's commitment to the fulfilment of the reporting obligations and its appreciation that the receipt of the reports so far submitted had been duly recognized.

The **Government representative of Nigeria** indicated that, out of the 20 reports outstanding, 19 had been prepared and would be handed in during the current session of the Conference, while the last one would come at a later stage.

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

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

The Committee requested the Governments of Bahamas, Barbados, Burkina Faso, Burundi, Chad, Comoros, Democratic Republic of the Congo, Denmark (Greenland), Djibouti, Equatorial Guinea, Eritrea, Ghana, Grenada, Guinea, Guyana, Haiti, Iceland, Ireland, Kazakhstan, Kiribati, Kyrgyzstan, Nigeria, Pakistan, San Marino, Sao Tome and Principe, Sierra Leone, Slovakia and Uganda, to make all efforts to transmit, as soon as possible, the required information. The Committee decided to note these cases in the corresponding paragraph in the General Report.

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

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

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

Croatia. Since the meeting of the Committee of Experts, the Government has sent replies to all 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.

France (French Polynesia). Since the meeting of the Committee of Experts, the Government has sent replies to all of the Committee's comments.

Greece. Since the meeting of the Committee of Experts, the Government has sent all the reports due in 2011 on ratified Conventions and replies to the previous comments adopted by the Committee of Experts. Following the ILO High Level Mission to the Country in 2011, the Committee of Experts adopted, at its last session in November–December 2011, new comments to which the Government is invited to reply by 1 September 2012.

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

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

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

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

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

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

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

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

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

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

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

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

Yemen. Since the meeting of the Committee of Experts, the Government has sent the majority of the reports due on the application of ratified Conventions, the first report due on the application of Convention No. 185 and replies to the majority of the Committee's comments.

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

**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 the Congo** affirmed the Government's desire to tackle the delays that had been observed regarding fulfilment of the obligation to submit instruments. The Committee of Experts on the Application of Conventions and Recommendations had noted the efforts made by the Government further to a mission undertaken by the Office in May 2010. Henceforth three instruments would be submitted to the competent authorities every three months. For the second trimester of 2011, the Equality of Treatment (Social Security) Convention, 1962 (No. 118), the Termination of Employment Convention, 1982 (No. 158), and the Labour Statistics Convention, 1985 (No. 160), had been submitted to the competent authorities. For the first trimester of 2012, other Conventions had also been submitted, in particular the Safety and Health in Agriculture Convention, 2001 (No. 184), the Work in Fishing Convention, 2007 (No. 188), and the Domestic Workers Convention, 2011 (No. 189).

A **Government representative of Colombia** stated that the Government had begun the process of submitting 14 ILO Conventions to the Congress of the Republic. It had also undertaken tripartite consultations, in accordance with the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which it had ratified, and had created a subcommittee on international affairs to carry out tripartite reviews of the State's obligations to the ILO.

A **Government representative of Ethiopia** indicated that all instruments adopted by the Conference at the 88th, 90th, 91st, 92nd, 94th, 95th, 96th, 99th and 100th Sessions had been submitted to the competent authorities with comments of the Ministry of Labour and Social Affairs after consulting with the social partners. This submission had been duly communicated to the Office in March this year, with a copy to the Ethiopian Employers' Federation and the Confederation of Ethiopian Trade Unions.

A **Government representative of Suriname** indicated that the instruments adopted by the Conference at its 90th–96th Sessions had been submitted but were still pending before the Council of Ministers. However, the new Government was now in the process of restarting the submission procedures, together with the instruments adopted in 2010 and 2011. Some technical issues would need to be resolved in the process and the Government would not hesitate to request technical assistance if necessary.

A **Government representative of Bangladesh** explained that while recognizing the necessity of timely action by member States in discharging their constitutional obligations, the process of submission of ILO instruments to the competent authorities in his country was a long one, involving various steps such as translation to Bangla and the approval by the Cabinet and relevant authorities, as well as other administrative and legal steps. He reiterated

his Government's commitment to complete all necessary steps.

A **Government representative of Bahrain** expressed his Government's commitment to respect the obligations that had not been met under the ILO Constitution. He affirmed that all measures necessary would be taken to submit the instruments adopted by the ILO to the competent authorities. The speaker indicated that the Government lacked human resources specializing in the matter. For this reason, the Committee was requested to grant additional time in order to allow the legal and technical services to examine these instruments. The Government would inform the Office of any developments in this regard.

A **Government representative of Seychelles** indicated that the submission process had been delayed due to the parliamentary election last year. She also referred to the restructuring of the Government, and indicated that the Government would pursue the fulfilment of its reporting obligations with the Ministry of Labour and Human Resources Development, strengthened through this restructuring, and also with the assistance of the Office to be provided through a planned workshop.

A **Government representative of Papua New Guinea** indicated that there had been technical progress in the initial preparation of the documented submission of the 18 instruments pending, but given the large number of instruments that had to be submitted to the competent authorities, further consultations should take place. With regard to the Maritime Labour Convention, 2006 (MLC, 2006), he indicated that a decision by the National Executive Council regarding this Convention was pending.

A **Government representative of Uganda** indicated that while limited human resources continued to be the major challenge in the Ministry of Gender, Labour and Social Development, the Government had compiled and summarized the ILO Conventions adopted during the period between 1994 and the present, in order to submit them to the competent authorities.

A **Government representative of Liberia** presented the apologies of her Government for not having submitted recent instruments and indicated that some instruments were currently before the Senate. She nevertheless made a request to the ILO for technical assistance with regard to the submission of instruments adopted by the Conference.

A **Government representative of Sudan** explained that Sudan had faced an exceptional situation in recent years owing to the separation of South Sudan. This had had an impact on various state institutions, including the legislature, which had undergone a period of transition when the country had needed restructuring to fill the gap left by this separation. The speaker expressed regret that his Government had not been able to submit the Conventions and Recommendations to the competent authorities within a suitable time frame. He announced the Government's commitment to take all necessary measures in order to submit the instruments in question to the competent authorities once these circumstances had come to an end.

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

The Committee took note of the specific difficulties mentioned by different speakers in complying with this constitutional obligation, as well as the promises to submit shortly to the competent authorities the instruments adopted by the Conference. Some Government representatives also referred to the assistance received from the Office in this regard.

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

The Committee expressed the firm hope that the 33 countries mentioned, namely Bahrain, Bangladesh, Belize, Colombia, Comoros, Congo, Côte d'Ivoire, Democratic Republic of the Congo, Djibouti, Dominica, Equatorial Guinea, Ethiopia, Fiji, Georgia, Guinea, Haiti, Iraq, Ireland, Kyrgyzstan, Libya, Mozambique, Papua New Guinea, Rwanda, Saint Lucia, Sao Tome and Principe, Seychelles, Sierra Leone, Solomon Islands, Somalia, Sudan, Suriname, Tajikistan and Uganda, would transmit, in the near future, information on the submission of Conventions, Recommendations and Protocols to the competent authorities. The Committee

decided to mention all these cases in the corresponding paragraph of the General Report.

(b) Information received

Cambodia. Since the meeting of the Committee of Experts, the Government submitted to the National Assembly on 21 December 2011 information on the instruments adopted by the International Labour Conference between 1973 and 2007.

Saint Kitts and Nevis. Since the meeting of the Committee of Experts, the ratification of the Maritime Labour Convention, 2006 was registered on 19 March 2012.

The former Yugoslav Republic of Macedonia. Since the meeting of the Committee of Experts, the Government indicated that Conventions Nos 177, 181, 183 and 187 were submitted to the Assembly, for ratification, on 11 November 2011.

Togo. Since the meeting of the Committee of Experts, the ratification of Convention No. 187 was registered on 30 March 2012.

Turkmenistan. Since the meeting of the Committee of Experts, the Government submitted to the Majlis (Parliament) on 25 May 2012 information on the instruments adopted by the International Labour Conference between 1994 and 2011.

Uzbekistan. Since the meeting of the Committee of Experts, the Government submitted to the Oliy Majlis (Parliament) on 3 April 2012 information on the instruments adopted by the International Labour Conference between 1993 and 2011.

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 Cape Verde** recalled that the process of ratifying international labour standards had a significant impact on national legislation and stated that the Labour Relations (Public Service) Convention, 1978 (No. 151), was currently being used in the framework of the preparation of a new career and salary plan for public employees, which would be submitted to the Social Dialogue Council for approval. The Government and the social partners had deployed enormous efforts to meet the constitutional obligation to submit Conventions and Recommendations to the competent authorities and to send reports on ratified Conventions, as indicated in the General Report. However, it had not been possible to submit reports on non-ratified Conventions because of insufficient human resources. ILO technical assistance was therefore still necessary in that respect. He stated that reports on non-ratified Conventions would be sent to the Office soon.

A **Government representative of Kenya**, while regretting the delay in supplying the reports due on unratified Conventions and Recommendations, highlighted that those reports had now been received by the Office. The speaker affirmed his Government's unwavering commitment to complying with its reporting obligations under the ILO Constitution and assured the Committee that the necessary steps would be taken to ensure that no further delays would occur in the future.

A **Government representative of Afghanistan** regretted his Government's non-compliance with the constitutional obligation to supply reports on unratified Conventions and Recommendations. The speaker assured the Committee that efforts were being made to submit the reports as soon as possible and requested that, in light of the resource constraints, further ILO technical assistance be provided to assist with the preparation of the relevant reports in a timely manner.

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

The Committee stressed the importance it attached to the constitutional obligation to transmit reports on non-ratified

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

The Committee insisted that all member States should fulfil their obligations in this respect and expressed the firm hope that the Governments of Afghanistan, Cape Verde, Guinea-Bissau, Samoa, Sierra Leone, Somalia, Turkmenistan and Vanuatu, would comply with their future obligations under article 19 of the ILO Constitution. The Committee decided to mention these cases in the corresponding paragraph of the General Report.

The Worker members took note of the information provided by the Government representatives and underlined the fact that everyone should make efforts to tackle the issues promptly. It was necessary to understand the difficulties that the Committee faced in cases of failure to comply with constitutional obligations. The Committee should be able to save on some debates in the future. The Worker members stressed that a lack of human resources was often invoked to explain failure to comply. In that regard, it was particularly important for the Office to continue to provide the necessary technical assistance so that the Committee could carry out its work.

The Employer members welcomed the information provided by various Government representatives on the efforts undertaken at national level to ensure compliance with constitutional obligations. They also expressed their satisfaction at the decrease in the number of member States that had failed to supply any of the reports due on the application of ratified Conventions for the past two or more years. While understanding that the underlying causes for the failure to report were infrastructural and budgetary constraints, the Employer members reiterated that governments should give consideration to these difficulties before deciding to ratify ILO Conventions.

(b) Information received

Since the meeting of the Committee of Experts, reports on unratified Conventions and Recommendations have subsequently been received from **Kenya** and **Uzbekistan**.

Appendix I. Table of Reports received on ratified Conventions

(articles 22 and 35 of the Constitution)

Reports received as of 15 June 2012

The table published in the Report of the Committee of Experts, page 972, 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 24 reports requested

All reports received: Conventions Nos. 6, 11, 13, 29, 32, 42, 77, 78, 81, 87, 88, 94, 95, 98, 99, 100, 111, 119, 120, 122, 144, 155, 181, 182

Angola 12 reports requested

(Paragraph 40)

All reports received: Conventions Nos. 6, 17, 26, 29, 45, 81, 87, 88, 98, 100, 105, 111

Bulgaria 32 reports requested

(Paragraph 40)

- 31 reports received: Conventions Nos. 6, 11, 13, 26, 29, 45, 55, 62, 77, 78, 79, 81, 87, 94, 98, 100, (102), 105, 111, 113, 120, (122), 124, 127, 138, 144, 156, 173, (177), 181, 182
- 1 report not received: Convention No. 95

Congo 21 reports requested

All reports received: Conventions Nos. 6, 11, 13, 14, 26, 29, 81, 87, 89, 95, 98, 100, 105, 111, 119, 138, 144, 149, 150, 152, 182

Croatia 12 reports requested

(Paragraph 40)

All reports received: Conventions Nos. 11, 87, 90, 98, 100, 105, 111, 113, 119, 122, 148, 156

Denmark 29 reports requested

All reports received: Conventions Nos. 6, 11, 12, 19, 29, 42, 87, 88, 94, 98, 100, 102, 111, 115, 118, 122, 126, 130, 138, 139, 141, 144, 148, 155, 159, 162, 169, 182, (187)

Eritrea 4 reports requested

(Paragraph 40)

All reports received: Conventions Nos. 87, 98, 100, 111

Fiji 17 reports requested

All reports received: Conventions Nos. 8, 11, 26, 29, 45, (81), 87, 98, 100, 105, 111, 144, (149), 159, 169, (178), 182

France 57 reports requested

- 53 reports received: Conventions Nos. 8, 11, 12, 16, 17, 19, 22, 23, 24, 35, 36, 42, 53, 55, 56, 68, 69, 71, 73, 74, 77, 78, 87, 90, 92, 94, 95, 96, 97, 98, 100, 102, 111, 118, 122, 124, 131, 133, 134, 141, 144, 145, 146, 147, 156, 158, 163, 164, 166, 178, 179, 180, (185)
- 4 reports not received: Conventions Nos. 113, 114, 125, 126

France - French Polynesia 22 reports requested

(Paragraph 40)

All reports received: Conventions Nos. 5, 6, 10, 11, 33, 77, 78, 87, 94, 95, 98, 100, 111, 115, 122, 123, 124, 125, 126, 131, 141, 144

Germany 22 reports requested

All reports received: Conventions Nos. 11, 12, 19, 26, 87, 98, 99, 100, 102, 111, 113, 114, 118, 121, 122, 125, 126, 128, 130, 141, 144, 162

Greece **26 reports requested**

(Paragraph 40)

All reports received: Conventions Nos. 11, 13, 17, 19, 42, 77, 78, 87, 88, 90, 95, 98, 100, 102, 111, 122, 124, 126, 136, 141, 144, 150, 154, 156, 159, 182

Guinea **48 reports requested**

(Paragraph 31)

- 21 reports received: Conventions Nos. 13, 16, 26, 29, 81, 87, 95, 98, 99, 100, 111, 114, 119, 120, 122, 132, 134, 138, 144, 150, 182
- 27 reports not received: Conventions Nos. 3, 11, 14, 45, 62, 89, 90, 94, 105, 113, 115, 117, 118, 121, 133, 135, 136, 139, 140, 142, 143, 148, 149, 151, 152, 156, 159

Guyana **36 reports requested**

(Paragraph 31)

- 16 reports received: Conventions Nos. 2, 19, 29, 42, 45, 81, 97, 98, 136, 142, 144, 150, 166, 172, 175, 182
- 20 reports not received: Conventions Nos. 11, 12, 87, 94, 95, 100, 105, 108, 111, 115, 129, 131, 135, 137, 138, 139, 140, 141, 149, 151

Hungary **32 reports requested**

All reports received: Conventions Nos. 6, 13, 26, 77, 78, 81, 87, 88, 95, 98, 99, 100, 105, 111, 115, 122, 124, 127, 129, 136, 138, 139, 141, 144, 148, 155, 159, 161, 167, 181, 182, (185)

Iraq **13 reports requested**

All reports received: Conventions Nos. 11, 77, 78, 94, 95, 98, 100, 111, 122, 131, 135, 144, 167

Kenya **15 reports requested**

(Paragraph 40)

- 13 reports received: Conventions Nos. 11, 12, 16, 27, 29, 81, 94, 105, 118, 129, 138, 141, 182
- 2 reports not received: Conventions Nos. 17, 19

Kyrgyzstan **42 reports requested**

(Paragraph 31)

- 14 reports received: Conventions Nos. 16, (17), 23, 69, 73, 92, 108, (111), 113, 126, 133, 134, 147, 154
- 28 reports not received: Conventions Nos. 11, 29, 77, 78, 79, 81, 87, 95, (97), 98, 100, 105, 115, 119, 120, 122, 124, (131), 138, (144), 148, 149, 150, (157), 159, 160, 182, (184)

Lebanon **8 reports requested**

(Paragraph 40)

- 6 reports received: Conventions Nos. 17, 19, 29, 81, 105, 122
- 2 reports not received: Conventions Nos. 138, 182

Liberia **14 reports requested**

(Paragraph 40)

- 10 reports received: Conventions Nos. 23, 29, 81, 87, 98, 105, 111, 112, 113, 144
- 4 reports not received: Conventions Nos. 108, 114, 150, 182

Luxembourg **42 reports requested**

- 41 reports received: Conventions Nos. 8, 9, 11, 12, 13, 16, 19, 22, 23, 29, 53, 55, 56, 68, 69, 73, 74, 81, 87, 88, 92, 102, 105, 108, 111, 121, 130, 133, 138, 146, 147, (149), 150, 155, 158, 166, (171), 178, 180, 182, (183)
- 1 report not received: Convention No. 129

Malaysia **4 reports requested**

All reports received: Conventions Nos. 29, 81, 138, 182

Malta **25 reports requested**

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, 147, 148, 180, 182

Mongolia	7 reports requested
<i>(Paragraph 40)</i>	
· 4 reports received: Conventions Nos. 29, 105, 111, 155	
· 3 reports not received: Conventions Nos. 138, 144, 182	
Nepal	4 reports requested
<i>(Paragraph 40)</i>	
All reports received: Conventions Nos. 29, 105, 138, 182	
Netherlands - Curaçao	9 reports requested
· 8 reports received: Conventions Nos. 11, 12, 25, 29, 42, 81, 105, 118	
· 1 report not received: Convention No. 17	
Norway	19 reports requested
All reports received: Conventions Nos. 11, 12, 19, 29, 42, 81, 102, 105, 113, 118, 126, 128, 129, 130, 138, 141, 156, 168, 182	
Panama	18 reports requested
All reports received: Conventions Nos. 11, 12, 17, 19, 29, 42, 81, 87, 100, 105, 111, 113, 114, 125, 126, 138, (167), 182	
Paraguay	8 reports requested
All reports received: Conventions Nos. 11, 29, 81, 105, 138, 156, 169, 182	
Peru	22 reports requested
· 14 reports received: Conventions Nos. 11, 12, 19, 29, 81, 102, 105, 112, 113, 114, 138, 156, 169, 182	
· 8 reports not received: Conventions Nos. 24, 25, 35, 36, 37, 38, 39, 40	
Rwanda	17 reports requested
<i>(Paragraph 40)</i>	
· 16 reports received: Conventions Nos. 11, 12, 17, 19, 29, 62, 81, 87, 94, 98, 100, 105, 111, 118, 138, 182	
· 1 report not received: Convention No. 42	
Senegal	12 reports requested
All reports received: Conventions Nos. 11, 12, 19, 29, 81, 98, 102, 105, 121, 125, 138, 182	
Slovakia	28 reports requested
· 15 reports received: Conventions Nos. 12, 17, 19, (81), 100, 120, (129), (135), 148, (154), 161, 163, 164, 167, 176	
· 13 reports not received: Conventions Nos. 11, 29, 42, 102, 105, 122, 128, 130, 138, 139, 156, 159, 182	
Slovenia	23 reports requested
<i>(Paragraph 40)</i>	
All reports received: Conventions Nos. 9, 11, 12, 19, 24, 25, 29, 56, 81, 91, (95), 102, 105, 113, 114, 121, 126, 129, 138, 156, 158, 180, 182	
Spain	23 reports requested
All reports received: Conventions Nos. 11, 12, 17, 19, 24, 25, 29, 42, 44, 81, 102, 105, 113, 114, 126, 129, 138, 141, 156, 157, 158, 182, (187)	
Thailand	7 reports requested
<i>(Paragraph 40)</i>	
· 4 reports received: Conventions Nos. 29, 105, 122, (159)	
· 2 reports not received: Conventions Nos. 138, 182	
Timor-Leste	4 reports requested
All reports received: Conventions Nos. (29), (87), (98), (182)	
Tunisia	21 reports requested
All reports received: Conventions Nos. 11, 12, 17, 18, 19, 29, 81, 87, 88, 98, 100, 105, 107, 111, 113, 114, 118, 122, 138, 150, 182	

Uganda	26 reports requested
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(Paragraph 40)

- 12 reports received: Conventions Nos. 11, 17, 26, 29, 81, 94, 95, 122, 138, 158, 159, 162
- 14 reports not received: Conventions Nos. 12, 19, 45, 87, 98, 100, 105, 111, 123, 124, 143, 144, 154, 182

United Kingdom - British Virgin Islands	20 reports requested
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All reports received: Conventions Nos. 8, 10, 11, 12, 14, 17, 19, 23, 26, 29, 58, 59, 82, 85, 87, 94, 97, 98, 105, 108

United Kingdom - Falkland Islands (Malvinas)	22 reports requested
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All reports received: Conventions Nos. 8, 10, 11, 12, 14, 17, 19, 22, 23, 29, 32, 42, 45, 58, 59, 82, 87, 98, 105, 108, 141, (182)

Yemen	17 reports requested
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(Paragraphs 31, 37 and 40)

- 13 reports received: Conventions Nos. 16, 29, 81, 87, 98, 100, 105, 111, 122, 138, 144, 182, (185)
- 4 reports not received: Conventions Nos. 19, 58, 156, 158

Grand Total

A total of 2,735 reports (article 22) were requested,
of which 2,117 reports (77.40 per cent) were received.

A total of 278 reports (article 35) were requested,
of which 265 reports (95.32 per cent) were received.

APPENDIX II. STATISTICAL TABLE OF REPORTS ON RATIFIED CONVENTIONS
AS OF 15 JUNE 2012
(ARTICLE 22 OF THE CONSTITUTION)

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Experts		Reports received in time for the session of the Conference	
1932	447	-		406	90.8%	423	94.6%
1933	522	-		435	83.3%	453	86.7%
1934	601	-		508	84.5%	544	90.5%
1935	630	-		584	92.7%	620	98.4%
1936	662	-		577	87.2%	604	91.2%
1937	702	-		580	82.6%	634	90.3%
1938	748	-		616	82.4%	635	84.9%
1939	766	-		588	76.8%	-	
1944	583	-		251	43.1%	314	53.9%
1945	725	-		351	48.4%	523	72.2%
1946	731	-		370	50.6%	578	79.1%
1947	763	-		581	76.1%	666	87.3%
1948	799	-		521	65.2%	648	81.1%
1949	806	134	16.6%	666	82.6%	695	86.2%
1950	831	253	30.4%	597	71.8%	666	80.1%
1951	907	288	31.7%	507	77.7%	761	83.9%
1952	981	268	27.3%	743	75.7%	826	84.2%
1953	1026	212	20.6%	840	75.7%	917	89.3%
1954	1175	268	22.8%	1077	91.7%	1119	95.2%
1955	1234	283	22.9%	1063	86.1%	1170	94.8%
1956	1333	332	24.9%	1234	92.5%	1283	96.2%
1957	1418	210	14.7%	1295	91.3%	1349	95.1%
1958	1558	340	21.8%	1484	95.2%	1509	96.8%
<p style="text-align: center;">As a result of a decision by the Governing Body, detailed reports were requested as from 1959 until 1976 only on certain Conventions.</p>							
1959	995	200	20.4%	864	86.8%	902	90.6%
1960	1100	256	23.2%	838	76.1%	963	87.4%
1961	1362	243	18.1%	1090	80.0%	1142	83.8%
1962	1309	200	15.5%	1059	80.9%	1121	85.6%
1963	1624	280	17.2%	1314	80.9%	1430	88.0%
1964	1495	213	14.2%	1268	84.8%	1356	90.7%
1965	1700	282	16.6%	1444	84.9%	1527	89.8%
1966	1562	245	16.3%	1330	85.1%	1395	89.3%
1967	1883	323	17.4%	1551	84.5%	1643	89.6%
1968	1647	281	17.1%	1409	85.5%	1470	89.1%
1969	1821	249	13.4%	1501	82.4%	1601	87.9%
1970	1894	360	18.9%	1463	77.0%	1549	81.6%
1971	1992	237	11.8%	1504	75.5%	1707	85.6%
1972	2025	297	14.6%	1572	77.6%	1753	86.5%
1973	2048	300	14.6%	1521	74.3%	1691	82.5%
1974	2189	370	16.5%	1854	84.6%	1958	89.4%
1975	2034	301	14.8%	1663	81.7%	1764	86.7%
1976	2200	292	13.2%	1831	83.0%	1914	87.0%

Year of the session of the Committee of Experts	Reports requested	Reports received at the date requested		Reports received in time for the session of the Committee of Ex-perts		Reports received in time for the session of the Conference	
As a result of a decision by the Governing Body (November 1976), detailed reports were requested as from 1977 until 1994, according to certain criteria, at yearly, two-yearly or four-yearly intervals.							
1977	1529	215	14.0%	1120	73.2%	1328	87.0%
1978	1701	251	14.7%	1289	75.7%	1391	81.7%
1979	1593	234	14.7%	1270	79.8%	1376	86.4%
1980	1581	168	10.6%	1302	82.2%	1437	90.8%
1981	1543	127	8.1%	1210	78.4%	1340	86.7%
1982	1695	332	19.4%	1382	81.4%	1493	88.0%
1983	1737	236	13.5%	1388	79.9%	1558	89.6%
1984	1669	189	11.3%	1286	77.0%	1412	84.6%
1985	1666	189	11.3%	1312	78.7%	1471	88.2%
1986	1752	207	11.8%	1388	79.2%	1529	87.3%
1987	1793	171	9.5%	1408	78.4%	1542	86.0%
1988	1636	149	9.0%	1230	75.9%	1384	84.4%
1989	1719	196	11.4%	1256	73.0%	1409	81.9%
1990	1958	192	9.8%	1409	71.9%	1639	83.7%
1991	2010	271	13.4%	1411	69.9%	1544	76.8%
1992	1824	313	17.1%	1194	65.4%	1384	75.8%
1993	1906	471	24.7%	1233	64.6%	1473	77.2%
1994	2290	370	16.1%	1573	68.7%	1879	82.0%
As a result of a decision by the Governing Body (November 1993), detailed reports on only five Conventions were exceptionally requested in 1995.							
1995	1252	479	38.2%	824	65.8%	988	78.9%
As a result of a decision by the Governing Body (November 1993), reports are henceforth requested, according to certain criteria, at yearly, two-yearly or five-yearly intervals.							
1996	1806	362	20.5%	1145	63.3%	1413	78.2%
1997	1927	553	28.7%	1211	62.8%	1438	74.6%
1998	2036	463	22.7%	1264	62.1%	1455	71.4%
1999	2288	520	22.7%	1406	61.4%	1641	71.7%
2000	2550	740	29.0%	1798	70.5%	1952	76.6%
2001	2313	598	25.9%	1513	65.4%	1672	72.2%
2002	2368	600	25.3%	1529	64.5%	1701	71.8%
2003	2344	568	24.2%	1544	65.9%	1701	72.6%
2004	2569	659	25.6%	1645	64.0%	1852	72.1%
2005	2638	696	26.4%	1820	69.0%	2065	78.3%
2006	2586	745	28.8%	1719	66.5%	1949	75.4%
2007	2478	845	34.1%	1611	65.0%	1812	73.2%
2008	2517	811	32.2%	1768	70.2%	1962	78.0%
2009	2733	682	24.9%	1853	67.8%	2120	77.6%
2010	2745	861	31.4%	1866	67.9%	2122	77.3%
2011	2735	960	35.1%	1855	67.8%	2117	77.4%

INDEX BY COUNTRIES TO OBSERVATIONS AND INFORMATION CONTAINED IN THE REPORT

Afghanistan

Part One: General Report, paras 121, 123
Part Two: III(a)

Bahamas

Part One: General Report, paras 117, 120, 131, 132
Part Two: I(b), (c)

Bahrain

Part One: General Report, paras 114, 121
Part Two: II(a)

Bangladesh

Part One: General Report, para. 114
Part Two: II(a)

Barbados

Part One: General Report, paras 120, 131
Part Two: I(c)

Belize

Part One: General Report, paras 114, 131, 132
Part Two: II(a)

Burkina Faso

Part One: General Report, paras 120, 121
Part Two: I(c)

Burundi

Part One: General Report, paras 120, 131
Part Two: I(c)

Cape Verde

Part One: General Report, para. 123
Part Two: III(a)

Chad

Part One: General Report, paras 116, 120, 121
Part Two: I(a), (c)

Colombia

Part One: General Report, para. 114
Part Two: II(a)

Comoros

Part One: General Report, paras 114, 120, 131
Part Two: I(c)
Part Two: II(a)

Congo

Part One: General Report, para. 114
Part Two: II(a)

Côte d'Ivoire

Part One: General Report, paras 114, 131
Part Two: II(a)

Democratic Republic of the Congo

Part One: General Report, paras 114, 120, 131
Part Two: I(c)
Part Two: II(a)

Denmark – Greenland

Part One: General Report, paras 120, 121
Part Two: I(c)

Djibouti

Part One: General Report, paras 114, 116, 120, 131
Part Two: I(a), (c)
Part Two: II(a)

Dominica

Part One: General Report, paras 114, 131, 132
Part Two: II(a)

Equatorial Guinea

Part One: General Report, paras 114, 116, 117, 120, 131, 132
Part Two: I(a), (b), (c)
Part Two: II(a)

Ethiopia

Part One: General Report, para. 114
Part Two: II(a)

Fiji

Part One: General Report, paras 114, 131
Part Two: II(a)

Georgia

Part One: General Report, paras 114, 131
Part Two: II(a)

Ghana

Part One: General Report, para. 120
Part Two: I(c)

Grenada

Part One: General Report, paras 116, 120, 131, 132
Part Two: I(a), (c)

Guinea

Part One: General Report, paras 114, 120
Part Two: I(c)
Part Two: II(a)

Guinea-Bissau

Part One: General Report, paras 117, 123, 131, 132
Part Two: I(b)
Part Two: III(a)

Guyana

Part One: General Report, para. 120
Part Two: I(c)

Haiti

Part One: General Report, paras 114, 120, 131
Part Two: I(c)
Part Two: II(a)

Iceland

Part One: General Report, paras 120, 121
Part Two: I(c)

Iraq

Part One: General Report, paras 114, 131
Part Two: II(a)

Ireland

Part One: General Report, paras 114, 120, 121
Part Two: I(c)
Part Two: II(a)

Kazakhstan

Part One: General Report, paras 117, 120, 131
Part Two: I(b), (c)

Kiribati

Part One: General Report, paras 120, 131
Part Two: I(c)

Kyrgyzstan

Part One: General Report, paras 114, 117, 120, 131
Part Two: I(b), (c)
Part Two: II(a)

Libya

Part One: General Report, paras 114, 131
Part Two: II(a)

Mongolia

Part One: General Report, para. 131

Mozambique

Part One: General Report, paras 114, 131
Part Two: II(a)

Myanmar

Part One: General Report, para. 129
Part Three: No. 29

Nigeria

Part One: General Report, paras 116, 117, 120, 121
Part Two: I(a), (b), (c)

Pakistan

Part One: General Report, paras 120, 121
Part Two: I(c)

Papua New Guinea

Part One: General Report, para. 114
Part Two: II(a)

Rwanda

Part One: General Report, paras 114, 131
Part Two: II(a)

Saint Lucia

Part One: General Report, paras 114, 131, 132
Part Two: II(a)

Samoa

Part One: General Report, paras 123, 131, 132
Part Two: III(a)

San Marino

Part One: General Report, paras 120, 131
Part Two: I(c)

Sao Tome and Principe

Part One: General Report, paras 114, 117, 120, 131
Part Two: I(b), (c)
Part Two: II(a)

Seychelles

Part One: General Report, paras 114, 117, 121
Part Two: I(b)
Part Two: II(a)

Sierra Leone

Part One: General Report, paras 114, 116, 120, 123, 131
Part Two: I(a), (c)
Part Two: II(a)
Part Two: III(a)

Slovakia

Part One: General Report, paras 120, 131
Part Two: I(c)

Solomon Islands

Part One: General Report, paras 114, 131
Part Two: II(a)

Somalia

Part One: General Report, paras 114, 116, 123, 131, 132
Part Two: I(a)
Part Two: II(a)
Part Two: III(a)

Sudan

Part One: General Report, paras 114, 121
Part Two: II(a)

Suriname

Part One: General Report, para. 114
Part Two: II(a)

Tajikistan

Part One: General Report, paras 114, 131
Part Two: II(a)

Turkmenistan

Part One: General Report, paras 123, 131
Part Two: III(a)

Uganda

Part One: General Report, para. 114
Part Two: II(a)

United Kingdom – St Helena

Part One: General Report, paras 117, 131
Part Two: I(b)

Vanuatu

Part One: General Report, paras 117, 123, 131, 132
Part Two: I(b)
Part Two: III(a)

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

OBSERVANCE BY THE GOVERNMENT OF MYANMAR OF THE FORCED LABOUR CONVENTION, 1930 (No. 29)



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

Report of the Committee on the Application of Standards

PART THREE

OBSERVATIONS AND INFORMATION CONCERNING PARTICULAR COUNTRIES

Special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Contents

	<i>Page</i>
A. Record of the discussion in the Committee on the Application of Standards	3
Document D.5	14
B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar	14
C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) to the Committee on the Application of Standards	23
D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29) (International Labour Conference, 100th Session, June 2011)	30
E. Message of the President of the Republic of Myanmar on the occasion of the May Day Ceremony	33
F. Document before the Governing Body at its 312th Session (November 2011) and Governing Body conclusions	35
G. Documents before the Governing Body at its 313th Session (March 2012) and Governing Body conclusions	49
Document D.5(Add.1)	77
H. Draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour In Myanmar	77

A. RECORD OF THE DISCUSSION IN THE COMMITTEE ON THE APPLICATION OF STANDARDS

The Chairperson of the Governing Body addressed the Committee in order to provide an overview of the outcome of the High-level Tripartite Mission that the Officers of the Governing Body had undertaken to Myanmar on 1–5 May 2012. The report of the Officers would be discussed the following week at the Selection Committee of the International Labour Conference which would undertake a comprehensive review of this question. Even though the present discussion focused on the application of Convention No. 29, the Committee would benefit from information on the broader developments to be discussed the following week, so that they could be taken into consideration.

In its March 2012 session, the Governing Body, taking into account increasingly positive developments in Myanmar, had decided that a High-level Tripartite Mission would take place to get first-hand information on the state of progress and hold discussions with Government and non-governmental representatives. The purpose was to assist the Conference, in particular, the Selection Committee, in its consideration of a review of the resolutions adopted by the Conference in 1999 and 2000 which were aimed at securing compliance by Myanmar with the recommendations of the Commission of Inquiry. The High-level Mission had met with the full cooperation and positive support of the Government and all facilities had been provided to it, allowing it to travel freely throughout the country and hold meetings with a wide range of counterparts. The discussions had been full, frank and informative. The parties with whom the Mission had held meetings included senior officials at the highest level, including the President, the Commander-in-Chief of the Defence Services, the Minister of Labour, the Minister of Foreign Affairs, the Attorney-General. The Mission had also met with employers' organizations and recently registered trade unions and opposition members of Parliament. It had had the opportunity to hold open exchanges during which the Minister of Labour had admitted that the resolutions of 1999 and 2000 had been justified and that the Government had lacked the capacity to respond appropriately at the time of their adoption.

The speaker informed the Committee of recent changes in the area of freedom of association as this was also important in combating forced labour. The Labour Organizations Law 2012 had entered into force, leading to the registration of 15 workers' and ten employers' organizations by the time of the Mission, with 40 additional applications having been processed after the Mission. The Mission had met with representatives of the workers' organizations and was completely satisfied that they were genuine worker-based trade unions. It had also met with the Chamber of Commerce and its affiliates and was equally satisfied. The development of a strong labour administration system with capacity to process the applications for registration and provide relevant advice was essential to the effective application of the law. There was recognition that there would be a need for significant ILO support in this regard. As far as the release of detainees for trade union activities was concerned, the authorities had confirmed in discussions with the Mission that the issue would be dealt with during the next amnesty. New legislation prohibiting forced labour had entered into force. On 1 May 2012, the President had issued a first statement on the abolition of forced labour which was retransmitted by the media throughout the country in all languages. The Commander-in-Chief had issued instructions to the military according to which forced labour was to cease and any members of the armed forces found to engage in these practices would be punished. The Mission had been informed that the Military Code provided for penalties which were even more significant than those envisaged in

the Penal Code. Translated copies of the instructions had been widely disseminated to ensure a high level of awareness.

The Mission had also held discussions on the situation on the ground with workers' organizations, opposition parties and 33 voluntary facilitators in the rural areas. There was strong recognition of the significant reduction of cases of forced labour and the quick reaction from the authorities once these cases were revealed. Overall, there were reports of fewer incidents, quicker reaction and greater awareness of the prohibition of forced labour. These were extraordinarily positive developments. A Memorandum of Understanding had been signed by the Government and the ILO to achieve the full abolition of forced labour by 2015. All parties were committed to moving as quickly as possible to achieve this objective by 2015 as the absolute end date. There was universal commitment in the joint working group which would oversee the strategy, to move as quickly and effectively as possible and this commitment had been reiterated by the President, the Commander-in-Chief and the Labour Minister in their meetings with the Mission.

With regard to the future relationship between the ILO and Myanmar, the report of the Officers of the Governing Body to the Selection Committee of the Conference would certainly herald a new era of relations between the ILO and Myanmar. This having been said, there was still an enormous amount of work to be done. There was cautious optimism on the ground and among the Governing Body Officers on the prospects of permanent and positive change in the country. The ILO still had a significant role to play to ensure that the commitments were implemented in full and that appropriate support was provided to the Government in this regard. The speaker concluded by thanking the Government for the full cooperation and the ILO Liaison Officer in Myanmar for the excellent organization of the Mission.

A Government representative of Myanmar indicated that within a very brief period since the advent of the new Government, Myanmar had been able to fulfil all the recommendations of the Commission of Inquiry by taking the necessary steps in the executive, legislative and judicial branches. The first recommendation of the Commission of Inquiry on the need for a legislative realignment in the context of Convention No. 29 had now been implemented with the promulgation of the Ward or Village Tract Administration Act in February 2012, which had repealed the Village Act and the Towns Act of 1907. The definition of forced labour in the new Act directly derived from Convention No. 29 and section 27A of the Act outlawed and penalized the use of forced labour. The Act also enacted penalties carrying the same gravity as section 374 of the Penal Code. The second recommendation of the Commission of Inquiry was to take concrete action through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. The ILO Liaison Officer had been appointed in 19 March 2002 to assist the Government in its efforts to ensure the prompt and effective elimination of forced labour in the country. A complaints mechanism for victims of forced labour had first been established in 2007 and had been functioning smoothly since then. Even though these days, the mechanism was receiving a higher number of complaints, the incidents of the exaction of forced labour by both civilian and military authorities had been declining. This trend had been confirmed by the ILO Liaison Officer in his report. The Office of the Commander-in-Chief of the Defence Services had recently issued relevant orders. The Order issued on 21 March 2012 was a reminder advising all military personnel that strict and stern military disciplinary action should be

taken against perpetrators of under-age recruitment in the military. The Orders issued on 10 and 20 April 2012 required that the new law, making forced labour a criminal offence, also applied to the military and also that the military personnel accused of the use of forced labour should be prosecuted under section 374 of the Penal Code. Copies of some of the Orders had been transmitted to the ILO Liaison Officer in Myanmar.

A Memorandum of Understanding signed by the Government of Myanmar and the ILO on 16 March 2012 provided the framework for a comprehensive strategy for the full elimination of forced labour in Myanmar by 2015 at the latest. In the context of this framework, a draft Action Plan had been developed and finalized on 21 May 2012 and was expected to be approved in due course. The draft text was now available as a Conference document. The speaker assured the Committee that the total and complete elimination of forced labour in Myanmar would be achieved, well before the deadline of 2015. In order to alleviate the possible sources of forced labour, necessary budget allocations had been made for the payment of wages for public works at all levels for the 2012–13 fiscal year. The local governments were allowed by law to request additional funds to meet the actual cost for community infrastructure or service work. Advocacy and awareness-raising activities played a vital role in the efforts to eliminate forced labour. In addition to training courses, seminars and educative talks to all stakeholders, the brochure on forced labour and the complaints mechanism had been distributed widely in Shan, Kayin (Pwo), Chin, Kayah and Myanmar languages. It would also be distributed in Kayin (Sgaw), Rakhine and Mon languages soon.

The speaker referred to the message conveyed by the President of Myanmar on the occasion of May Day (Workers' Day) on 1 May 2012, a section of which read as follows: "Our elected Government has been in office for over a year and it is high time we should eliminate all forms of forced labour once and for all for enhancing the eternal principles of justice, liberty, equality in the Union. Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily. Therefore, the process of eradicating forced labour in Myanmar has been accelerated and the International Labour Organization and the Government of the Republic of the Union of Myanmar have launched a Joint Strategy for the absolute elimination of forced labour in Myanmar by 2015." The full text of the President's message had been widely published in the national media and reproduced in full on the front pages of the national press, in both English and the Myanmar languages.

The third recommendation of the Commission of Inquiry was that the penalties which might be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour should be strictly enforced, in conformity with Article 25 of Convention No. 29. As the penalty stipulated in the Ward or Village Tract Administration Act was the same as the punishment stipulated under section 374 of the Penal Code, the Government believed that the recommendation had now been implemented. Since the establishment of the complaints mechanism, military disciplinary measures had been taken against 166 military personnel (27 officers and 139 members of other ranks) for committing offences of forced labour and under-age recruitment. To date, action had been taken under section 374 of the Penal Code against 28 officers and 142 other officials supervising the recruitment process. Five military personnel had been prosecuted under the Penal Code in accordance with the new Order issued by the Commander-in-Chief of the Defence Services.

In the light of the above measures taken by the Government, Myanmar had sufficiently implemented the de-

cisions of previous Conferences and the Governing Body and was now adequately compliant with the recommendations of the Commission of Inquiry. The Government's genuine political will and sincere cooperation with the ILO was not limited to the implementation of the Convention. In order to provide the Committee with a fuller picture of this cooperation, the speaker informed the Committee of recent significant developments relative to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The Labour Organizations Law, which had entered into force on 9 March 2012, provided for the formation of more than one Confederation in the country. There were currently 15 workers' and ten employers' organizations registered under the Labour Organizations Law and another 26 were in the process of registration. The speaker was pleased to inform the Committee that a Workers' delegate from Myanmar who had been democratically elected by the workers' organizations, was attending the current session of the Conference. On the sidelines of the Conference, a meeting had taken place on 29 May 2012 between representatives of the Government and Mr Maung Maung, Secretary-General of the Federation of Trade Unions of Burma (FTUB). During the discussion, the modalities of the return to the country of Mr Maung Maung had been discussed as well as the issue of registration of the FTUB under the existing law. Both sides considered that the meeting was positive and that progress had been made. Representatives of the ILO and the International Trade Union Confederation (ITUC) had also been present at the meeting.

These encouraging and tangible achievements in the promotion and protection of the rights and well-being of workers had led to a recent visit of the Officers of the Governing Body to Myanmar. In their report, the Officers shared the view that it was now time to recognize the extent of positive change in Myanmar and also that consideration should be given to the needs of its 60 million citizens. The Mission had also concluded in their report that the legislative changes introduced by the new Government were increasingly taking effect. The Government was of the view that it was irrelevant and unjustifiable to keep the 1999 resolution, which had been adopted at the time on the reasoning that the Government had failed to take necessary action to implement the recommendations of the Commission of Inquiry. It would also be inappropriate to keep the 2000 resolution, which was adopted to secure the compliance of Myanmar with the recommendations of the Commission of Inquiry. Both the 1999 resolution and the 2000 resolution came as a package linked to the implementation of the three recommendations of the Commission of Inquiry. Myanmar was now adequately compliant with all these conditions and, therefore, it would only be just, fair and equitable to lift both resolutions in their entirety. Therefore, a strict and equitable legal interpretation should be applied when the Conference reviewed its resolutions.

The consideration for lifting the resolutions together with the actions they called for, should be based solely and logically on the merits of Myanmar's compliance with the recommendations of the Commission of Inquiry on Convention No. 29. It should not be linked to any other unrelated issues or circumstances. The international community and the ILO in particular, should duly recognize the tangible results, the tireless efforts and the commitment of the Government of Myanmar in implementing the recommendations of the Commission of Inquiry. Time was now ripe for workers in Myanmar to receive fair and equitable treatment from the international community, including the ILO, on a par with workers in other member States of the Organization. The 2000 resolution paid particular attention to the activities of other international organizations. In this context, the recent official visit to Myanmar by the Secretary-General of the United Nations

reflected the move towards engagement with Myanmar by the United Nations and other organizations in the multi-lateral system. The Secretary-General in his speech to the joint session of Myanmar's Parliament had urged the international community "to go even further in lifting, suspending or easing trade restrictions and other sanctions".

In this new era of Myanmar, one of the immediate priorities of the new Government was job creation and income generation. But the Government alone could not achieve this task. It needed a helping hand from the international community and from the ILO in particular. So long as the Conference resolutions remained in place, an adequate flow of foreign direct investment would not be directed towards the country. And the latter would not be able to benefit from the Generalized System of Preferences for its export industries. The workers would be the ones to suffer in that scenario, as they were the most vulnerable members of society. In the best interests of the workers, the resolutions on Myanmar should come to an end at the current session of the Conference. Any further delay in lifting the resolutions would not improve their livelihoods. The thoughtful and sympathetic consideration of this Committee would be vital to making a big difference to the workers. The speaker concluded by emphasizing that, in accordance with the primary goal of the ILO which was to achieve social justice, the Government had high hopes that the current session of the Conference would favourably consider doing justice to the workers of Myanmar, in a fair and logical manner, by lifting the resolutions on Myanmar.

The Employer members thanked the Government for the very helpful information. This year's special sitting on the observance by Myanmar of Convention No. 29 was of fundamental importance, especially in light of the developments that had recently occurred in the country. The Employer members welcomed the report and the proposals of the High-level Tripartite Mission, touching on three main points: (i) the need to lift previous limitations on ILO technical cooperation and assistance, allowing such cooperation and assistance to be available to the Government on all issues within the ILO's mandate; (ii) the need to allow the Government, and its social partners, to participate fully in all ILO activities, including meetings, symposia and seminars; and (iii) the need to suspend reporting obligations of ILO's constituents regarding their relations with Myanmar until 2013. Continued communication, transparency and collaboration between the Government, the ILO and the social partners had been and would continue to be key in this regard. It was by its continued participation in tripartite efforts at the local, national and international levels that the Government would be able to demonstrate unambiguously its willingness to address the relevant issues and comply with the Convention. The genuine willingness of the Government to effect change was supported by a clear and precise statement made in May 2012 by the President of Myanmar, in which he had communicated the Government's commitment to eliminate all forms of forced labour "once and for all".

The Employer members welcomed the Memorandum of Understanding by the ILO and the Government on a joint strategy to eliminate all forms of forced labour in Myanmar by 2015 which had been signed during the March 2012 session of the Governing Body. The elaborated and detailed Action Plan was welcomed by the Employer members who looked forward to further information from the new Working Committee on the Joint Strategy for the Elimination of Forced Labour with regard to progress made in its implementation. With regard to legislation, it was important to refer to the newly adopted Labour Organizations Law, which was key to facilitating freedom of association and genuine dialogue between the social partners in the country. The Employer members welcomed the confirmation of the Mission that legislative changes

had been made with a view to securing compliance with Convention No. 29. Such legislative changes included the repeal of the Village Act and the Towns Act of 1907, through the adoption of the Ward or Village Tract Administration Act in 2012, section 27 of which built on the definition of forced labour in Convention No. 29 and stipulated that "anyone who exacts work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily shall be punished" by imprisonment or fine. They viewed this new law as an important step towards the abolition of forced labour throughout Myanmar, and emphasized the importance of the full implementation of the new legislation. The Employer members requested clarifications concerning article 359 of the Constitution, which exempted from the prohibition of forced labour "duties assigned by the Union in accordance with the law in the interest of the public". This provision still allowed much discretion for the exaction of forced labour and they trusted that it would be amended forthwith and brought in line with the Convention.

With regard to the military, the Commander-in-Chief had stated that provisions of the new Ward or Village Tract Administration Act also applied to the military and that any personnel accused of forced labour, and specifically under-age forced recruitment, would be prosecuted under the Penal Law. The Commander-in-Chief had also issued Orders instructing that no civilian personnel should be used in military support activities of any kind and that any civilian labour needed should be freely engaged and paid. Information had been received on 166 military prosecutions, with penalties ranging from reprimands, loss of promotions, fines, demotion, discharge and imprisonment. Since the last session of the Conference, for instance, five military personnel had been prosecuted under the Penal Code. The Employer members commended the Government on the progress that had been made to address the use of forced labour by members of the military, including the investigation, prosecution and punishment of perpetrators, and the initiation and continuation of direct discussions with the armed forces. They encouraged the Government to monitor the situation concerning forced labour in the military to ensure the continued application of the recently issued Orders. The Employer members were also encouraged by the news, having been noted by the Committee of Experts on the Application of Conventions and Recommendations and the Governing Body, of an increased discharge of under-age military recruits and previously detained labour activists. They hoped for the Government's continued cooperation in locating and releasing other activists in detention, and in discharging and reintegrating other under-age recruits.

They noted that the budget for the 2012–13 fiscal year, currently under development, foresaw that provisions would be made for the payment of wages for public works, with allocations in the budget in the ratio of 60 per cent for materials and 40 per cent for labour. Additionally, provision would be included allowing for supplementary allocations, if local authorities required additional funds to meet operational demands, including for the cost of labour. They expressed appreciation at these changes as they believed that the allocation of funds for appropriate remuneration was an important step in alleviating pressures that might contribute to the use of forced labour by civilian authorities. The Mission had also indicated that a brochure explaining the law pertaining to forced labour and available complaints mechanisms was in the process of being translated into a number of national languages. Increased access to such information was important to timely investigation, and where necessary, prosecution and punishment of forced labour. The Employer members welcomed the news, noted by the Governing Body, of an increased resolution of complaints in the Magwe region, noting that the investigation into

and resolution of disputes was critical to demonstrating that the use of forced labour would not be tolerated. Clarifications were requested on the issue of protection from negative repercussions due to initiating complaints. From the report of the Mission, it appeared that the environment for complaints to be made had changed but there was still a need to ensure that complainants faced no obstacles or consequences from raising issues under the Supplementary Understanding complaints mechanism.

The Employer members considered that the abolition of forced labour was but one facet in the promotion of international labour standards and that the Government should continue with the newly established policies towards civil rights and social justice. Despite progress being made in a number of issue areas, the Employer members underlined that the newly elected member of Parliament Ms Aung San Suu Kyi had cautioned that the rule of law, which had yet to be established completely, was a necessary precondition for real democracy and change. While the ILO Liaison Office had contributed much to the improvements in Myanmar since its establishment in 2007, the extension of the Supplementary Understanding had not relieved the Government of its own obligations to take all outstanding measures to abolish the use of forced labour. The Employer members reiterated their support for the Joint Strategy between the ILO and the Government. As the full abolition of forced labour was still to be achieved and instances of forced labour still occurred, the Government should work quickly on the Joint Action Programme and bring about the total abolition of forced labour as soon as possible. The Employer members trusted that the ILO would be able to do its part in assisting the Government and the social partners in this regard.

The Worker members observed that although the Conference Committee was meeting yet again especially to address the case of forced labour in Myanmar, it was the first time that it could report the existence of changes. These had occurred so rapidly that the Committee of Experts for the Application of Conventions and Recommendations had not yet been able to review and assess the new developments relating to the implementation of the 1998 recommendations of the Commission of Inquiry. The Commission of Inquiry had made three recommendations to the Government: to bring the legislative texts into line with Convention No. 29; to eliminate the practice of forced labour imposed by the authorities, in particular the military; and to strictly enforce the applicable criminal penalties. Furthermore, the Government had been required to take a number of specific measures immediately: to disseminate specific instructions to the civil and military authorities; to ensure extensive publicity of the prohibition on forced labour; to allocate financial resources in order to pay workers who had been hired for forced or unpaid labour; and to implement the prohibition on forced labour.

The Worker members noted that the Village Act and the Towns Act of 1907 had finally been repealed and replaced with a new law which stated explicitly that the use of forced labour was a criminal offence. Although the Committee of Experts still needed to examine the conformity of this new law with Convention No. 29, the Worker members already noted that the applicable penalties were not in line with the Convention. They recalled that the Committee of Experts had stated, in its 2007 General Survey on forced labour, that the imposition of just a fine or a maximum one-year prison sentence could not be considered effective, given the seriousness of the offence and the dissuasive effect that the penalties should have. The Worker members also observed that article 359 of the National Constitution still permitted labour imposed by the State in the interest of the public, which amounted to a blanket authorization for the use of forced labour.

With regard to the changes that had been observed, the Worker members noted that: (1) the instructions concerning the ban on forced labour had been addressed to the civil and military authorities and that complainants no longer seemed to be harassed or prosecuted for having lodged a complaint; (2) a simple leaflet explaining the legislation on forced labour and the channels of appeal had been disseminated in the official language as well as in several local languages; (3) the next budget provided for initial allocations for the funding of public works; and (4) further penalties for forced labour had been established. However, the penalties were administrative or disciplinary rather than criminal, except in certain cases of forced under-aged recruitment in the army. Although progress had been made, it was limited. Even though the use of forced labour had decreased in scale, the use of compulsory labour and also the confiscation of land were still sources of concern in several regions of the country, according to recent reports. The Worker members had always affirmed that the absence of democracy and of freedom of association perpetuated forced labour. The previous year, changes had been recorded in the political landscape rather than in the social sphere. Even though some trade unionists and political prisoners had been freed in the meantime, others were still in prison.

A new law had been adopted to provide a framework for the operation of trade unions, for collective bargaining and for the settlement of labour disputes. Furthermore, in March 2012, a new Memorandum of Understanding between the Ministry of Labour and the ILO had been signed, followed this week by a joint Action Plan which established an overall strategy to completely eliminate forced labour by 2015.

The Worker members welcomed the admirable work done by the ILO Liaison Officer, despite the lack of available resources, in the areas of awareness raising, the collection of complaints and the release of young people recruited into the army. However, they recalled that while the Supplementary Understanding was a valuable instrument, other levers were also needed to reach the objective of eliminating forced labour and re-establishing freedom of association. The social partners should also be involved in the development and implementation of this Supplementary Understanding. The same applied to the new joint Action Plan. The Worker members expressed their concern that the new Joint Strategy fell short of the stated objectives. The time frame given for the abolition of all forced labour was very long, even too long. In addition, the Action Plan did not contain any objective as regards criminal prosecution, nor did it define any specific progression or make provision for sufficient financial resources for the commitments listed.

In a new and promising situation, it was important to assess the efforts of the ILO and draw conclusions for future action, particularly because foreign investment was going to flow into the country without a legal framework and without any guarantee of conditions for decent work.

An observer representing the International Trade Union Confederation (ITUC), the Secretary-General of the FTUB, indicated that the consensus within the Committee with regard to the violations of workers' rights in Burma and then Myanmar had been outstanding for the last 20 years. Although improvements had been seen in the country, including less forced labour and fewer child soldiers, and action had been taken against perpetrators, not all was well, and more needed to be done. The FTUB had objected to the recently concluded Memorandum of Understanding because it allowed for violations concerning forced labour to continue for another three years, until 2015. There was also no comprehensive report on the impact of the extensive training provided by the ILO Liaison Office and a lack of logic underpinning the three-year Action Plan. The FTUB considered that the Action Plan

was more or less repeating the work of previous years and believed that the method should be changed.

Referring to the public statements made by the President and the Commander-in-Chief, who had committed themselves to the total eradication of forced labour, the speaker queried why it would take another three years to achieve this goal. Despite the emphasis placed by the President in his speech to National Parliament of 1 March 2012 on the rule of law, the eradication of forced labour was still not associated with the prosecution of perpetrators or the imposition of penalties in the country.

An alternative approach proposed by the FTUB was to launch, as a country, an "End forced labour by the end of 2013" campaign. He indicated that everybody in the Committee would surely be more than happy to see this concerted campaign for a total eradication of forced labour. The FTUB called for an examination of available resources which should be put towards coordinated action. Examples would include requesting the Democratic Voice of Burma (DVB) to launch TV and radio broadcasts aimed at the eradication of forced labour in various ethnic languages (the DVB already had the human resources and funding provided by the Norwegian Government which could be supplemented by the ILO); discussing with respective ethnic organizations that had entered ceasefire talks to help with translation into their languages, and with distribution and documenting (resources could be provided by the ILO); supporting and encouraging the reports of forced labour through the newly established communications offices of the ethnic nationalities (resources could be provided by the ILO); educating, supporting and requesting the Parliamentarians to raise awareness among their own constituents; raising awareness, and having discussions with the employers and requesting those who had ventures in rural areas to enforce the calls by the President and the Commander-in-Chief for the eradication of forced labour (some companies had already done so when there had been threat of legal action against them); and collaborating with the many non-governmental organizations and civil society organizations that had already been working on the eradication of forced labour in order for them to be a part of the campaign – the trade unions could be the bridge between them and the Government. Such action would allow the people to understand that the eradication of forced labour was a national issue, and that it affected the way in which the country was perceived by the rest of the world.

The FTUB was ready to discuss this alternative approach with both the ILO and the Government. This approach would allow the whole population to become part of the campaign and become part of helping the country. The FTUB proposed this people-oriented approach to eradicate forced labour in one and half years instead of the three-years set out in the Action Plan (half-year for preparation and one year for implementation), followed by independent reporting to the ILO by all concerned. This approach was more participatory, more transparent, less costly, less rigid and provided space for the people to take an active part in the eradication of forced labour.

The Government member of Denmark, speaking on behalf of the Governments of Member States of the European Union (EU) attending the Conference, as well as the Acceding Country (Croatia), the Candidate Countries (The former Yugoslav Republic of Macedonia, Montenegro, Iceland and Serbia), the European Free Trade Association Country (Norway) and the Republic of Moldova, welcomed the statement by the Government representative of Myanmar/Burma. They had followed with respect and appreciation the historic changes in the country over the past years and encouraged the wide ranging reforms to continue in a partnership with political and civil society actors. They were pleased to be able to welcome Ms Aung San Suu Kyi at the Conference the following week. Although these reforms would need time to bear fruit, the

peaceful nature of the process and the readiness of the parties to work toward the same goals, with a shared vision for political, social and economic reforms, should be praised. They welcomed the concrete steps taken by the Government to eliminate the use of forced labour and to comply with the recommendations of the Commission of Inquiry, which, as acknowledged by the Government, had been justified.

While welcoming the basic legislation put in place to meet the first recommendation of the Commission of Inquiry, the speaker stated that they expected the Government to ensure full implementation of the legislation to ensure without delay that no forced or compulsory labour was imposed by the authorities, including the military, inside or outside conflict zones. The awareness-raising activities at community level and with Government authorities, including the police and the military was welcomed. The ILO and the Government were encouraged to continue these activities and to ensure widespread distribution of the information brochure in all relevant languages. Stressing that forced labour must be eliminated in practice, the Governments on whose behalf he spoke, regretted that incidents of forced labour continued to be reported, albeit at a substantially reduced level over the last few months. The presentation by the Government of the joint Action Plan for the full elimination of forced labour by 2015 was also welcomed. Its implementation was important to meet the recommendations of the Commission of Inquiry. They noted the effective prosecution of forced labour perpetrators which demonstrated the Government's willingness to implement Convention No. 29 and encouraged the Government to continue to apply the law against any offenders, including civilians and military. The Government activities to protect its workers abroad and their rights should be welcomed and reflected in domestic policy as well.

The EU would like to collaborate actively and constructively with the country, to assist the reform process and to contribute to economic, political and social development. All actors would be assisted in their endeavour to strengthen the rule of law and the respect for human rights. European companies would be encouraged to explore trade and investment opportunities, notably by promoting the practice of the highest standards of corporate social responsibility, on the basis of all the internationally recognized instruments and principles on corporate social responsibility and multinational enterprises.

Recognizing that two recommendations of the Commission of Inquiry had been fulfilled, they encouraged the authorities to avail themselves of ILO assistance to ensure full compliance with the third recommendation to eliminate in practice forced labour from the country, if possible before 2015 as had been expressed by the Government representative of Myanmar.

The Government member of Viet Nam, speaking on behalf of the Government members of the Committee who are Member States of the Association for Southeast Asian Nations (ASEAN), welcomed the positive developments in Myanmar and the commitment of the Government to implement democratic reforms, promote national reconciliation, and support socio-economic development. The international community, including the Secretary-General of the United Nations, had recognized that significant progress had been achieved. ASEAN echoed the Secretary-General's call for the international community to lift or suspend trade restrictions on Myanmar. They also expressed appreciation for Myanmar's continued cooperation with the ILO in the context of the relevant ILO Conventions. Efforts to promote and protect the rights of workers in Myanmar were gaining momentum. They noted with satisfaction the political commitment made by the President of Myanmar on 1 May 2012 to eliminate all forms of forced labour. Although progress had been achieved, it was acknowledged that challenges remained.

The Government of Myanmar was encouraged to continue to engage with and seek assistance from the international community, including the ILO. They called upon the ILO to reciprocate Myanmar's genuine efforts, tangible achievements and continued political will in eliminating forced labour by reviewing the resolutions adopted at the 87th and 88th Sessions of the Conference in 1999 and 2000, and lifting the restrictions prescribed in these resolutions. Such restrictions were incompatible with the current status of Myanmar's compliance with the ILO's requirements, and their immediate removal would constitute a positive step by the ILO and lead to the creation of jobs and income generation.

The Government member of Japan expressed his Government's appreciation for the positive developments concerning forced labour in Myanmar and acknowledged both the dedicated work of the ILO and the proactive steps being taken by the Government. The promulgation of the Ward or Village Tract Administration Act, which penalized forced labour, was welcomed and the successful completion of the Mission to Myanmar by the Officers of the Governing Body was commended. He stated that the actual incidents of forced labour must be fully eradicated, including by prohibiting the recruitment of under-age soldiers by the military, and the recent orders issued in this regard were welcomed. The speaker indicated the expectation that the joint Action Plan related to the prohibition of forced labour would be enacted in a timely manner. Regarding the resolutions adopted at the 87th and 88th Sessions of the Conference, an appropriate response should be developed given the concrete progress taking place in Myanmar.

The Worker member of France recalled that, despite the recommendations of the Commission of Inquiry, forced labour persisted. Referring to specific examples, she recalled that land was still being confiscated; the military was still forcing people to build roads and bridges; children were still being conscripted into the army by force; and citizens were still being used to clear mines. Since the 2011 session of the Conference, cases of forced labour involving the carrying of sacks of rice or water for the armed forces and building military bases or roads had been reported, affecting children as well as adults. Such examples showed that, even though some progress had been made, particularly in terms of communication on the subject of forced labour, the practice was still a reality that must be eradicated immediately, without waiting for the 2015 deadline. The persistent nature of the problem made it necessary to hold the regular special sitting on Myanmar again during the next session of the Conference, in 2013. From then on, all trade unions, including the FTUB, should be able to enjoy complete freedom of association, so that they could fight forced labour more effectively, and the charges still pending against Mr Maung Maung and the FTUB activists and officials should be dropped to allow them to resume their trade union responsibilities.

The Government member of the United States noted that over the past few months, the Conference Committee had witnessed a dramatic change in the way the issue of forced labour was addressed by the Government. The changes in law and policy indicated that efforts were under way to finally eradicate the practice of forced labour. Her Government welcomed and strongly endorsed these efforts and urged the Government to ensure that they were definitively achieved as soon as possible. The reports of the recent tripartite ILO Mission and of the ILO Liaison Officer described the many initiatives being undertaken by the Government. The repeal of the Village Act and the Towns Act and the passage of the amended Ward or Village Tract Administration Act of 2012 was encouraging. Her Government commended the Government for signing the Joint Strategy for the Elimination of Forced Labour with the ILO and for creating an inter-agency process so

that all components of the Government could address these issues. Her Government also applauded the President for his strong commitment to eliminate forced labour, as expressed in his May Day message, and Parliament's actions to advance important legislation. However, she noted that the real test would be the extent to which these changes were realized in practice and were sustainable. There were significant challenges in achieving the goal of eliminating forced labour by 2015. Much work would have to be done to ensure that the legal system had the means to implement the new laws, that rural authorities were empowered to root out forced labour at the local level and that all citizens were aware of the legislative changes. A substantial reduction in the use of forced labour had been reported, but there were many credible reports of it continuing. A transparent monitoring mechanism should be developed and implemented so that the Government and the ILO could evaluate progress being made. The addition of a new international officer to the ILO Office would help support its mission. Her Government endorsed expanding both the size and scope of the ILO Office in the country and its programmes. The continued use and expansion of the complaints mechanism developed in the 2007 Supplementary Understanding was also supported.

The Government member of Thailand indicated that his Government aligned itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. The encouraging developments in Myanmar with regard to the observance of the Convention and the implementation of the recommendations of the Commission of Inquiry were welcomed. The international community had witnessed much progress in Myanmar within the first 14 months of the new Government: the broadening of political space, the improvement of the legislation and the establishment of the National Human Rights Commission, among others. Myanmar's ongoing efforts were coupled with serious commitment, political will and action, as demonstrated by the signing of the Memorandum of Understanding on the elimination of all forms of forced labour by 2015, on the basis of which a joint Action Plan was being prepared. Although many challenges remained, it was important that the international community recognized and supported these efforts. Fair recognition of the positive efforts by the Government was important to nurture the much needed social and economic development. It was therefore important to lift the measures enunciated in the 1999 and 2000 Conference resolutions, to review the international community's means of engagement and to support the efforts and aspirations of Myanmar.

The Government member of New Zealand, speaking also on behalf of the Government of Australia, recalled the three recommendations of the 1997 Commission of Inquiry. She noted that significant and tangible progress had been made by the Myanmar authorities towards compliance with the Commission of Inquiry's recommendations over the past 12 months, including the enactment of new legislation that repealed the Village Act and the Towns Act of 1907. The new legislation also specifically prohibited forced labour by any party; made such action a criminal offence; and specified penalties under the Penal Code for those persons convicted of acting contrary to the new law. The speaker welcomed the new legislation, commended the President for his commitment to the eradication of forced labour in Myanmar, and expressed support for the Order issued by the Commander-in-Chief of the Defence Services, stating that the new legislation applied equally to the Defence Services. This demonstrated legal and political will. Nevertheless, she noted that such promising developments did not automatically mean that forced labour was no longer present or occurring in Myanmar, and there was a long road ahead. In this regard, the Governments of New Zealand and Australia welcomed the joint Action Plan that had been agreed to by

the Myanmar Government with the ILO, which established specific objectives, set timelines for the commencement and completion of each activity, and stated who was responsible for both delivery of and funding the activity. The joint Action Plan should go a long way towards eliminating forced labour in Myanmar. The Myanmar Government and the ILO were called upon to ensure that they made available both the human and financial resources necessary to fulfil the obligations under the Plan.

The Government member of Indonesia indicated that his Government associated itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. His Government supported the democratization and national reconciliation process in Myanmar and believed that this process would be of benefit to the country's economic development. Parliamentary elections had run smoothly and safely, positive measures had been taken by the Government to establish a better democratic system, and the Government had committed itself to eradicating forced labour. The extension of the Supplementary Understanding and awareness-raising activities on the complaints mechanism for victims of forced labour, the recent release of labour activists from prison, and the adoption of the legislation repealing the Village Act and the Towns Act of 1907, implied the strong commitment of the Government to protect the rights of its people and eradicate forced labour. While there was still a lot to do, Myanmar had shown its full commitment to the implementation of the recommendations of the Commission of Inquiry. His Government would continue to support Myanmar in implementing various programmes to improve democracy and labour conditions.

The Worker member of Australia stated that it was the task of the Conference Committee to examine progress made by the Burmese Government in implementing the recommendations of the Commission of Inquiry. She regretted that despite measurable improvements in other areas, progress was limited with respect to the recommendation that perpetrators of forced labour, whether civil or military, were prosecuted under the Penal Code, and that sufficiently dissuasive sanctions were applied. Legal provisions providing for the prosecution and sanctioning of perpetrators of forced labour were in place. Section 374 of the Penal Code provided for the punishment of anyone who unlawfully compelled any person to labour against his or her will, and imposed a punishment of up to one year imprisonment. In addition, recent legislation, the Ward or Village Tract Administration Act, defined forced labour and provided for the criminal prosecution of perpetrators. Nevertheless, the speaker stated that there was as of yet no evidence of investigations, prosecutions or sentencing of those found guilty on a scale commensurate with the scale of the problem. It was encouraging that the Committee of Experts on the Application of Conventions and Recommendations in its report published in 2012, noted that the Government had provided information on administrative and criminal action taken with respect to a number of military personnel responsible for the recruitment of minors. The ILO Liaison Officer's report to the Conference Committee detailed more progress with 166 prosecutions under military regulation in response to complaints made under the complaints mechanism, and the prosecution of five military personnel under the Penal Code. In addition, one officer of the Land Records Department had been dismissed for his responsibility in relation to a forced labour complaint. Moreover, the Officers of the Governing Body noted in their Mission report that they were encouraged by the explicit commitment of the Government and the Commander-in-Chief of the Defence Services to prosecute and punish all perpetrators of forced labour in accordance with the Penal Code. However, this commitment had not yet been supported by major and sustained efforts to ad-

dress the culture of impunity that had long prevailed in the country, and the longstanding and pervasive violations of workers' rights needed to be addressed. The speaker emphasized that if forced labour in Burma were to be eliminated, there must be the rule of law, and legislation consistent with international standards must be enforced through an independent, professional judicial system. An independent and impartial judiciary was critical to ending and preventing other human rights abuses that were committed in Burma and to ensuring that the positive developments that had been seen taking place in recent months were sustained. It would similarly ensure that increased foreign investment into Burma was done in a way that respected human rights and benefitted the Burmese people.

The Government member of Cuba stated that her Government recognized the efforts that the Government of Myanmar had been making to eliminate forced labour and to comply with the Convention, in particular the legislative reform currently under way which aimed at restoring the country's judicial system and bringing its legislation into line with the Convention. Under the new Ward or Village Tract Administration Act, forced labour was classified as a crime and perpetrators were liable to severe penalties. Other provisions were also being reviewed. She drew attention to the signing of the Memorandum of Understanding between the ILO and the Government of Myanmar, under which a strategy had been designed to eliminate all forms of forced labour by the year 2015, and to the Government's intention to reach that goal in advance of the date set. She stressed that the strategy was to be carried out on the basis of continuing technical cooperation and dialogue.

The Government member of the Russian Federation recalled that for a number of years, the observance by the Government of Myanmar of the Convention had been under review by the ILO supervisory bodies, the Governing Body and the Conference. While recognizing the efforts of the ILO leadership to address the problem of forced labour in Myanmar, his Government considered that no notable success could have been achieved without the political will demonstrated by the Government. Practically all of the recommendations of the Commission of Inquiry had been implemented or were being implemented: the legislative framework had been improved; criminal responsibility for acts of forced labour had been reinforced; and the message of the President reaffirmed the Government's commitment to the eradication of forced labour. Together with the ILO, the Government of Myanmar had created a special mechanism to address the issue of forced labour and had drafted a Joint Strategy for the elimination of forced labour. The ILO Liaison Officer continued his work in the country and the Government had created all the necessary conditions therefor. Any future progress would depend on the amendment of the legislation regulating activities of independent trade unions so as to make it less restrictive, as well as on the enhancement of the authority of trade unions and strengthening their role in the society. The Government of Myanmar was called upon to continue to raise awareness on the issue of forced labour among its population and to take the necessary measures in order to ensure that all cases of forced labour were investigated and prosecuted. His Government considered that it was time to review the actions called for by the 1999 and 2000 Conference resolutions and indicated that his Government was ready to play its part in this regard during the current session of the Conference.

The Government member of Canada indicated that her Government welcomed the Governing Body's report findings that Burmese authorities had taken meaningful steps over the past few months to follow through on their commitment to improve the human rights and democracy situation in the country. These steps had included the re-

lease of hundreds of political prisoners, meaningful engagement with the opposition members, the adoption of new legislation and cooperation with the ILO to address the use of forced labour. In response to these developments, the Government of Canada had eased its economic sanctions in April 2012. However, significant concerns remained, including the continued detention of political prisoners, the conflict in the Kachin State and the continued prevalence of forced labour, particularly in conflict areas. The Government of Canada therefore urged the Burmese authorities to continue to implement reforms and cooperate with the ILO to ensure that proper policies and practices were put in place to eliminate forced labour and that new laws and policies were implemented fully and transparently. Her Government would continue to support those working to promote human rights and democracy for the Burmese people.

The Worker member of Italy acknowledged the great efforts in the eradication of forced labour by the ILO Liaison Office and recognized the positive political commitment and the adoption of legislative measures by the Government of Burma. The speaker noted that the Worker members had continuously underlined that the eradication of forced labour could only take place if the Government adopted and implemented without further delay the necessary financial, legislative and administrative measures foreseen in the Commission of Inquiry recommendations. She underlined that despite such progress, not all of the Commission of Inquiry's recommendations had yet been met. She recalled that the November 2011 Governing Body had regretted "the absence of consultation" in the elaboration of the new law repealing the Village Act and the Towns Act, which the January 2012 High-level Mission had requested be brought into conformity with the Convention, particularly on sanctions for the perpetrators. She expressed concern that the new law did not meet these requirements. Regarding the Memorandum of Understanding on a comprehensive joint strategy for the elimination of all forms of forced labour by 2015, she expressed disappointment that the Governing Body had not previously discussed a draft of this document and that the Worker members had only received a copy thereof the previous day. The Worker members had previously criticized this last minute approach, and had asked for broad consultation with the FTUB and the international trade union movement in the definition of such Joint Strategy. The speaker noted that the ILO Liaison Office operated under an extremely heavy workload, and had limited capacity to service an increasing number of complaints, which resulted in a backlog of unprocessed complaints. She advised that the Conference Committee needed to tackle the causes of such constraints in order not to undermine the quality of the ILO's role in Burma. With regard to the Memorandum of Understanding and its related Action Plan, she noted that the stated deadline for the elimination of forced labour by the end of 2015 was not in line with the Commission of Inquiry's recommendations, which requested the elimination of forced labour without delay. In this regard, she urged the Government of Burma and the Office to amend the strategic objective, which should be the immediate elimination of forced labour, through specific actions and clear benchmarks to measure progress. She requested that the special sitting mechanism continue until forced labour was fully eradicated. Similarly, the Memorandum of Understanding and the Action Plan needed to be revised to ensure that the FTUB was included as an integral part of all activities, and that language be added regarding the legislative amendments of the land acquisition law and of article 359 of the Constitution. Due to the noted scarcity of human and financial resources, the success of the Memorandum of Understanding and the Action Plan would be better achieved if they were limited to the strict implementation of the Commission of Inquiry's recommendations. She

requested that a specific budget be elaborated for implementation of the Action Plan. She suggested that the Conference Committee define a transparent monitoring procedure that identified the constraints and the delivery capacity of such a Plan.

The Government member of Cambodia stated that his Government associated itself with the statement made by the Government member of Viet Nam on behalf of ASEAN. The speaker noted the encouraging progress made by the Government of Myanmar since its formation in 2011, including the promotion of democratic policy reforms and the improvement of the socio-economic standards in the country. His Government welcomed the recent signing of the Memorandum of Understanding on the elimination of all forms of forced labour by 2015 between the Government of Myanmar and the ILO, which demonstrated another positive step taken to improve conditions for workers, and expressed support for the Government's cooperation with the ILO Liaison Officer. The message conveyed by the President of Myanmar on 1 May 2012 was an expression of political commitment towards this end. There was additional progress in other areas and continued efforts by the Government towards the promotion and the protection of the rights of workers, in compliance with the Convention. The ILO should continue to provide further technical support and assistance in this context. The recent High-level Tripartite Mission by the Governing Body Officers to Myanmar was an example of the extensive cooperation between the ILO and Myanmar, as the delegation met not only with Government representatives, but also with other stakeholders, including Ms Aung San Suu Kyi. The Government of Myanmar had committed itself to the process of reform in addressing the remaining challenges ahead. The Government was encouraged to seek support and cooperation from the international community. Given these pledges, the Government of Cambodia reaffirmed the statement expressed by the Government of Viet Nam on behalf of ASEAN calling for the removal or easing of sanctions and other restrictive measures to be considered by the ILO. Constructive dialogue was the most practical way to improve socio-economic development and bring about further democratic reform and national reconciliation.

The Government member of the Bolivarian Republic of Venezuela noted that his Government recognized the considerable will of the Government to move forward in effectively eradicating forced labour. He drew attention to the report of the High-level Tripartite Mission that had visited Myanmar recently, in which the progress and measures taken by the Government were highlighted. He recalled that the Governing Body had taken note of the measures, commitments and initiatives being put in place with a view to complying fully with the recommendations of the Commission of Inquiry. The Government, the social partners and the ILO were urged to continue their joint efforts towards the absolute elimination of forced labour in the context of democracy, justice, liberty, equality and respect for human rights, and he expressed his Government's desire for that goal to be achieved before 2015.

The Government member of India expressed his Government's appreciation of the efforts made by the Government of Myanmar with regard to the observance of the Convention. The main developments in Myanmar included economic and social reforms as well as major legislative and policy reforms involving Parliamentary debates and interactions with the business community, United Nations agencies and the international community. Since the advent of the new Government, the Government of Myanmar had fulfilled the recommendations of the Commission of Inquiry by taking concrete measures which involved the executive, legislative and judicial branches. He noted with satisfaction that the Village Act and the Towns Act of 1907 had been repealed by the

promulgation of the Ward or Village Tract Administration Act in February 2012, which penalized the use of forced labour. His Government further welcomed the commitment expressed by the President in his message on the occasion of the May Day Ceremony in 2012 to eradicate forced labour by 2015 and commended the strict imposition of penalties under section 374 of the Penal Code for the exaction of forced or compulsory labour. The Government of India had always encouraged dialogue and cooperation between the ILO and member States in resolving the outstanding issues. In this context, he acknowledged the signing, in March 2012, of a Memorandum of Understanding between the ILO and the Government of Myanmar on the elimination of all forms of forced labour and considered that it was time for the international community to recognize the progress made to comply with the Convention. When visiting Myanmar in April 2012, the Secretary-General of the United Nations appealed to the international community to suspend or ease trade restrictions and other sanctions. The Government of India encouraged the Government of Myanmar to continue its constructive engagement with the ILO and urged the ILO to reply positively to the endeavours taken by the Government of Myanmar so as to fulfil the aspirations of the people of Myanmar.

The Worker member of Japan indicated that while some important changes had taken place, the widespread and systematic use of forced labour by the military continued and had even increased in 2011 in some areas, forcing villagers to work as porters, as well as on infrastructure projects, camp construction or food production. Recourse to forced labour on projects related to foreign direct investment also remained a serious issue in the context of the suspension or elimination of trade or investment sanctions by some governments increasingly seeking to take advantage of the country's abundant natural resources and lower labour costs, as well as the lack of adequate regulation and public accountability. The ILO should set up a tripartite monitoring mechanism to review the compliance of multinational enterprises with the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy as well as with ILO Conventions and other international instruments focusing in particular on the extractive industries, major infrastructure projects, timber, agribusiness and large-scale tourism projects. States had the duty to protect human rights and fundamental rights at work. This also applied to enterprises regardless of States' abilities to fulfil their human rights obligations. All businesses had the responsibility to prevent or mitigate adverse impacts on human rights that were linked to their operations, products or services by their business relationships, as well as their supply chains. International monitoring of business relationships was crucial since the rule of law was extremely weak in Burma and there was no independent judiciary, as underlined by Ms Aung San Suu Kyi. This factor would facilitate the rampages of powerful corporations in Burma and would not lead to fair and sustainable development, the creation of jobs and promotion of decent work. Social partners were essential in ensuring that multinational enterprises respected their obligations. The social partners should be involved in the establishment and implementation of any mechanism to monitor the observance of human rights by enterprises. The speaker concluded by calling on the Government to respect its obligation under the Convention to immediately eliminate forced labour in practice and to ensure that those responsible for exacting that labour were effectively punished.

The Government member of China stressed that the Government of Myanmar had taken effective measures, in particular legislative, executive and judicial measures, to combat forced labour and had committed to financing such measures. Tangible positive results had been achieved. The collaboration between the Government and

the ILO played an essential role in this respect. The good will and endeavours of the Government in eliminating forced labour must be fully recognized and encouraged. The ILO should continue to provide technical assistance to the Government in order to ensure the complete elimination of forced labour by 2015. His Government considered that the sanctions against Myanmar should be lifted at this session of the Conference.

The Government member of Pakistan acknowledged the positive developments brought about by the Government of Myanmar, which appeared to indicate that freedom of association and protection of labour rights was a priority pursued by the Government. His Government welcomed the Government of Myanmar's continued cooperation with the ILO and encouraged it to remain firm in the objective of the abolition of forced labour. There was no doubt that the Government of Myanmar would pursue these positive developments in a more results-oriented manner, which should be acknowledged by the Conference Committee.

The Worker member of Sweden, speaking on behalf of the Worker members of Denmark, Norway and Iceland, presented some information regarding land rights and land confiscation. She described a dispute between security guards from a company owned by businessman and parliamentarian, and local farmers in Rangoon's Minqaladon township. In May 2012, employees from the Zaykabar company began to bulldoze land in Shwenanthar village, and farmers in the area responded by taking to the fields with two tractors and standing their ground. The farmers eventually left the field after Minqaladon township's authorities mediated the situation, but the Zaykabar bulldozers later demolished embankments built by the farmers. In similar circumstances, farmers in Hlaingtharyar township claimed they lost about 600 acres of their land after the Zaykabar company cleared the area for an industrial zone. Zaykabar had appropriated 800 acres of land from locals in Hlaingtharyar township to make way for an industrial project. The company offered farmers 300,000 Kyat in compensation per acre. After receiving several complaints from the farmers, state authorities told the company to suspend their projects, but the orders were ignored. The issue of land rights in Burma was a sensitive one; existing laws did little to prevent confiscation by government aligned figures. This phenomenon had to stop and the speaker urged the Government to ensure that it did.

The Government representative of Myanmar thanked the Committee for the discussion and interest in the various measures taken or envisaged by his Government. He noted that the three main points raised in the discussion concerned the revision of the national Constitution, the perceived culture of impunity and the rule of law. In this respect, he stressed that the Constitution was approved by the people of Myanmar in 2008 and could be amended only if such was the people's wish and desire. As regards the alleged culture of impunity, he assured the Committee that impunity was not tolerated in Myanmar. Lastly, while the rule of law was maybe not yet perfectly applied, it did exist. He recalled in this respect that the President had recently reiterated the importance of the rule of law and governance.

The Government member of Switzerland noted that his Government welcomed the recent changes that had occurred in Myanmar, including the preparation of detailed action plans to implement the Memorandum of Understanding signed on 16 March 2012. The creation of the new Joint Working Group on a Joint Strategy was a significant step that was important to take in order to eradicate all forms of forced labour by 2015 at the latest. It was time to lift the restrictions on technical cooperation and assistance provided by the Office and a report by the Director-General should be prepared on activities that could be undertaken. The ILO's mandate on the ground should

also be extended and sufficient resources allocated to the Liaison Office in Myanmar. On 9 May 2012, following the recent progress made on human rights issues, the Swiss authorities had lifted its sanctions against Myanmar, apart from the embargo on military equipment and materials that could be used for the purposes of repression, but remained on the alert for information regarding any case of forced labour in Myanmar.

The Worker members welcomed the undeniable progress made with regard to the abolition of forced labour and the restoration of freedom of association and considered that this had to be consolidated and increased as quickly as possible. Accordingly, they called for the immediate release of all political prisoners and labour activists; an examination by the Committee of Experts on the Application of Conventions and Recommendations of the new legislation concerning forced labour and the Labour Organizations Law; the abolition of article 359 of the Constitution concerning forced labour; and the allocation of the budgetary resources needed for the remuneration of work performed in place of forced labour. They wished to echo the concern voiced by the Employer members concerning the need for an effective judicial system to ensure that rights were respected in practice. In order to achieve these goals, the Government, workers and employers should be able to avail themselves of technical assistance from the ILO and participate in its work. The new Joint Strategy would be even more effective if it set as a goal the immediate stoppage of forced labour, fixed precise objectives and indicators, focused on actions relating to the recommendations of the Commission of Inquiry, and established a budget for each of those actions. In the spirit of the ILO Constitution, the social partners, including the FTUB, should be associated with the implementation and monitoring of the Action Plan both at the national level and within the ILO. The involvement of the greatest number of players should enable the expected results to be achieved by 2015. Finally, the establishment of a compulsory mechanism for monitoring foreign investment operating both within the country and at the ILO was essential for ensuring compliance with the most stringent international standards. In conclusion, the Worker members indicated that they firmly expected their demands to be taken into account when the measures adopted by the Conference to ensure the implementation of measures by the Committee of Experts on the Application of Conventions and Recommendations were reviewed, and insisted that the Conference should be in a position to note in 2013 the progress made regarding the elimination of forced labour in Myanmar.

The Employer members took stock of the overview report from the Governing Body, and wholeheartedly supported the goal of ending forced labour in Myanmar by 2015. While cautiously optimistic, the Employer members recognized that much work remained, and the key role the ILO would continue to play. The work of the ILO Liaison Officer in Myanmar, and the effective High-level Mission which had taken place in January 2012 was admirable. They thanked the Government of Myanmar for its participation and noted that the Employer members would be following up on the requested constitutional amendments. Moreover, the Employer members were in favour of continued use of the complaints mechanism elaborated under the Supplementary Understanding. The Government of Myanmar had achieved much in a short period of time; concrete steps of progress had been taken, it had requested the assistance of the international community, and there was an operational strategy in place to end forced labour by 2015. The Employer members welcomed the Government's statement that it was entering a "new era", including in the area of job creation; if the creation of new jobs was to be in alignment with corporate social responsibility, the process must include adequate protection for workers. In this same vein, given the various international

frameworks which existed in this sphere, such as the United Nations Guiding Principles on Business and Human Rights and the Guidelines of the Organisation for Economic Co-operation and Development, the Employer members requested guidance as to how to apply these frameworks in Myanmar going forward.

Conclusions

The Committee took note of the observations of the Committee of Experts on the Application of Conventions and Recommendations on the application of Convention No. 29 by the Government of Myanmar, as well as the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended in February 2012, for a further 12 months to 25 February 2013.

The Committee also noted the decisions of the Governing Body of November 2011 and March 2012. It welcomed the several advances enumerated in these documents and further elaborated in the statement of the Government representative and in the discussion in the Committee.

The Committee noted, in particular, the Government's detailed information on: the promulgation of the Ward or Village Tract Administration Act in February 2012, its definition of forced labour and penalties for its use and the repeal of the Village Act and the Towns Act of 1907; the orders issued by the Commander-in-Chief of the Defence Services in March 2012 advising all military personnel that strict and stern military disciplinary actions shall be taken against perpetrators of military under-age recruitment and those of April 2012 which make the new law prohibiting forced labour applicable to the military with perpetrators being prosecuted under section 374 of the Penal Code; the draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour in Myanmar; budget allocations made for the payment of wages for the public works at all levels for 2012–13; the progress made on the translation into local languages of the brochure on the complaints mechanism; the statement made by the President on May Day 2012 committing the Government to acceleration of action to ensure the eradication of all forms of forced labour; disciplinary measures taken against 166 military personnel, action taken under section 374 of the Penal Code against 170 other government officials and five military personnel prosecuted under the Penal Code. The Government representative also referred to the adoption and the implementation of the Labour Organizations Law and the registration of 41 workers' organizations and ten employers' organizations and the discussion of modalities for the return of Mr Maung Maung and the registration of the Federation of Trade Unions of Burma (FTUB) under existing law.

The Committee welcomed the progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry. It observed that many important steps had been taken by the Government in this regard since its meeting last year and expected that the Committee of Experts would review the latest legislative and practical steps taken to combat and punish the use of forced labour at its meeting this year.

The Committee did, however, raise its continuing concern over the Constitutional provision which provided an exception from the prohibition of forced labour for "duties assigned by the Union in accordance with the law in the interest of the public". It welcomed the Government representative's statement that the Constitution could be amended where it was the will of the people and trusted that steps would be taken to ensure that any exception to forced labour provided for in the constitutional and legislative framework was strictly limited to the narrow scope of exceptions under Convention No. 29.

The Committee welcomed the elaborate and detailed Action Plan developed between the Government and the ILO,

and insisted that all the social partners and civil society organizations would play an active role in prioritizing and assisting in the accelerated application of the elements in the Plan most relevant to the immediate implementation of the Commission of Inquiry recommendations. Prioritized objectives, clear targets, and effective monitoring mechanisms, accompanied by sufficient budgetary and human resources, would be essential elements for transposing these steps into a proactive and preventive campaign for the eradication of all forms of forced labour and the advancement of workers' rights.

The Committee welcomed the Government representative's statement that a culture of impunity was not tolerated and that the President had called for steps to be taken to ensure the respect for the rule of law throughout the country. The Committee considered that the action taken to prosecute forced labour should continue to be reinforced and the newly adopted legislation effectively applied so as to ensure complete accountability under the law. The Committee trusted that effective and dissuasive sanctions would be imposed to punish the use of forced labour in all sectors and requested the Government to review the impact of the measures that it had reported on so as to be in a position to strengthen them where necessary. It firmly emphasized the importance of the rule of law and the independence of the judiciary as necessary preconditions for real democratization and change.

The Committee encouraged the Government and the ILO to monitor closely the progress made in the implementation of the Action Plan, especially as regards the use of forced labour by the military, and requested that information be

provided in this regard to the Committee of Experts this year.

Welcoming the release of numerous political and labour activist detainees, the Committee expected that all further such prisoners would be immediately released.

The Committee renewed its call for continuing collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar.

It once again called on all investors to ensure that their activity in Myanmar was not used to perpetuate or extend the use of forced labour but rather made a positive contribution to its complete eradication, in full respect for international labour standards, and recalled the availability of the ILO to provide appropriate support in this regard.

The Committee called for the strengthening of the capacity of the ILO Liaison Office to assist the Government, the social partners and all other relevant stakeholders, to play a full and constructive role in the efforts made to eliminate forced labour, including through the empowerment of communities in the knowledge and exercise of their rights and responsibilities. The Committee trusted that complainants and facilitators would continue to be protected in relation to their use and activities under the complaints mechanism, the retention of which it considered to be critically important.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and trusted that the Conference would be in a position to take note of significant developments at its next session.

Document D.5

B. Observation of the Committee of Experts on the Application of Conventions and Recommendations on the observance of the Forced Labour Convention, 1930 (No. 29), by Myanmar

Myanmar (ratification: 1955)

Follow-up to the recommendations made by the Commission of Inquiry (complaint made under article 26 of the Constitution of the ILO)

Historical background

In its earlier comments, the Committee has discussed in detail the history of this extremely serious case, which has involved the Government's gross, long-standing and persistent non-observance of the Convention, as well as the failure by the Government to implement the recommendations of the Commission of Inquiry, appointed by the Governing Body in March 1997 under article 26 of the Constitution.

The Committee recalls that the Commission of Inquiry concluded that the obligation under the Convention to suppress the use of forced or compulsory labour was violated in national law and in practice in a widespread and systematic manner. In its recommendations, the Commission urged the Government to take the necessary steps to ensure:

- that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Convention;
- that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
- that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, which required thorough investigation, prosecution and adequate punishment of those found guilty.

The Commission of Inquiry emphasized that, besides amending the legislation, concrete action needed to be taken immediately to bring an end to the exaction of forced labour in practice, to be accomplished through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. The Committee of Experts has identified four areas in which “concrete action” should be taken by the Government to fulfil the recommendations of the Commission of Inquiry. In particular, the Committee indicated the following measures:

- issuing specific and concrete instructions to the civilian and military authorities;
- ensuring that the prohibition of forced labour is given wide publicity;
- providing for the budgeting of adequate means for the replacement of forced or unpaid labour; and

- ensuring the enforcement of the prohibition of forced labour.

Developments since the Committee's previous observation

There have been a number of discussions and conclusions by ILO bodies, as well as further documentation received by the ILO, which has been considered by the Committee. In particular, the Committee notes the following information:

- The report of the ILO Liaison Officer submitted to the Conference Committee on the Application of Standards during the 100th Session of the International Labour Conference in June 2011, as well as the discussions and conclusions of that Committee (ILC, 100th Session, *Provisional Record* No. 18, Part Three (A) and Doc. D.5(C)).
- The documents submitted to the Governing Body at its 310th and 312th Sessions (March and November 2011), as well as the discussions and conclusions of the Governing Body during those sessions.
- The communication made by the International Trade Union Confederation (ITUC) received in August 2011, with appendices.
- The communication made by the Federation of Trade Unions Kawthoolei (FTUK) received in October 2011, with appendices.
- The reports of the Government of Myanmar received on 9 December 2010, 16 February, 4 April, 2 and 27 June, 31 August, 27 September, 14 October and 18 November of 2011.

The Supplementary Understanding of 26 February 2007 – extension of the complaints mechanism

In its earlier comments, the Committee discussed the significance of the Supplementary Understanding (SU) of 26 February 2007 between the Government and the ILO, which supplemented the earlier Understanding of 19 March 2002 concerning the appointment of an ILO Liaison Officer in Myanmar. The Committee noted, in particular, that the SU set out a complaints mechanism, which had as its object “to formally offer the possibility to victims of forced labour to channel their complaints through the services of the Liaison Officer to the competent authorities with a view to seeking remedies available under the relevant legislation and in accordance with the Convention”. The Committee notes that the Supplementary Understanding was extended for the fourth time, on 23 February 2011, for a further 12-month period from 26 February 2011 until 25 February 2012 (ILC, 100th Session, *Provisional Record* No. 18, Part Three, Doc. D.5.F). The Committee further discusses the information on the functioning of the SU below, in the context of its comments on the other documentation, discussions and conclusions regarding this case.

Discussion and conclusions of the Conference Committee on the Application of Standards

The Committee on the Application of Standards once again discussed this case in a special sitting during the 100th Session of the Conference in June 2011. The Conference Committee took note of certain steps taken by the Government, such as: the further extension of the SU for another year; certain awareness raising activities, including in ethnic minority regions; allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government; and certain improvements in dealing with under-age recruitment by the military, including release of children and disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition

of penal sentences in certain cases. However, the Conference Committee regretted to note that there had been no substantive progress achieved towards complying with the recommendations of the Commission of Inquiry and strongly urged the Government to fully implement, without delay, these recommendations, as well as the comments and observations of the Committee of Experts, and in particular, to submit the draft proposals for amendment of the relevant legislative texts to the ILO for comment and advice aimed at ensuring their full conformity with the Convention, and ensure their early adoption into law and application in practice; to take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into the armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work and human trafficking for forced labour, that are still persistent and widespread; to strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied; to release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained, etc. The Conference Committee also called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism.

Discussions in the Governing Body

The Governing Body continued its discussions of this case during its 310th and 312th Sessions in March and November 2011 (GB.310/5, GB.312/INS/6). The Committee notes that, following the discussion in November 2011, the Governing Body welcomed the positive developments in Myanmar since March 2011 but remained concerned that serious problems in the use of forced labour persisted. It called for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry. The Governing Body noted that legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 is before Parliament; it urged the early adoption and coming into force of that legislation. The Governing Body urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual. The Governing Body welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and ending impunity. It also welcomed the commencement of direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities. While welcoming the release of a number of labour activists, the Governing Body strongly urged the early release of other labour activists remaining in detention. The Governing Body stressed again the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code. While welcoming the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, the Governing Body encouraged the continuation of this partnership activity and its expansion into other languages. Whilst recalling all of its previous conclusions and recommendations, the Governing Body encouraged the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its Supplementary Understanding, which should be further extended in February 2012. Finally, in the light of the above, the Governing Body considered it essential to strengthen the capacity of the Liaison Office and reiterated its repeated calls on the Government to issue without delay the visas necessary to that effect.

Communication received from workers' organizations

The Committee notes the comments made by the ITUC in its communication received in August 2011. In these comments, the ITUC refers to several recent reports which contain detailed allegations about the continued use of forced labour, largely for portering, but also for road construction, collection and provision of bamboo and leaves to military camps, etc., which have occurred in the Karen, Shan and Arakan States. Appended to this communication was a report which contained allegations about the forced labour practices by civil and military authorities in North Arakan State/North Rakhine State over the nine months period which followed the national elections in November 2010. The report noted the observers' estimate that 35–40 per cent of forced labourers were children, some as young as ten years old. The report attributed the increase in forced labour to construction and repair of the border fence between Myanmar and Bangladesh, but noted that forced labour was also used for large scale road construction projects, construction of bridges, portering, military camp maintenance, patrol duties, collection of logs and bamboo poles and plantation work. The Committee also notes the comments made by the FTUK in its communication received in October 2011, which contained a report including translated copies of 207 Order documents issued by military and civilian officials to village heads in eastern Myanmar between March 2008 and July 2011. The tasks and services demanded according to these documents involved, inter alia, portering for the military; bridge construction and repair; production and delivery of thatch, bamboo and other materials; attendance at meetings; provision of money and food; forced recruitment into armed ceasefire groups; provision of information on individuals, households and non-state armed groups; etc. The report states that, in almost all cases, demands were uncompensated and backed by implicit or explicit threats of violence or other punishments for non-compliance. Copies of the above communications by the ITUC and the FTUK with annexes were transmitted to the Government, in September and October 2011 respectively, for its comments.

The Government's reports

The Committee notes the Government's reports referred to above, which include replies to the Committee's previous observation. It notes, in particular, the Government's indications concerning its continued cooperation with the various functions of the ILO Liaison Officer, including monitoring and investigating the forced labour situation, discussion on the follow-up to the 100th Session of the International Labour Conference and the operation of the SU complaints mechanism. As regards the amendment of the legislation, the Government indicates that draft legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. However, no action has been taken or contemplated to amend section 359 of the Constitution. The Committee notes the Government's ongoing efforts in the field of the awareness-raising and training activities on forced labour, including the joint ILO–Ministry of Labour (MOL) Awareness Raising Workshop held in Chin State in May 2011 and the distribution of booklets on the SU and informative simply worded brochures on forced labour. The Committee also notes the Government's indications concerning measures taken to prevent recruitment of under-aged children and to release newly recruited under-aged soldiers, disciplinary action taken against military personnel, as well as dismissal of some officers and the imposition of penal sentences in certain cases. However, the Committee notes that the Government has not yet supplied its comments on the numerous specific allegations contained in the communications from the ITUC of August 2011 and the FTUK of October 2011 referred to above, as well as in the previous communication by the ITUC received in August 2010. ***The Committee urges the Government to respond in detail in its next report to the numerous specific allegations of continued imposition of forced or compulsory labour by military and civil authorities, which are documented in the above communications from the ITUC and FTUK, making***

particular reference to the “Order documents”, which provide evidence of the systematic imposition of forced labour throughout the country.

Assessment of the situation

Assessment of the information available on the situation of forced labour in Myanmar in 2011 and in relation to the implementation of the recommendations of the Commission of Inquiry and compliance with the Convention by the Government will be discussed in three parts, dealing with: (i) amendment of legislation; (ii) measures to stop the exaction of forced or compulsory labour in practice; and (iii) enforcement of penalties prescribed under the Penal Code and other relevant provisions of law.

(i) Amendment of legislation

The Committee notes from the discussions in the Governing Body in November 2011, as well as from the Government’s reports referred to above, that draft legislation prohibiting the use of forced labour in all its forms and repealing both the Village Act and the Towns Act of 1907 has been submitted to Parliament. ***While noting these positive developments, the Committee trusts that legislation prohibiting the use of forced labour in all its forms and repealing the Village Act and the Towns Act of 1907 will be adopted without delay in order to ensure compliance with the Convention, and that the Government will communicate to the ILO a copy of the new legislation, as soon as it is adopted.***

In its earlier comments, the Committee referred to section 359 of the Constitution (Chapter VIII – Citizenship, Fundamental Rights and Duties of Citizens), which excepts from a prohibition of forced labour “duties assigned by the Union in accordance with the law in the interest of the public”. The Committee observed that the exception encompasses permissible forms of forced labour that exceed the scope of the specifically defined exceptions in *Article 2(2) of the Convention* and could be interpreted in such a way as to allow a generalized exaction of forced labour from the population. The Committee notes with ***regret*** the Government’s repeated statement in its reports that it is impossible to amend the 2008 Constitution, since it has been approved by 92.48 per cent of citizens’ votes. ***The Committee expresses the firm hope that, following the legislative amendment referred to above, the necessary measures will be taken with a view to amending section 359 of Chapter VIII of the Constitution, in order to bring it into conformity with the Convention.***

(ii) Measures to stop the exaction of forced or compulsory labour in practice

Information available on current practice.

The Committee notes that the communications received from the ITUC and the FTUC referred to above contain well-documented allegations that forced and compulsory labour continued to be exacted from local villagers in 2010–11 by military and civil authorities in some of the country’s States. The information in the appendices refers to specific dates, locations and circumstances of the occurrences, as well as to specific civil bodies, military units and individual officials responsible for them. According to these reports, forced labour has been exacted both by military and civil authorities; it has taken a wide variety of forms and involved a variety of tasks.

The Committee notes from the report of the ILO Liaison Officer to the Conference Committee in June 2011 (Doc. D.5.C) that, notwithstanding the awareness raising and training activities, complaints alleging the use of forced labour by both military and civilian authorities continue to be received (paragraphs 12–14). A considerable number of forced labour complaints have been lodged by farmers in Magway Region; they refer to

the actions of the military in support of their commercial projects and self-sufficiency policy (paragraph 19). The ILO Liaison Officer also states that the generally positive responses from the Adjutant-General's Office in respect of under-age military recruitment and associated complaints is in contrast to the continuing difficulty in reaching satisfactory conclusions regarding complaints that allege the use of forced labour by the military. The ILO Liaison Officer further states that "non-verifiable evidence continues to suggest that the use of forced labour by the civilian authorities has been reduced, at least in some parts of the country" and suggests to verify this trend in a proposed labour force survey (paragraph 15). An increasing number of complaints under the SU mechanism continue to be received, which may be also seen as a sign of greater awareness among the public of their right under the law to complain and their increased confidence in seeking redress through the use of the complaints mechanism (paragraph 10). However, according to the Governing Body document submitted to its 312th Session in November 2011, "Whilst recognizing the progress made in respect of civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including, in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; portering; construction, maintenance and servicing of military camps; and forced agricultural work" (GB.312/INS/6, paragraph 28). In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (armed forces) Committee on ILO Affairs, at which all the issues and practices indicated above were discussed, and further meetings to clarify these issues were scheduled (GB.312/INS/6, paragraph 29). Regarding the under-age recruitment, the Committee notes that, since March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints launched under the SU; the total number of under-age recruits released or discharged under the SU since February 2007 was 208 (GB.312/INS/6, paragraph 31).

Issuing specific and concrete instructions to the civilian and military authorities

In its earlier comments, the Committee emphasized that specific, effectively conveyed instructions to civil and military authorities, and to the population at large, were required to identify each and every field of forced labour and to explain concretely for each field the means and manner by which the tasks or services involved are to be carried out without recourse to forced labour. The Committee previously noted the Government's statement in its June 2009 report that "the various levels of administrative authority are well aware of the orders and instructions related to forced labour prohibition issued by the higher levels". However, the Committee notes once again that no new information has been provided by the Government in its subsequent reports on this important issue. Given the continued dearth of information regarding this issue, the Committee remains unable to ascertain that clear instructions have been effectively conveyed to all civil authorities and military units, and that bona fide effect has been given to such instructions. It therefore reiterates the need for concrete instructions to be issued to all levels of the military and to the whole population, which identify all fields and practices of forced labour and provide concrete guidance as to the means and manner by which tasks or services in each field are to be carried out, and for steps taken to ensure that such instructions are fully publicized and effectively supervised. ***Considering that measures to issue instructions to civilian and military authorities on the prohibitions of forced and compulsory labour are vital and need to be intensified, the Committee reiterates the firm hope that the Government will provide, in its next report, information on the measures taken in this regard, including translated copies of the instructions which have been issued reconfirming the prohibition of forced labour.***

Ensuring that the prohibition of forced labour is given wide publicity

In relation to ensuring that the prohibition of forced labour is given wide publicity, and noting, in particular, that the Governing Body and the Conference called for the continuing expansion of awareness-raising activities at community level, the Committee notes from the report of the ILO Liaison Officer referred to above, from the documents submitted to the Governing Body and to the Conference Committee, as well as from the Government's reports, that a number of awareness-raising activities concerning the forced labour situation, the legal prohibitions of forced labour and existing avenues of recourse for victims were carried out in 2011. These included, inter alia, a joint ILO–MOL awareness-raising seminar in Chin State for local authority personnel (military, police, judges and civilian authorities); two presentations on the law and practice concerning forced labour to senior police, immigration and Ministry of Home Affairs personnel, and to the Myanmar Women's Affairs Federation; and six training seminars/workshops (one of them on a regular two-months basis) for journalists, various NGO's and community-based organizations. The Government's translation of the information brochure in the Shan language (the most widely used of the national languages after the Myanmar language) was in the process of printing and distribution, and the brochure in the official Myanmar language was widely distributed in every State and region by the Government and the ILO with support from NGO's and community-based organizations (GB.312/INS/6, paragraphs 22–24). ***Considering that the awareness-raising activities are of crucial importance in helping to ensure that the prohibition of forced labour is widely known and applied in practice, the Committee expresses the firm hope that such activities will continue and be expanded, both at State and community level.***

Noting also from the report of the ILO Liaison Officer to the Conference Committee in June 2011 referred to above that complaints alleging the use of forced labour by both military and civilian authorities continue to be received, the Committee reiterates its view that the complaints mechanism under the SU provides in itself an opportunity for the authorities to demonstrate that continued recourse to forced labour practices is illegal and would be punished as a penal offence, as required by the Convention. ***The Committee therefore reiterates its hope that the Government will continue to use the SU complaints mechanism as an important modality of awareness raising, and that it will provide, in its next report, the information on the impact the awareness-raising activities are having on the enforcement of criminal penalties against perpetrators of forced labour and on the imposition in actual practice of forced or compulsory labour, particularly by the military.***

Making adequate budgetary provisions for the replacement of forced or unpaid labour

In its earlier comments, the Committee observed that budgeting of adequate means for the replacement of forced labour, which tends also to be unpaid, is necessary if recourse to the practice is to end. The Committee recalled in this regard that, in its recommendations, the Commission of Inquiry stated that “action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required.” Recalling also that both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated, the Committee notes from the Governing Body document submitted to its November 2011 session (GB.312/INS/6) that the first meetings of the ILO with the above Ministries took place in 2011, during which the budget formulation procedure and the basic procedures for pre-allocation planning

were explained, and it was clarified that, under the new administration, financial policy was in the process of being reformed in accordance with the new Constitution. It was also recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations, and it was expected that such matters would be addressed under new governance and accountability structures (paragraphs 35–40). The Committee notes that the Government's reports referred to above contain no new information on this issue, and that the Government merely repeats, in its report received on 2 June 2011, its previous indication that the budget allotments including the expense of labour costs for all ministries have been allocated to implement their projects. ***The Committee therefore hopes that the Government will provide, in its next report, detailed and precise information on the measures taken to budget adequate means for the replacement of forced or unpaid labour, as well as the information on the impact of the financial policy reform on these issues.***

(iii) ***Ensuring the enforcement of the prohibition of forced labour***

In its earlier comments, the Committee referred to section 374 of the Penal Code, which provides for the punishment, by a term of imprisonment of up to one year, of anyone who unlawfully compels any person to labour against his or her will. It recalls that, following the recommendations of the Commission of Inquiry, both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied. The Committee notes from the Governing Body document submitted to its 312th Session in November 2011 (GB.312/INS/6) that, in respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken, punishments ranging from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, discharge and imprisonment (paragraph 42). The Government indicates in its reports received on 2 June and 31 August 2011 that, in the under-age recruitment cases, action was taken against 20 military officials and 110 other ranks for breaching the rules, five officials and five other ranks were dismissed and imprisoned. However, in respect of cases concerning forced labour exacted by the military, the ILO has received no information concerning the prosecution of any perpetrator under the abovementioned provision of the Penal Code. As regards the exaction of forced labour by civilian authorities, the Committee previously expressed concern that the only prosecution of perpetrators under the Penal Code in response to complaints submitted had been reported in respect of a case in 2007 already noted by the Committee in its earlier comments. The ILO has been advised that another prosecution has been initiated under the Penal Code in respect of a civilian accused of being a party to the exaction of forced labour, though no information has yet been received as to the outcome of this prosecution (GB.312/INS/6, paragraph 42).

The Committee ***regrets*** to note once again that no new information has been provided by the Government in its 2011 reports about any prosecutions against perpetrators of forced labour being pursued under section 374 of the Penal Code. ***The Committee therefore urges the Government to take measures to ensure that penalties imposed by law for the illegal exaction of forced or compulsory labour are adequate and strictly enforced, as required by Article 25 of the Convention, and expresses the firm hope that appropriate measures will be taken in the near future in order to ensure that perpetrators of the exaction of forced labour are prosecuted and punished with penal sanctions under section 374 of the Penal Code. The Committee asks the Government to provide, in its next report, information on the progress made in this regard.***

Concluding remarks

The Committee fully endorses the conclusions concerning Myanmar made by the Conference Committee and the Governing Body, as well as the general evaluation of the forced labour situation by the ILO Liaison Officer. The Committee welcomes the positive developments, such as submission to Parliament of the draft legislation repealing the Towns Act and the Village Act of 1907; the expanded awareness-raising activities; the improvements in dealing with under-age recruitment by the military, including release of children and imposition of disciplinary and penal sanctions on military personnel; cooperation in the functioning of the SU complaints mechanism and its further extension for another year. However, the Committee observes that, in spite of the efforts made towards the implementation of the recommendations of the Commission of Inquiry, the Government has not yet fully implemented these recommendations. Besides the steps taken towards the amendment of the legislation, the Government still has to ensure that, in actual practice, forced labour is no longer imposed by the authorities, in particular by the military; and it still has to ensure that penalties for the exaction of forced labour under the Penal Code are strictly enforced against civil and military authorities. *While noting the positive developments referred to above, the Committee urges the Government to redouble its efforts towards the full implementation of the recommendations of the Commission of Inquiry, by implementing the concrete practical requests addressed by the Committee to the Government. It expresses the firm hope that all the necessary measures will be taken without delay to achieve full compliance with the Convention, both in law and in practice, so as to ensure that all use of forced or compulsory labour in Myanmar is completely eliminated.*

C. Report of the Liaison Officer to the special sitting on Myanmar (Convention No. 29) to the Committee on the Application of Standards

I. Introduction

1. The ILO Liaison Officer in Myanmar operates within the framework of the 2002 Understanding signed by the Government of Myanmar and the ILO and a subsequent Supplementary Understanding (SU) agreed in 2007. The Liaison Officer undertakes various activities aimed at supporting the Government in its efforts to ensure the prompt and effective elimination of forced labour in that country, including by implementing the recommendations of the Commission of Inquiry that had been appointed to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).
2. The SU signed on 26 February 2007 sets out a complaints mechanism under which any person or their representative(s) bona fide residing in Myanmar can forward to the Liaison Officer complaints on alleged cases of forced labour. The SU provided for a 12-month trial period, which was extended for the fifth time in January 2012, to 26 February 2013.
3. The Governing Body has regularly reviewed developments in respect of forced labour in Myanmar at each of its March and November sessions under a specific agenda item. The reports of the Liaison Officer to the Governing Body in November 2011 (GB.312/INS/6) and in March 2012 (GB.313/INS/6) are available for reference on the ILO website. The conclusions of those two Governing Body discussions are attached (see Parts E and F).
4. At the initiative of the Government a new Memorandum of Understanding (MOU) between the Government and the ILO was signed on 16 March 2012. This MOU agreed between the Ministry of Labour and the ILO and witnessed by the Ministry of Defence provides the framework of a comprehensive strategy for the full elimination of forced labour in Myanmar by 2015. It has been agreed that every effort should be made to achieve this objective at an earlier date, with the action plans for implementation reflecting this commitment.
5. At the time of writing, those detailed action plans are in the final stages of discussion. They address each element of the MOU framework, establish a specific objective for each and delineate specific activities for its achievement. Timelines for the commencement and/or completion of each activity have been set and responsibility for both delivery and funding allocated.
6. In response to the request of the Governing Body contained in its March 2012 conclusions, a delegation consisting of the Governing Body Officers accompanied by senior ILO staff members was invited and undertook an official mission to Myanmar from 1 to 5 May 2012. A separate report on this mission is before the Conference in *Provisional Record* No. 2-2.
7. At the request of the Government, during two other ILO staff missions to Myanmar, consultations were held on the draft Ward or Village Tract Administration Act and the Prisons Act as concerns the prohibition of the use of forced labour, as well as the draft Labour Organizations Act and its associated Rules in respect of freedom of association and the Disputes Settlement Act. All of them have subsequently been passed into law, with the exception of the Prisons Act.

8. As decided by the Governing Body in March 2012, the agenda of the International Labour Conference now has an additional item entitled: “Review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry”. The relevant documents had been prepared by the Office for the discussion.
9. This report provides specific information in response to each of the Committee’s conclusions endorsed by the Conference in 2011 and on the practical operation of the SU complaints mechanism. It also provides new information on the rapidly changing situation in Myanmar.

II. **Developments on the implementation of the conclusions adopted by the Conference in 2011**

10. The 2011 conclusions of the Committee, which were subsequently endorsed by the Conference, are attached (see Part C) and the following commentary reports on the current position in respect of each of the specific action points contained therein.
11. The conclusions requested the Government to:
 - (1) *submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice; and*
 - (2) *take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;*

Current position:

- (i) After consultation with the ILO during a mission undertaken in January 2012, a new law entitled the Ward and Village Tract Administration Act 2012 was adopted by the Parliament and promulgated by the President. This Act specifically confirms the use of forced labour by any party as a criminal offence; it defines forced labour utilizing the definition from Convention No. 29, provides for the criminal prosecution of persons acting contrary to the law and specifies penalties in accordance with article 374 of the Penal Code. It also specifically repeals the Village and Towns Acts of 1907.
- (ii) In his message to the Myanmar Government’s May Day ceremony, the President of the Republic made a firm commitment to the eradication of forced labour, referred specifically to the new legislation, clearly defined forced labour and confirmed his Government’s intention to work with the ILO in an agreed comprehensive strategy towards the full eradication of forced labour. This speech was reproduced in full in all the daily newspapers, both in English and Myanmar languages (see Part D).
- (iii) The Commander-in-Chief of the Defence Services stated that he had issued an order to all military personnel confirming that the provisions of the new Act applied equally to the Defence Services and instructing them that any military personnel accused of forced labour, and specifically under-age or forced recruitment, would be prosecuted under the Penal Law and not under military regulations. Whilst a copy of the order applying this policy to forced and/or under-age recruitment has been received, the ILO has not yet received a copy of the general order.

- (3) *take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, human trafficking for forced labour, that are still persistent and widespread;*

Current position:

Each element listed above is specifically addressed in the Joint Action Plan referred to in paragraph 5 above. Furthermore, the Commander-in-Chief of the Defence Services confirmed that he had issued orders instructing that no civilian personnel (convicts or otherwise) shall be used in military support activities of any kind, including portering and camp maintenance/construction, in conflict zones, and that any civilian labour needed to undertake military support services in non-conflict zones should be freely engaged and paid.

- (4) *strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied;*

Current position:

Detailed information on 166 military prosecutions under military regulation in response to ILO complaints has been received, with penalties ranging from the issuance of a reprimand, loss of promotion and pension entitlements, monetary fines, demotion, dishonourable discharge and in four cases the imposition of prison sentences. Recently, information was received that five military personnel had been prosecuted under the Penal Code in accordance with the new order issued by the Commander-in-Chief and that an officer of the Land Records Department had been dismissed for his responsibility in relation to a forced labour complaint.

- (5) *carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;*

Current position:

Consultations between the ILO Liaison Officer and senior staff from the Budgeting Department of the Ministry of Finance and the Ministry of Planning took place during the last quarter of 2011. Information was received that in the budget then being developed for the 2012–13 fiscal year specific provision was being made for the payment of wages in public works at all levels, with allocations being in the ratio of 60 per cent materials and 40 per cent labour. In addition, the new legislation on local government makes provision for a specific process for granting supplementary allocations in the event that a local administrator at village tract or ward level needs funds to meet operational demands, including for the cost of labour for required community infrastructure or service works. Specific provision is made in the Joint Action Plan for the development and distribution of practical guidelines for the engagement of labour to all local authorities and for in-service training of local administrators.

- (6) *provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military;*

Current position:

- (i) The composition of a new joint Strategic Working Group (SWG), which was created to overview the future application of the Joint Action Plan, has been established. The SWG is chaired by the Minister of Labour and has, as its joint secretaries, the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer. The SWG membership includes all members of the Government Working Group for the Elimination of Forced Labour, supplemented by two additional representatives of the Defence Services and two ILO representatives. This new joint forum should enable direct and meaningful consultation between the ILO and all government representatives, including the military.
 - (ii) In addition, from 23 to 27 April 2012, the Deputy Liaison Officer accompanied three government representatives (the Deputy Advocate-General for the Defence Services, a senior officer of the police and a Deputy Director from the Ministry of Labour) on a one-week training programme in the International Training Centre of the ILO in Turin, entitled "Investigation and prosecution of forced labour complaints". It has subsequently been agreed that these four persons will form a focal group for the day-to-day coordination of the SU complaints mechanism.
- (7) *immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;*

Current position:

No new complaints of harassment, retaliation against or imprisonment of complainants or persons associated with or facilitating complaints have been received since the 2011 session of the Conference. A problem persists concerning the arrest of complainants who are under-age recruits accused of desertion. Their release is normally achieved in the context of complaint processing, and recommendations on procedures to avoid this type of situation have been made with further consultations proposed as part of the Joint Action Plan. Negotiations continue concerning the situation of family members of one previously imprisoned complaints facilitator who were demoted and transferred to distant locations by their employer in connection with his activities.

- (8) *release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;*

Current position:

No complainants or persons otherwise associated with the complaints process remain in prison or in detention. Negotiations continue in respect of the reinstatement of the practicing licences of two lawyers previously imprisoned in connection with their forced labour complaints activity.

- (9) *intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;*

Current position:

Joint ILO/Ministry of Labour awareness-raising seminars continue to be undertaken and the programme of ILO workshops with nationwide coverage, as reported below, has been maintained. A major expansion of awareness-raising activities utilizing a range of new media has been agreed in the Joint Action Plan drafting process.

(10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages;

Current position:

The joint ILO/Ministry of Labour brochure has been widely distributed in the Karen (Pwo), Chin and Shan languages, as well as in Myanmar language. Translations into Karen (Sgaw), Rakhine and Mon languages are in preparation.

(11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing among other things under-age recruitment.

Current position:

A negotiated draft of the Joint Action Plan required under Security Council Resolution 1612 concerning children in circumstances of armed conflict is currently the subject of final ratification by both parties with tentative arrangements being made for the signing ceremony to take place before the end of June 2012.

As called for in the 2000 resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather make a positive contribution to its complete eradication.

Current position:

The Committee will be aware that a number of member States have recently moved to either remove or suspend sanctions imposed on Myanmar, including investment embargoes. In doing so, they have expressed the expectation that new investment in Myanmar will be “responsible investment”. During the recent visit to Myanmar of the United Nations Secretary-General, the Global Compact initiative was launched in the country. The Republic of the Union of Myanmar Federation of Chambers of Commerce and Industry has recently launched a corporate social responsibility initiative.

The Committee further called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

Current position:

Following the granting of an entry visa, an additional international professional staff member will commence duties in Myanmar on 10 June 2012 to further support the SU complaints process. Two additional national staff members have been appointed to act as regional focal points for the network of volunteer complaints facilitators, with two further such appointments planned for July 2012. The Government has agreed to give favourable consideration to the granting of one further visa to permit the engagement of another international professional staff member who will support the application of the forced labour action plans once the funding for that post is secured by the ILO.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

Current position:

The MOU makes specific provision for this activity and procedures for its implementation are expected to be incorporated in the Joint Action Plan.

III. Specific actions under the Understanding and the SU

12. Since 20 May 2011, the following activities have been undertaken:

(a) Training and awareness raising

- 30 ILO training workshops/presentations have been held for 1,201 staff of the United Nations, international non-governmental organizations, local NGOs, and community-based organizations, as well as for individual citizens, on legislation prohibiting forced labour, including under-age recruitment, and the practical operation of the SU complaints mechanism.
- The ILO has participated in one Country Task Force for Monitoring and Reporting training seminar/presentation conducted for members of the armed forces (operational, training and recruitment personnel), the police and the prison service on the law and practice concerning under-age recruitment into the military.

(b) Operational field missions

- Three field missions for complaint assessment were carried out.
- Ten case follow-up/information verification missions were carried out.

(c) Government consultations

- In addition to meetings held in the context of the three ILO missions to Myanmar, there were four meetings with the full Government Working Group for the Elimination of Forced labour on the operation of the SU and two meetings with the newly created SWG.

IV. Statistics on complaints

13. Since the coming into effect of the SU in February 2007, a total of 1,458 complaints have been received by the Liaison Officer. Of these, 541 were outside the ILO mandate in Myanmar.
14. Of the 917 cases accepted as being within the mandate, 286 have been assessed, submitted to the Working Group, investigated by the Government and subsequently closed. Another 273 cases remain open, either awaiting information on the results of the investigations by the Government or being the subject of follow-up negotiations. Another 358 cases either are currently under assessment or require further information prior to submission.

15. A total of 235 children recruited under-age have been discharged/released to the care of their families and 37 persons recruited under-age and imprisoned for alleged desertion and other offences have been released from prison and discharged from the military.
16. Since the last special sitting of the Committee, 738 complaints have been received, of which 367 related to the forced labour mandate.
17. Reports from the network of voluntary facilitators, confirmed by information that the Governing Body Officers' mission received from opposition members of Parliament and labour activists, indicate that the incidence of the use of forced labour by the civilian authorities has decreased considerably and that there has recently been a noticeable reduction in respect of the exaction of forced labour by the military. This reinforces the belief that the increase in complaints received does not reflect an increase in the use of forced labour, but rather a greater awareness of the general population as to their rights under the law and growing confidence in the complaints mechanism established under the SU. Notwithstanding this, the fact that complaints continue to be received confirms the importance of maintaining vigilance, as well as the need for the committed application of the MOU strategy and its associated action plans and the continuation of the operation of the SU. The imminent commencement of additional staff will contribute both to a reduction of the backlog of complaints requiring processing and to the implementation of the joint strategy.

V. Summary

18. In summary, it can be said that important developments have been observed in a number of areas since the Committee last reviewed the situation. In the context of the recommendations of the Commission of Inquiry, the previous legislation has been repealed and new legislation has been adopted, including legislation confirming the exaction of forced labour as a criminal offence. Perpetrators, and in particular military personnel, accused of the use of forced labour are now prosecuted and punished under the law. Whilst there has been a noticeable reduction in the use of forced labour, the problem persists and complaints continue to be received. This has been recognized by the Government through their initiation of a joint strategy with the ILO for the full elimination of all forms of forced labour by 2015, if not before, and by their agreement to detailed action planning for the implementation of that strategy.

D. Conclusions adopted by the Committee on the Application of Standards in its special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)
(International Labour Conference, 100th Session, June 2011)

The Committee noted the observations of the Committee of Experts on the application of Convention No. 29 by the Government of Myanmar, as well as the report of the ILO Liaison Officer in Yangon that included the latest developments in the implementation of the complaints mechanism on forced labour established on 26 February 2007 with its trial period extended, in February 2011, for a further 12 months to 25 February 2012.

The Committee also noted the discussions and decisions of the Governing Body of November 2010 and March 2011. It further took due note of the statement of the Government representative and the discussion that followed. In particular, the Government referred to the ongoing revision of the Village Act and the Towns Act and indicated that the draft law explicitly prohibits forced labour and includes reservations in the case of natural disasters. He also referred to ongoing awareness-raising activities, including in ethnic minority regions, and to the allocation of funds for the purpose of alleviating the chances of unpaid labour on the part of the Government. As regards complaints of under-age recruitment, he stated that children had been released, disciplinary action taken against military personnel and some officers dismissed and sentenced to prison terms. He stated that it was evident that action would be taken against any perpetrator, civilian or military, on forced labour and under-age recruitment.

The Committee welcomed the release from house arrest of Daw Aung San Suu Kyi that it had been calling for over many years. It again called for the immediate release of other political prisoners and labour activists.

The Committee referred to the political restructuring that had taken place since the last meeting and noted the initial policy priority statements of the newly elected President on good government and good governance. The Committee firmly expects that these objectives will be transposed into substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Despite the above, the Committee regretted to note that there had been no substantive progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry, namely to:

- (1) bring the legislative texts in line with the Forced Labour Convention, 1930 (No. 29);
- (2) ensure that in actual practice forced labour is no longer imposed by the authorities; and
- (3) strictly enforce criminal penalties for the exaction of forced labour.

The Committee recalled the continued relevance of the decisions concerning compliance by Myanmar with Convention No. 29, adopted by the Conference in 2000 and 2006, and all the elements contained therein.¹ It expressed the firm expectation that the Government move with urgency to ensure that the actions requested are carried out at all levels and by all civil and military authorities. The Committee strongly urged the Government to fully implement, without delay, the recommendations of the Commission of Inquiry and the comments and observations of the Committee of Experts.

The Government in particular should:

- (1) submit the draft proposals for amendment of the Village and Towns Acts to the ILO for comment and advice aimed at ensuring their full conformity with Convention No. 29, and ensure their early adoption into law and application in practice;
- (2) take steps to ensure that the constitutional and legislative framework effectively prohibit the exaction of forced labour in all its forms;
- (3) take all necessary measures to prevent, suppress and punish the full range of forced labour practices, including the recruitment of children into armed forces, forced conscription into fire brigade and militia reservist units, portering, construction, maintenance and servicing of military camps, agricultural work, human trafficking for forced labour, that are still persistent and widespread;
- (4) strictly ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied;
- (5) carry out, without delay, proposed consultations between the ILO and the finance and planning ministries towards ensuring that necessary budget allocations are made so that workers are freely contracted and adequately remunerated;
- (6) provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military;
- (7) immediately cease all harassment, retaliation and imprisonment of individuals who use, are associated with or facilitate the use of the complaints mechanism;
- (8) release immediately complainants and other persons associated with the use of the complaints mechanism who are currently detained and reinstate any consequentially revoked professional licences;
- (9) intensify awareness-raising activities throughout the country including in association with major infrastructure projects and in training of police and military personnel;
- (10) facilitate, without delay, the production and wide distribution of the brochure in the remaining local languages; and
- (11) actively pursue agreement of a meaningful joint action plan with the United Nations Country Task Force on Monitoring and Reporting in respect of children in circumstances of armed conflict, of which the ILO is a member, addressing amongst other things under-age recruitment.

¹ <http://www.ilo.org/public/english/standards/relm/ilc/ilc88/resolutions.htm#I>,
<http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-3-2.pdf>.

As called for in the 2000 ILC resolution of the International Labour Conference, the Committee counted on the collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It similarly called on all investors in Myanmar to ensure that their activity in the country is not used to perpetuate or extend the use of forced labour but rather makes a positive contribution to its complete eradication.

The Committee called for the strengthening of the capacity available to the ILO Liaison Officer to assist the Government in addressing all of the recommendations of the Commission of Inquiry, and to ensure the effectiveness of the operation of the complaints mechanism, as well as any other additional action necessary for the complete elimination of forced labour. In particular, the Committee firmly expected that the Government would give full assurances without delay for the granting of entry visas for additional international professional staff.

The Committee called on the Government to review with the ILO Liaison Officer the references to forced labour orders made during its discussion, as well as the orders and similar documents which have been submitted to the Committee of Experts and requested that the progress made in this regard be reported to the Governing Body at its November session. It encouraged the Government to make use of the ILO Office to put in place a mechanism for the immediate review and investigation of these allegations.

The Committee urged the Government to provide detailed information on the steps taken on all the abovementioned matters to the Committee of Experts for its examination this year and expects to be in a position to take note of significant developments at the next session of the Conference.

E. Message of the President of the Republic of Myanmar on the occasion of the May Day Ceremony

NAY PYI TAW, 1 May-The following is the full text of the message sent by President of the Republic of the Union of Myanmar Agga Maha Thayay Sithu, Agga Maha Thiri Thuddhamma U Thein Sein on the occasion of May Day:-

Esteemed workers,

May I extend my warmest regards to you the entire workers of the country who are striving for national economic development within your intellectual and physical capacities and industriousness through might and main in building a modern, developed democratic nation and wish you all physical and spiritual well-being on May Day, 1st May 2012.

Today is an especial day and indeed remarkably meaningful for the workers of Myanmar as May Day is being celebrated nationwide this year to honour the workers like in many other countries that observe this special occasion on 1st May.

To have a decent work for every one is a fundamental objective of the Republic of the Union of Myanmar that is implementing the Rural Development and Poverty Alleviation task by setting up (8) work programmes. To realize the said objective, efforts are being made for ensuring rapid flow of domestic and foreign investments into the country. As for the number of factories, industrial estates, industrial zones and special economic zones, small and medium enterprises and regional business is increasing, the labour market that could create more job opportunities and establish sustainable professions emerges. The work efficiency promotion policy has also been adopted as it is crucially important for the productivity of a country.

Currently, the Government is focusing on ensuring rights based on Social Justice for entire workers. So, the Government enacted Law, rules and regulations and permitted the formation of independent labour organizations to protect the rights of workers, to foster better relations among workers and between employers and workers.

Moreover, a new Social Security Law which could provide more social protection including the right of medical care, cash benefit, free medical care after retirement, family assistance, superannuation pension benefit and unemployment benefit, invalidity benefit, employment injury benefit, funeral benefit, survivor's benefit and benefits of social security housing project has been drafted.

Our elected government has been in the office for over a year and it is high time we should eliminate all forms of forced labour once and for all for the enhancing the eternal principles of justice, liberty, equality in the Union. Forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

Therefore, the process of eradicating forced labour in Myanmar has been accelerated and International Labour Organization and the government of the Republic of the Union of Myanmar have launched a Joint Strategy for the absolute elimination of forced labour in Myanmar by 2015.

Esteemed workers,

In conclusion, I would like to urge all the workers and workers' organizations, employers' and employers' organizations to work together with the Union Government in unity having a strong determination in building a modern, developed democratic nation.

F. Document before the Governing Body at its 312th Session (November 2011) and Governing Body conclusions

INTERNATIONAL LABOUR OFFICE



Governing Body

312th Session, Geneva, November 2011

GB.312/INS/6

Institutional Section

INS

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Overview

Summary

This report fulfils the obligation stemming from the 1999 International Labour Conference resolution that there be a standing item on the Governing Body agenda on this subject. The paper addresses activities undertaken and developments since the last report (March 2011).

Policy implications

None.

Legal implications

None.

Financial implications

None.

Decision required

The paper is submitted for debate and guidance.

Follow-up action required

Depending on the conclusions of the Governing Body.

Author unit

ILO Liaison Officer in Myanmar (ILO-Yangon).

References to other Governing Body documents and ILO instruments

GB.310/5 and related Governing Body conclusions; GB.312/INS/7.

Members may also find reference to *Provisional Record* No. 18, Part 3, of the International Labour Conference, 100th Session (2011), useful in their considerations of this report.

Forced Labour Convention, 1930 (No. 29).

Introduction

1. Considerable activity has taken place since the last reports to the Governing Body at its 310th Session (March 2011)¹ and to the International Labour Conference at its 100th Session (June 2011).² Following the general elections in November 2010, the elected Government took office in March 2011 and, in parallel with the workings of the new parliamentary structure, has commenced work on a broad policy reform agenda.
2. The complaints mechanism under the Supplementary Understanding which was extended for a further 12 months in February 2011 continues to operate, with positive developments in a number of areas and an environment of increased dialogue and cooperation. The number of complaints received continues to grow – an average of 30 per month since March 2011 compared with 21 per month in the same period of 2010, ten per month for 2009 and five per month for both 2008 and 2007. This is seen as reflecting the increased awareness of the complaints mechanism and increasing confidence about its use.
3. Since the 310th Session of the Governing Body, 210 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 155 (75 per cent) relate to under-age recruitment, with the balance being evenly spread between the issues of trafficking for forced labour and military forced labour. A number of cases are starting to be received alleging the use of forced labour in the private sector, particularly in, but not limited to, domestic work. Over the same period, the number of complaints alleging the use of forced labour by the civilian authorities has continued to fall. There is growing evidence too that, with all parties being better informed and people being more empowered, forced labour incidents are better able to be resolved at local level without recourse to the complaints mechanism.
4. This paper is presented in two parts with a view to assisting the Governing Body in its deliberations. Part I discusses the current political background. Part II provides a commentary concerning developments in the implementation of the recommendations of the 1998 Commission of Inquiry and of the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Part I. The current political background

5. The activities and developments outlined in Part II of this document have taken place against a background of rapid political change. General elections were held in November 2010 under the terms of the Constitution adopted by referendum in 2008. Views on the legitimacy and credibility of that electoral process vary widely. They were contested by a number of political parties, but the main opposition group, the National League for Democracy, did not take part.
6. As a result, a parliamentary system is now in place comprised of upper and lower houses at the national level, as well as 14 state and regional assemblies. The party sponsored by the previous regime holds a majority of elected seats in all of these bodies, in which the military is entitled to appoint 25 per cent of members. Opposition parties and those representing the main ethnic groups also hold elected seats in each of them.

¹ GB.310/5.

² See ILO: *Provisional Record* No. 18, Part 3, International Labour Conference, 100th Session (Geneva, 2011), pp. 21–26.

7. During the first session of Parliament (3 February–31 March 2011), the Constitution was formally adopted, a national President elected, a new Government formed, appointments made to the judiciary and the civil service restructured. Corresponding actions were also taken at the state and regional levels.
8. Since taking office, the President and his Government have begun a major programme of legislative and policy reform. This has involved published parliamentary debates and consultations with the business community, United Nations (UN) agencies, and the international community.
9. The second session of Parliament (22 August 2011 to present) has, to a large extent, been committed to a broad legislative programme.
10. The major initiatives taken to date include the following:
 - introduction into Parliament of draft legislation on local administration which would repeal the Village and Towns Acts (see paragraph 18 below);
 - adoption by Parliament of a Labour Organizations' Act (see GB.312/INS/7), which repeals the provisions of the Trade Union Act, 1926. The Parliament has also repealed the Myanmar Labour Law, 1964, which made provision for a single union;
 - release from house arrest of Daw Aung San Suu Kyi, General Secretary of the National League for Democracy, who has undertaken dialogue with the Government;
 - declaration of two amnesties, involving the release of some 10,000 prisoners, most of whom were serving criminal sentences. The number of political prisoners benefiting remains unclear and many are believed to remain in detention. At the time of writing further releases are expected;
 - elaboration and implementation of a rural development and poverty-alleviation strategy;
 - relaxation of media censorship rules;
 - introduction of land reform legislation;
 - appointment of a Human Rights Commission in conformity with the Paris Principles relating to the Status of National Institutions;³
 - beginning of peace negotiations with non-state armed groups, seen by the Government as a key to "ethnic reunification". At the time of writing, two agreements had been reached, although fighting between the Myanmar armed forces and at least three non-state armed groups continued;
 - increase of pensions for ex-government and service personnel, with a review of private sector social security policy under way and the introduction of draft legislation into Parliament planned;
 - inviting the International Monetary Fund (IMF) to visit the country to advise on reform of macroeconomic policy;
 - beginning of financial sector reform;

³ *The Principles and Guidelines on children associated with armed forces or armed groups*, February 2007.

- joint initiatives with the Government of Thailand to protect the rights and interests of Myanmar migrant workers in that country;
 - introduction of tax relief on foreign currency earnings; and
 - suspension of a major Myanmar–China hydroelectric project in response to public petitioning.
11. These developments have attracted considerable attention internationally. Positive moves by the Government, including in matters of long-standing concern to the ILO, have been welcomed and the need to proceed further towards full respect of all human rights and democratic freedoms has been underlined.
 12. In her video message to the Conference in June 2011, Daw Aung San Suu Kyi stated, amongst other things: “We look to the ILO to expand its activities in Burma to help usher in an era of broad-based social justice in our country.”⁴ In discussion with the ILO Liaison Officer, Daw Aung San Suu Kyi has expressed the view that whilst many issues remained to be addressed, the new President appeared sincere in the pursuit of reforms at many levels. While questions remained in respect of the depth and sustainability of the reform, the capacity of the Government to deliver, and possible areas of resistance, she said that appropriate effort should be directed at supporting reform efforts and ensuring their successful introduction while maintaining a firm principled approach – including on the issues of forced labour and freedom of association.
 13. The Governing Body will no doubt wish to keep this background in mind when considering the developments reported below in the implementation of the recommendations of the 1998 Commission of Inquiry on Forced Labour and in drawing up its conclusions on the future activities of the ILO in the country.

Part II. Developments in implementing the recommendations of the 1998 Commission of Inquiry, and the conclusions of the Governing Body at it 310th Session and of the Conference at its 100th Session

14. All activities are undertaken in pursuit of the recommendations of the 1998 Commission of Inquiry, which examined the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), namely:
 - A. that the relevant legislative texts [...] be brought into line with the Forced Labour Convention, 1930 (No. 29);
 - B. that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military; and
 - C. that the penalties which may be imposed under Section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention.

⁴ ILO: *Provisional Record* No. 16(Rev.), International Labour Conference, 100th Session (Geneva, 2011), p. 20. The video message is available at: http://www.ilo.org/global/about-the-ilo/press-and-media-centre/videos/video-interviews/WCMS_157494/lang--en/index.htm.

15. The working agenda of the Liaison Officer is guided by the conclusions of the Governing Body and of the Conference on the practical issues to be addressed in order to meet the Commission of Inquiry's recommendations. The following commentary records activity undertaken in response to the conclusions adopted by the Governing Body at its 310th Session and by the Conference at its 100th Session.

Follow-up expectations

16. Recognizing the political restructuring and positive developments which have taken place following the November general elections, both the Governing Body and the Conference expressed the expectation that these would result in a revitalization of the programme, with substantive positive actions and proactive and preventive measures for the eradication of all forms of forced labour and the advancement of workers' rights.

Update

17. Following both the 310th Session of the Governing Body and the 100th Session of the Conference, the Liaison Officer had three meetings with the Government Working Group for the Elimination of Forced Labour, chaired by the newly appointed Deputy Minister of Labour to review their conclusions and identify priority issues for follow-up action. These meetings took place in a new, more constructive, atmosphere with substantive discussion of issues, priorities identified and agreed, and concrete commitments made, as described in the following paragraphs.

Legislative reform

18. Both the Governing Body and the Conference called for the rapid amendment of the Village and Towns Acts, 1907, the review of the *Jail Manual*, and the introduction of proposed new labour legislation prohibiting the use of forced labour in all its forms, advising that the technical support services of the ILO should be taken advantage of so as to ensure full conformity with Convention No. 29.

Update

19. The Ministry of Labour has advised that the Ward and Villages Administration Bill has been submitted to Parliament and is under parliamentary discussion at the time of writing. The text of the Bill, managed by the Ministry of Home Affairs, remains confidential until the first round of parliamentary discussion is completed, but a copy may be transmitted shortly to the ILO. The ILO is advised that this Bill makes the use of forced labour illegal with the sole exception being under the emergency disaster provisions of Convention No. 29. It is further advised that the Bill repeals the forced labour provisions of the previous Village and Towns Acts, 1907. It is hoped that a copy of this legislation will be available prior to the November 2011 session of the Governing Body.

20. The ILO has also been informed that the review of the *Jail Manual* continues and that it is included in Parliament's legislative reform schedule. In the interim, discussion on current practices in respect of the use of convict labour for military portering purposes has commenced with the armed forces (see paragraph 29 below).

Expansion of community awareness

21. Both the Governing Body and the Conference called for the continued expansion of awareness-raising activities at community level and with government authorities, including the police and the military, as well as for the production and distribution of the information brochure on forced labour in languages other than the official Myanmar language in which it already exists.

Update

22. Since the last session of the Governing Body, the following forced labour presentations, seminars and workshops have been held:
- a joint Ministry of Labour/ILO awareness-raising seminar in Chin state for 162 local authority personnel (military, police, judges and civilian authorities);
 - a presentation to the Myanmar Women's Affairs Federation;
 - a presentation to some 120 senior police, immigration and Ministry of Home Affairs personnel, as part of the government training course on "Promotion and Protection of Human Rights (2011)";
 - a one-day workshop held for 34 journalists;
 - regular one-day forced labour workshops now held on a twice-monthly basis, with the participation of 582 community-based organization personnel, monks, teachers, elected politicians and individual citizens from all over the country;
 - a half-day seminar with 40 Save the Children and partner organizations' field staff;
 - a half-day seminar with 43 members of the Women's Protection Technical Working Group;
 - a half-day workshop with 18 field staff of partner organizations of the Office for the Coordination of Humanitarian Affairs; and
 - a one-and-a-half-day seminar with Thai-based international non-governmental organizations (NGOs).
23. The Government's translation of the information brochure into the Shan language has been received and, at the time of writing, is in the process of printing for distribution. It has been agreed that the Shan language, as the most widely used of the national languages after Myanmar, would be given priority with others to follow.
24. The brochure in the official Myanmar language has been widely distributed in every state and region by the Government and by the ILO with support from NGOs and community-based organizations.
25. UNICEF as the co-chair of the Country Task Force on Monitoring and Reporting on Children and Armed Conflict (CTFMR), of which the ILO is a member, has undertaken a

number of training activities for military personnel in cooperation with the Ministry of Defence. Another similar training session is scheduled for December 2011, at which the ILO will present a section on under-age recruitment in the context of the operation of the Supplementary Understanding.

26. The Government Working Group for the Elimination of Forced Labour has confirmed agreement to include ILO presentations on forced labour, including under-age recruitment, in police in-service training curricula. This is expected to commence in early 2012.
27. Activity continues with the TOTAL Company, in respect of its pipeline operation, and initial discussions, as yet inconclusive, have been held with Ital–Thai and Daewoo, in respect of potential partner training/awareness-raising activities on their respective projects. It is hoped that discussions with the China National Petroleum Corporation (CNCP) and the Petroleum Authority of Thailand Exploration and Production Company (PTTEP) can be held shortly.

Military use of forced labour

28. Whilst recognizing the progress made in respect of the civilian authorities, the Governing Body and the Conference called on the Government to provide for meaningful consultations between the ILO and the Ministry of Defence and senior army representatives to address both the policy and behavioural practices driving the use of forced labour by the military, including in particular: the recruitment of children into the armed forces; forced conscription into the armed forces, fire brigade and militia reservist units; portering; construction, maintenance and servicing of military camps; and forced agricultural work.

Update

29. In response to this call, the Working Group for the Elimination of Forced Labour facilitated the first direct meeting between the ILO and the Tatmadaw (Armed Forces) Committee on ILO Affairs. These initial discussions were constructive. The Committee indicated its understanding that the political environment had changed and now required greater accountability. All of the issues and practices outlined above were discussed and a second meeting with the Committee Chairperson was held in October, at which a number of issues were clarified. Another meeting to consider what and how issues can be acted on further is tentatively scheduled for December. In the interim, the Tatmadaw Committee has requested that a schedule of the various allegations presented to the Committee of Experts be submitted for its consideration and follow-up as appropriate.

Under-age recruitment

30. The Conference called for the active pursuit of a joint action plan with the CTFMR in respect of children in circumstances of armed conflict, addressing among other things under-age recruitment.

Update

31. Since 1 March 2011, 33 victims of under-age recruitment have been released or discharged from the military in response to complaints lodged under the Supplementary Understanding, including six who were released from prison with their desertion charges quashed. The total number of under-age recruits released or discharged in response to Supplementary Understanding complaints since February 2007 now stands at 208.
32. Negotiations between the Government and the CTFMR for a joint action plan under UN Security Council Resolution 1612 concerning children in circumstances of armed conflict have been resumed in recent months, with indications that the new Government is keen to finalize an agreement.
33. The armed forces continue to respond to under-age recruitment complaints and to deal with them relatively efficiently. In the meeting with the Tatmadaw Committee referred to above, a number of practical areas of action, proactive rather than reactive, were discussed and are under consideration.
34. Of these, two may be highlighted. The first concerns the need to put in place a policy and procedure under which a copy of a genuine official proof-of-age document is required to be produced and attached to the recruit's file before recruitment is confirmed. The second concerns the need to adopt a verification procedure to be followed prior to the arrest, prosecution and imprisonment of recruits for alleged "desertion". In some instances, such arrests occur in full knowledge that the child was illegally recruited and that a complaint under the Supplementary Understanding is being investigated. Responses are awaited on both of these issues.

Budgeting for wages

35. Both the Governing Body and the Conference have consistently called for the Government to facilitate ILO meetings with the Ministry of Finance and the Ministry of Planning towards ensuring that adequate budgetary allocations are made so that workers may be freely contracted and adequately remunerated.

Update

36. Following the 100th Session of the Conference, the Government Working Group facilitated the first meeting of the ILO with the Ministry of Finance on this matter. The meeting was constructive; the Ministry of Finance senior officials shared information on policy and practice and were responsive to questions asked. The budget formulation procedure was explained and it was clarified that, under the new administration, financial policy has been and continues to be reformed in accordance with the new Constitution. Government departments must submit project proposals to the Ministry of Planning as part of their annual budget forecasting process, and such proposals must make provision for payment of wages against a template policy of a standard daily wage of 1,100 Kyat (approximately US\$1.30) per day and a standard cost ratio of 60 per cent materials and 40 per cent wages. Once approved by the Ministry of Planning, the proposed budget is vetted and confirmed by the Ministry of Finance prior to acceptance. In the case of minor works, repairs and maintenance, the responsible departments must make global projections using the same prescribed daily wage and materials:wages ratio.
37. It was recognized that the potential for forced labour arose particularly at municipal level when the demand for infrastructure or repairs and maintenance outstripped budgeted allocations. Whilst a procedure for supplementary allocations existed, it was acknowledged

that local authority personnel could resort to the use of forced labour to fill the funding gap. It is expected that such matters will be addressed under new governance and accountability structures.

38. The Ministry of Finance was not in a position to clarify specific budgeting and financial management practices adopted by the defence services, as the Ministry simply provides the defence services the required overall allocation in respect of both current and capital accounts without being party to details of the budget breakdown or policy for its application. The issue of Ministry of Defence and armed services funding as a potential driver of forced labour is among the items in continuing discussion with the Tatmadaw Committee on ILO Affairs.
39. An introductory meeting with the Ministry of Planning was held on 20 October 2011 at which the basic procedures for pre-allocation planning were explained. Tentative arrangements have been made for a more in-depth follow-up meeting in December 2011.
40. It should be noted that, during the meeting with the Ministry of Finance, it was indicated that with the introduction of the new political environment and the establishment of state and regional parliaments the whole financial management system was being reconfigured. It is understood that, as from 1 October 2011, a transitional phase was entered into under which the national budget has been split and decentralized for state and regional parliament management. As from the financial year commencing April 2012, state and regional parliaments will, within the national budgeting framework, have full responsibility for the development of their own budgets, with the right to impose local taxes, under the overall supervision of a newly formed national Parliamentary Finance Commission.

Application of the law and punishment

41. Both the Governing Body and the Conference have sought to ensure that perpetrators of forced labour, whether civil or military, are prosecuted under the Penal Code and that sufficiently dissuasive sanctions are applied.

Update

42. In respect of military personnel deemed responsible for the recruitment of minors, action under the military disciplinary code is now routinely taken. Punishments range from a formal reprimand to a monetary penalty, the loss of service entitlements for pension and promotion, demotion, imprisonment and dishonourable discharge. In the case of civilian government personnel, the only prosecution under the Penal Code that the ILO has been informed of took place in respect of a case in 2007 with punishments since then being limited to the imposition of administrative penalties. While advice has been received that a prosecution, under the Penal Code, has been initiated in respect of a civilian accused of being party to the exaction of forced labour, no information has as yet been received as to the outcome of this or any other similar prosecutions.

Release of detainees

43. The Committee of Experts, the Conference and the Governing Body have at every opportunity called for the release of labour activists imprisoned for their association with forced labour complaints or their pursuit of freedom of association. This call has been made in respect of all such persons and, in particular: U Zaw Htay; U Nyan Myint; Daw Su Su Nway; U Min Aung; U Myo Aung Thant; U Thurein Aung; U Wai Lin; U Nyi Nyi Zaw; U Kyaw Kyaw; U Kyaw Win and U Myo Min. They have also called for the

reinstatement of licences to practice law of U Aye Myint and Ko Pho Phyu, which were revoked following their prosecution in connection with ILO activities.

Update

44. As part of the general presidential amnesty of 17 May 2011, U Nyan Myint was released. Under the second general presidential amnesty of 12 October 2011, U Min Aung, U Zaw Htay, U Myo Aung Thant and Daw Su Su Nway were also released, reportedly together with a further 13 labour activists.
45. At the time of writing, U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min remain in prison, as reportedly do 16 other labour activists. As a result, there are currently no persons imprisoned in connection with ILO elimination of forced labour activities.
46. With respect to the reinstatement of licences to practice law, the Government has advised that this matter rests with the Bar Council which, to date, continues to reject applications for their reinstatement.

Harassment

47. The Governing Body and the Conference renewed their call for the cessation of all harassment, retribution and detention against complainants or persons supporting the submission of a complaint.

Update

48. A limited number of incidents in which complainants, their families or persons supporting their complaint have been subjected to verbal abuse have come to the ILO's notice. However, no reports of serious harassment have been received and no arrests or detentions in this connection have been experienced since the last quarter of 2009.

The Magwe Region cases

49. The Governing Body has identified a number of long-standing cases from the Magwe Region, largely concerning the loss of land as a penalty for refusal to undertake forced labour demanded by businesses owned by the Ministry of Defence or by operational military units. It has called for the Government to work with the Liaison Officer to find lasting solutions to these cases.

Update

50. Ongoing attention has been given to these five cases which involve the well-being and livelihood of many hundreds of farmers. In three of the cases, it is understood that the complainant farmers have been permitted to return to their land with no restrictions being placed on them as to its use. In one case, where the land was required for government use, compensation has been offered and has been accepted by the complainants. In the remaining case, the facts remain in dispute. All the cases remain, for the time being, open on the basis that it is necessary to verify final outcomes and to clearly establish the facts in respect to the last outstanding case. An ILO field mission has been scheduled for 3–5 November 2011 to this end.

Strengthening the capacity of the Liaison Office

- 51.** In light of the demands placed on the Liaison Office by the considerable increase in complaints received, together with the extensive demand for awareness-raising and training activities, the Governing Body and the Conference have called on the Government to grant a visa for an additional international Professional staff member and to facilitate a licence for an additional vehicle required for assessment missions.

Update

- 52.** An import licence has been issued and an additional vehicle ordered. The Government continues to advise that they consider the engagement of additional international Professional staff as unwarranted and that the ILO is free to engage national staff as deemed appropriate. The Office has recently been able to engage, on a temporary basis, international consultants resident in Myanmar who will assist in processing the substantial backlog of cases requiring assessment.
- 53.** Operating with limited staff requires the Liaison Officer to utilize the voluntary services of a number of community networks – currently some 250 persons – all of whom have received basic training in case facilitation work. To manage this operation, the Liaison Officer has engaged the services of national staff with regional network focal point responsibilities.
- 54.** Additional staffing and the provision of extensive awareness raising has been generously supported by targeted project funding from the European Union, the Government of Sweden and the Government of the United States.

Geneva, 3 November 2011

312th Session of the Governing Body of the International Labour Office

(November 2011)

SIXTH ITEM ON THE AGENDA

GB.312/INS/6

Draft conclusions concerning Myanmar

The Governing Body took note of the report of the Liaison Officer, the statement made by the Permanent Representative of the Republic of the Union of Myanmar and the subsequent discussion. In the light of the debate, it adopted the following conclusions:

- (1) The Governing Body welcomes the positive developments in Myanmar since March 2011 but remains concerned that serious problems in the use of forced labour persist. The Governing Body calls for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.
- (2) The Governing Body notes that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, is before Parliament. The Governing Body regrets the absence of consultation and urges the early adoption and coming into force of that legislation. It underlines that full conformity of the new law with Convention No. 29 is required to meet the relevant recommendation of the Commission of Inquiry.
- (3) The Governing Body urges that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invites the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual.
- (4) The Governing Body welcomes the commencement of direct discussion with the Tatmadaw (armed forces) and looks forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.
- (5) The Governing Body also welcomes the commencement of, and encourages the continuation of, direct discussion with the Ministries of Finance and Planning and looks forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.
- (6) The Governing Body welcomes the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urges the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.
- (7) The Governing Body again calls on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

- (8) The Governing Body again stresses the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.
- (9) The Governing Body notes the priority action taken towards the resolution of a number of long-standing complaints in the Magwe Region and looks forward to receiving confirmation that they are at last satisfactorily resolved.
- (10) The Governing Body welcomes the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, and encourages the continuation of this partnership activity and its expansion into other languages. The Governing Body further notes the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruitment and their alleged desertion.
- (11) The Governing Body, whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its Supplementary Understanding which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.
- (12) In light of the above, the Governing Body considers it essential to strengthen the capacity of the Liaison Office and therefore reiterates in the strongest terms its repeated calls on the Government to issue without delay the visas necessary to this effect.
- (13) The Governing Body notes the calls for a review by the International Labour Conference of the mandate defined by the 1999 resolution and will consider this issue at its March 2012 session.

Geneva, 16 November 2011

**G. Document before the Governing Body
at its 313th Session (March 2012) and
Governing Body conclusions**

INTERNATIONAL LABOUR OFFICE



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6

Institutional Section

INS

Date: 15 March 2012
Original: English

SIXTH ITEM ON THE AGENDA

**Developments concerning the question
of the observance by the Government
of Myanmar of the Forced Labour
Convention, 1930 (No. 29)**

Purpose of the document

This document informs the Governing Body about activities undertaken by the Office since the 312th Session (November 2011), includes a report of the Liaison Officer pursuant to paragraph 6 of the Supplementary Understanding and provides factual background information on the current situation. It also addresses the question of possible review of the measures adopted by the International Labour Conference.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: These will depend on the decisions taken or guidance provided.

Legal implications: These will depend on the decisions taken or guidance provided.

Financial implications: None.

Follow-up action required: This will depend on the decisions taken or guidance provided.

Author unit: ILO Liaison Office in Myanmar, Office of the Legal Adviser (JUR) and Executive Director of the Standards and Fundamental Principles and Rights at Work Sector (ED/NORM).

Related documents: Governing Body members may find reference to the conclusions of GB.312/INS/6 and GB.313/INS/7 useful to their deliberations.

1. Considerable activity has taken place since the last session of the Governing Body, against a background of major political change in Myanmar. Following general elections in November 2010 and a new Government taking office in March 2011, the new Parliament and the Government have continued to work on a broad reform agenda.
2. The complaints mechanism under the Supplementary Understanding (SU), which was extended for a further 12 months in January 2012, continues to operate with positive developments in a number of areas in an environment of increased dialogue and cooperation.
3. Furthermore, agreement has been reached in principle on the development and implementation of a joint Government/ILO strategy for the elimination of all forms of forced labour by 2015. A framework agreement for such a strategy is under discussion and at the time of writing is expected to be available in time for the current session of the Governing Body.
4. Since the 312th Session (November 2011) of the Governing Body, 91 formal complaints have been received which have been assessed as coming within the ILO forced labour mandate. Of these, 63 related to under-age recruitment. While still an issue in some states and regions, the number of complaints alleging the use of forced labour by the civilian authorities continues to fall. There is growing evidence that, in a context of better information and growing confidence, some forced labour incidents, including under-age recruitment, are more amenable to resolution at local level without recourse to the complaints mechanism. The exaction of forced labour by the military and non-state armed groups in conflict situations, while not the subject of many formal complaints because of the obstacles faced by victims, continues to be a problem. Direct discussion with the military has been opened at senior level, and positive initial responses have been received. The proposed joint strategy will, by definition, address all manifestations of forced labour, whether related to the military, the civil Government or the private sector.
5. This paper is presented in four parts, with a view to assisting the Governing Body in its deliberations both in respect of its review of developments and in the context of the conclusions it adopted in November 2011,¹ in which it noted, inter alia, the calls for a review of the mandate defined by the 1999 resolution² and decided to consider this issue at its March 2012 session.
 - Part I provides a brief chronological summary of ILO action in respect of forced labour in Myanmar;
 - Part II discusses the current political climate;
 - Part III discusses developments since the 312th Session (November 2011) of the Governing Body; and
 - Part IV calls for a possible review of the measures decided by the Conference.

¹ GB.312/PV/Draft, para. 112 (the text of the conclusions is contained in Appendix I to this document).

² Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999) (the text of the resolution is contained in Appendix II to this document).

Part I. A summary of ILO action in respect of forced labour in Myanmar

6. Following a complaint in respect of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29), lodged under article 26 of the ILO Constitution, the Governing Body established a Commission of Inquiry in 1997.³ The Commission's report was received by the Governing Body at its 273rd Session (November 1998), and its recommendations were duly adopted.⁴

7. On 21 May 1999, the ILO Director-General presented a report to Governing Body members,⁵ which concluded that:

Despite the Order issued by the Government of Myanmar on 14 May 1999 there is no indication that the three recommendations of the Commission of Inquiry have yet been followed:

- (a) the Village Act and the Towns Act have not been amended;
- (b) in actual practice forced or compulsory labour continues to be imposed in a widespread manner;
- (c) no action appears to have been taken under section 374 of the Penal Code to punish those exacting forced labour.

8. In this context, the International Labour Conference, at its 87th Session (June 1999), adopted a resolution⁶ stating:

- (a) that the attitude and behaviour of the Government of Myanmar were grossly incompatible with the conditions and principles governing membership of the Organization;
- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations; and
- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

9. At its 277th Session (March 2000), the Governing Body decided to place on the agenda of the 88th Session of the Conference (June 2000) an item entitled: "Action recommended by the Governing Body under article 33 of the Constitution – Implementation of the recommendations contained in the report of the Commission of Inquiry entitled *Forced Labour in Myanmar (Burma)*".

³ GB.268/15/1.

⁴ GB.273/5 (the text of the recommendations is contained in Appendix III to this document).

⁵ Report of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry established to examine its observance of the Forced Labour Convention, 1930 (No. 29), Geneva, 21 May 1999, para. 61.

⁶ Resolution on the widespread use of forced labour in Myanmar, op. cit. (Appendix II).

10. Subsequently, at its 88th Session (June 2000), the Conference adopted a further resolution⁷ which called, among other measures, on member States, workers' and employers' organizations and international organizations to review their relations with the Government of Myanmar with a view to supporting the objective of the elimination of forced labour. In the absence of further progress, notwithstanding the undertaking of a technical cooperation mission to Myanmar in October 2000, the provisions of the resolution were brought into effect as of November 2000.
11. Following a number of further technical cooperation missions and a mission by a high-level team during the period from September 2001 to February 2002, a formal Understanding between the Government and the ILO was concluded in March 2002 for the appointment of an ILO Liaison Officer based in Yangon. The Liaison Officer was tasked with assisting the Government in its efforts to ensure prompt and effective elimination of forced labour in the country. The tasks of the Liaison Office include cooperation with the Government in the application of its policy against the use of forced labour, undertaking educational activities and monitoring and otherwise supporting progress in the application of that policy.
12. Following a further debate at the 95th Session of the International Labour Conference, in 2006, a number of unsuccessful initiatives to implement practical mechanisms to support the elimination of forced labour and a number of serious incidents, including the arrest and conviction on charges of treason of persons supporting ILO activities, all of which raised serious questions as to the Government's true commitment, further negotiations resulted in the conclusion of an SU which came into effect on a one-year trial period basis as of 26 February 2007.
13. The SU was intended to support better the implementation of the Commission of Inquiry's recommendations. It addressed awareness raising on rights and responsibilities under the law and the application of the law and its enforcement, and also contained a mechanism permitting residents of Myanmar to submit complaints in respect of forced labour to the Liaison Officer, who in turn was authorized to assess those complaints and, if it was established that there was a case to answer, to submit those complaints to a Government Working Group established for the purpose of initiating an investigation and appropriate response.
14. The trial period of the operation of the SU has been extended annually since 2008, and its operation has been the subject of reports of the Liaison Officer to each session of the Governing Body since then. Initially very few complaints were received, largely because of the absence of any public awareness of rights under the law or of the complaints mechanism itself, and of a genuine fear of retribution.
15. With the coming into effect of the SU, a long and difficult process commenced, which initially met with serious obstruction and acts of reprisal, including imprisonment, against persons involved in the process. This situation has improved progressively as the Government's commitment to the process has increased, along with public awareness and confidence in it.

⁷ Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (June 2000) (the text of the resolution is contained in Appendix IV of this document).

16. At the 98th Session of the Conference (2009), the Office's mandate in respect of Myanmar was extended to permit a positive response to the Government's request for assistance in meeting its obligations under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), which it has ratified.

Part II. The current situation in Myanmar

17. Rapid change has continued in Myanmar's domestic political situation, which has had consequences for its external relations. Parliament has continued to sit in extended sessions to deliberate on a wide range of legislation. Amendments to the Electoral Act have permitted political organizations previously unable to register as political parties to do so. This includes the National League for Democracy (NLD). By-elections for 48 vacant seats in Parliament will be held on 1 April 2012 with full NLD participation and with its Chair, Daw Aung San Suu Kyi, contesting a Yangon constituency.
18. The Government has launched two major priority campaigns: reduction in poverty; and rural development. It has also begun to address a wide range of issues relating to governance and economic and social policy. These include the development of national and regional budgets, foreign currency exchange rate alignment, taxation and licensing policies, financial institution structures, relaxation of media and information technology restrictions and local authority governance, as well as freedom of association and the right to peaceful assembly.
19. These initiatives have been undertaken in an environment of increased openness and transparency, with consultation being undertaken with, and assistance being sought from, the United Nations, the international financial institutions, other governments, the private sector and, increasingly, civil society.
20. Further amnesties have resulted in the release of a large number of prisoners of conscience, and there are indications that further amnesties could be expected shortly.
21. The Government has recognized that political stability, economic development and social cohesion cannot be achieved fully while hostilities continue with ethnically based, non-state armed groups. A number of ceasefire agreements have been negotiated, resulting in hostilities being halted for the time being in all parts of the country with the exception, at the time of writing, of Kachin State, where negotiations are continuing. These agreements, while fragile, are a critical first step which will need to be followed up with further negotiations for full peace agreements encompassing lasting political, economic and social solutions.
22. In response to these developments, a number of countries have increased their funding of aid to Myanmar and offered technical support, particularly for the transition process. Some of the political and economic sanctions previously imposed have been removed in whole or in part, with those remaining being subject to review in a number of cases. A number of Governments have opened or upgraded their diplomatic relations with Myanmar.

Part III. Developments in respect of the elimination of forced labour

23. The Liaison Office has faced an extremely heavy workload since the November 2011 session of the Governing Body: 214 complaints were submitted under the SU complaints mechanism, of which 91 have been assessed as falling within the forced labour mandate. The majority of those not deemed to be within the mandate relate to issues of land

confiscation and, in increasing numbers, labour disputes. In such instances, complainants are referred to the government departments concerned or to the newly formed National Human Rights Commission, as appropriate.

24. The Office's limited capacity to service the increasing number of complaints has resulted in a backlog of unprocessed complaints. The situation has been aggravated by demands for greater Office involvement in UN development planning activity as well as for support of ILO and numerous other international missions to the country.
25. At the invitation of the Government, an ILO high-level mission visited Myanmar from 21 to 28 January 2012. The mission was led by Mr Guy Ryder (Executive Director for Standards and Fundamental Principles and Rights at Work) accompanied by Ms Karen Curtis (Deputy Director of the International Labour Standards Department), Mr Drazen Petrovic (Principal Legal Officer in the Office of the Legal Adviser) and Mr Tim de Meyer (Standards Specialist, Regional Office for Asia and the Pacific).
26. Since the last session of the Governing Body, the work of the Liaison Officer and the activities of the ILO high-level mission have been concentrated on follow-up to the conclusions of that meeting.⁸
27. The following information on developments in respect of forced labour is structured by reference to the Governing Body's conclusions. Information on developments in respect of freedom of association issues is contained in document GB.313/INS/7.

Conclusion (1): Welcomed the positive developments in Myanmar since March 2011 but expressed concern that serious problems in the use of forced labour persist. The Governing Body called for the continuation of strengthened, resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.

Further developments: A review of the operation of the SU was undertaken by the high-level mission with the Government Working Group for the Elimination of Forced Labour. A government proposal that a joint Government/ILO strategy be developed for the elimination of all forms of forced labour by 2015 was accepted in principle. A Memorandum of Understanding providing a comprehensive framework for the development of such a strategy has been agreed upon. Arrangements have been made for it to be signed, so that it could be presented at the current session of the Governing Body. The Defence Services have confirmed their commitment to cooperate with other government authorities and the ILO in such a strategy.

Conclusion (2): Noted that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, was before Parliament. The Governing Body regretted the absence of consultation and urged the early adoption and coming into force of that legislation. It underlined that full conformity of the new law with Convention No. 29 was required to meet the relevant recommendation of the Commission of Inquiry.

Further developments: The high-level mission was informed that the Ward or Village Tract Administration Act had been adopted by Parliament, repealing the Village Act and the Towns Act of 1907. Nevertheless, consultations between the mission and the Ministry of Home Affairs responsible for the legislation resulted in a number of recommendations for the amendment of the new Act with a view to bringing it into line with Convention No. 29. Regrettably, those recommendations were not included in a subsequent parliamentary review of the legislation before it was passed into law.

⁸ GB.312/PV/Draft, para. 112 (Appendix I to this document).

According to the Government, although there was insufficient time to insert the ILO recommendations into the legislative review, it remained committed to the policy for the elimination of forced labour. It pointed out that the new legislation repeals the Village Act and the Towns Act of 1907 and contains no provision which in any way condones or permits the use of forced labour. It advised that section 374 of the Penal Code makes the use of forced labour illegal and provides for appropriate penalties. The Government also said that the ILO recommendations for amendments to the Ward or Village Tract Administration Act would be built into the administrative rules which would be published to implement the Act. In response, the Office has brought to the Government's attention previous recommendations of the ILO supervisory bodies regarding the need for specific provision in law expressly prohibiting forced labour in order to remove any ambiguity arising from article 359 of the country's Constitution and to ensure the applicability of section 374 of the Penal Code. The Government may wish to provide further information for the current session of the Governing Body.

Conclusion (3): Urged that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invited the Government to avail itself of the technical assistance of the ILO in the review of the Jail Manual.

Further developments: Consultations were undertaken with the high-level mission on a draft revision of the Prisons Act (encompassing the Jail Manual) with recommendations made to ensure that the prison labour provisions meet the requirements of Convention No. 29. The amended draft is expected to be presented to Parliament for debate; however, the time frame is not known at present. It addresses, among other things, the practice of using prison labour for military portering duties in conflict zones. Direct discussion with the military on this matter continues with a view to an immediate end to such practices.

Conclusion (4): Welcomed the commencement of direct discussion with the Tatmadaw (armed forces) and looked forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.

Further developments: Meetings were held by the high-level mission with the Minister of Defence, senior armed forces personnel and Ministry of Home Affairs officials, resulting in agreement for enhanced cooperation, including agreement to work together to find practical, operational solutions to informal practices which result in breaches of the law.

Conclusion (5): Welcomed the commencement of, and encouraged the continuation of, direct discussion with the Ministries of Finance and Planning and looked forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.

Further developments: National and regional budgets for the 2012 financial year commencing 1 April 2012 are currently under discussion in the respective Parliaments. It is expected that these will include appropriate allocation of funds to cover the cost of wages for public works. Follow-up discussion with officials of the Ministry of Finance and Revenue and the Ministry of National Planning and Economic Development is planned on the completion of the parliamentary budget adoption process to confirm that this is the case.

Conclusion (6): Welcomed the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urged the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.

Further developments: In amnesties since the last Governing Body session, 19 labour activists, including all those named in the conclusion above, have been released. This is in addition to 17 other labour activists released during 2011. Investigation and negotiations continue for the locating and release of 11 other persons who remain in prison or are otherwise unaccounted for at the time of writing.

Conclusion (7): Called on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

Further developments: No progress can be reported on the issues referred to in the above conclusion. The Office is continuing its efforts in this regard.

Conclusion (8): Stressed the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.

Further developments: Representatives of the military provided information to the high-level mission concerning the prosecution, in response to complaints lodged with the ILO, of 166 military personnel (27 officers and 139 other ranks) for breaches of the forced labour and under-age recruitment laws. According to this information, penalties ranged from formal reprimands, monetary fines, the loss of promotional and pensionable service, and demotion, to dismissal from the service and imprisonment (three cases). These measures are prescribed by Chapter VII of the Defence Services Act, 1959, and result from a sentence of a court martial. In respect of civilian perpetrators, the ILO has been informed of the prosecution of three persons under the Penal Code of whom two were convicted and received prison sentences. One Government official was recently dismissed from his post and it is understood that further prosecutions under the Penal Code are currently under consideration.

Conclusion (9): Noted the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looked forward to receiving confirmation that they are at last satisfactorily resolved.

Further developments: Three of the five major Magwe cases have now been satisfactorily resolved with the farmers concerned having been permitted to return to their land with no restrictions imposed on its use. In one of the remaining two cases, most of the farmers concerned have similarly been permitted to return to their land. Negotiations continue in respect of a significant number of others who as yet have not been allowed to do so. In the other case, negotiations continue in respect of compensation to those unable to return to their land.

Conclusion (10):

- (a) Welcomed the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in the Shan language, and encouraged the continuation of this partnership activity and its expansion into other languages.

Further developments: The Government informed the high-level mission that the Attorney-General's Office was currently working on the translation of the brochure

into the Karen (Paw and Sakaw), Kachin, Chin and Rakhine languages, with the Mon language still under consideration.

- (b) Further noted the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruits and their alleged desertion.

Further developments: Joint planning is under way for further awareness-raising/training activities for military personnel (including recruitment staff), the police and other relevant government services.

Conclusion (11): Whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.

Further developments: On 23 January 2012, an extension of the SU trial period was agreed for a further 12 months from 26 February 2012.

Conclusion (12): Considered it essential to strengthen the capacity of the Liaison Office and therefore reiterated in the strongest terms the Governing Body's repeated calls on the Government to issue without delay the visas for additional international staff necessary to this effect.

Further developments: The Government informed the high-level mission that an appropriate visa application for an additional international professional to support the operation of the SU would be granted and that further visa applications for the engagement of two further professionals – one on forced labour and one on freedom of association – would be positively considered. It should be possible to provide confirmation of the appointment of the initial additional staff member at the current session of the Governing Body.

Part IV. Possible review of measures adopted by the Conference

- 28. The Office recalls that the Governing Body took note in November 2011 of the calls for a review of the mandate defined by the 1999 resolution on the widespread use of forced labour in Myanmar and decided to consider this issue at its current session. The texts of the 1999 resolution and the resolution on Myanmar adopted by the Conference in 2000 are appended to this document (Appendices II and IV).
- 29. Should the Governing Body consider that there is need to review the measures adopted by the Conference, it may wish to decide (as it did in 2006) to place on the agenda of the 101st Session of the Conference (2012) an additional item that may be entitled "Review of measures adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry".

Appendix I

Conclusions adopted by the Governing Body at its 312th Session (November 2011)¹

Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

The Governing Body's conclusions

The Governing Body took note of the report of the Liaison Officer, the statement made by the Permanent Representative of the Republic of the Union of Myanmar and the subsequent discussion. In the light of the debate, it adopted the following conclusions:

- (1) The Governing Body welcomes the positive developments in Myanmar since March 2011 but remains concerned that serious problems in the use of forced labour persist. The Governing Body calls for the continuation of strengthened resolute and proactive action for the full implementation of the recommendations of the 1998 Commission of Inquiry.
- (2) The Governing Body notes that legislation, prohibiting the use of forced labour in all its forms and repealing both the Towns and Villages Acts of 1907, is before Parliament. The Governing Body regrets the absence of consultation and urges the early adoption and coming into force of that legislation. It underlines that full conformity of the new law with Convention No. 29 is required to meet the relevant recommendation of the Commission of Inquiry.
- (3) The Governing Body urges that the practice of the imposition of forced labour on prisoners, particularly as porters in conflict areas, cease immediately and again invites the Government to avail itself of the technical assistance of the ILO in the review of the *Jail Manual*.
- (4) The Governing Body welcomes the commencement of direct discussion with the Tatmadaw (armed forces) and looks forward to further substantive policy and behavioural change for the elimination of forced labour and the ending of impunity.
- (5) The Governing Body also welcomes the commencement of, and encourages the continuation of, direct discussion with the Ministries of Finance and Planning and looks forward to confirmation that planning and financial management processes sufficiently provide for the payment of wages in government operational and project activities.
- (6) The Governing Body welcomes the release of U Zaw Htay, U Nyan Myint, Daw Su Su Nway, U Min Aung, U Myo Aung Thant and other labour activists and strongly urges the early release of U Thurein Aung, U Wai Lin, U Nyi Nyi Zaw, U Kyaw Kyaw, U Kyaw Win and U Myo Min, as well as other labour activists remaining in detention.
- (7) The Governing Body again calls on the Government to facilitate the free access of the Liaison Officer to detainees and to effect the reinstatement of the advocacy licences of U Aye Myint and Ko Pho Phyu.

¹ dec-GB.312/INS/6.

- (8) The Governing Body again stresses the critical importance of a comprehensive proactive approach encompassing not only the continuation of awareness-raising activities and the management of the complaints mechanism but also the effective prosecution of forced labour perpetrators, military and civilian, under the Penal Code.
- (9) The Governing Body notes the priority action taken towards the resolution of a number of long-standing complaints in the Magwe region and looks forward to receiving confirmation that they are at last satisfactorily resolved.
- (10) The Governing Body welcomes the expanded awareness-raising activities being undertaken, including the production and distribution of the information brochure in Shan language, and encourages the continuation of this partnership activity and its expansion into other languages. The Governing Body further notes the positive initiative of the proposed training of police personnel to ensure their understanding of their role and responsibilities, in collaboration with the military, in the elimination of forced labour, including in respect of procedures to address the continuing problems of under-age recruitment and their alleged desertion.
- (11) The Governing Body, whilst recalling all of its previous conclusions and recommendations, encourages the ILO and the Government in their continuing positive collaboration within the framework of the Understanding and its SU which should be further extended in February 2012. It also encourages the Government to respond positively to all ILO related recommendations made by the Human Rights Council during the Universal Periodic Review.
- (12) In light of the above, the Governing Body considers it essential to strengthen the capacity of the Liaison Office and therefore reiterates in the strongest terms its repeated calls on the Government to issue without delay the visas necessary to this effect.
- (13) The Governing Body notes the calls for a review by the International Labour Conference of the mandate defined by the 1999 resolution and will consider this issue at its March 2012 session.

Appendix II

Resolution on the widespread use of forced labour in Myanmar, adopted by the International Labour Conference at its 87th Session (June 1999)

The International Labour Conference,

Reaffirming that all member States have an obligation to apply fully, in law and in practice, the Conventions that they have voluntarily ratified,

Recalling that Myanmar ratified the Forced Labour Convention, 1930 (No. 29), and the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), on 4 March 1955,

Taking note of the provisions of United Nations General Assembly resolution 53/162 of 9 December 1998 and of United Nations Commission of Human Rights resolution 1999/17 of 23 April 1999, which also address the use of forced labour in Myanmar,

Recalling the decision of the Governing Body to place on the agenda of its November 1999 session an item entitled: “Measures, including recommendations under article 33 of the ILO Constitution, to secure compliance by the Government of Myanmar with the recommendations of the Commission of Inquiry”,

Gravely concerned by the Government’s flagrant and persistent failure to comply with the Convention, as concluded by the Commission of Inquiry established to examine the observance of the Forced Labour Convention, 1930 (No. 29),

Appalled by the continued widespread use of forced labour, including for work on infrastructure projects and as porters for the army,

Noting the report (dated 21 May 1999) of the Director-General to the members of the Governing Body on measures taken by the Government of Myanmar following the recommendations of the Commission of Inquiry in its report on “forced labour in Myanmar (Burma)”;

1. Deeply deplores that:

- (a) the Government has failed to take the necessary steps to bring the relevant legislative texts, in particular the Village Act and Towns Act, into line with the Forced Labour Convention, 1930 (No. 29), by 1 May 1999, as recommended by the Commission of Inquiry;
- (b) at the end of the twentieth century, the State Peace and Development Council (SPDC) has continued to inflict the practice of forced labour – nothing but a contemporary form of slavery – on the people of Myanmar, despite repeated calls from the ILO and from the wider international community for the past 30 years;
- (c) there is no credible evidence that those exacting forced labour in Myanmar have been punished under section 374 of the Penal Code;

2. Reaffirms that this issue should be further considered by the Governing Body in November 1999;

3. Resolves:

- (a) that the attitude and behaviour of the Government of Myanmar are grossly incompatible with the conditions and principles governing membership of the Organization;

- (b) that the Government of Myanmar should cease to benefit from any technical cooperation or assistance from the ILO, except for the purpose of direct assistance to implement immediately the recommendations of the Commission of Inquiry, until such time as it has implemented the said recommendations;
- (c) that the Government of Myanmar should henceforth not receive any invitation to attend meetings, symposia and seminars organized by the ILO, except such meetings that have the sole purpose of securing immediate and full compliance with the said recommendations, until such time as it has implemented the recommendations of the Commission of Inquiry.

Appendix III

Recommendations of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)¹

539. In view of the Government's flagrant and persistent failure to comply with the Convention, the Commission urges the Government to take the necessary steps to ensure:

- (a) that the relevant legislative texts, in particular the Village Act and the Towns Act, be brought into line with the Forced Labour Convention, 1930 (No. 29), as already requested by the Committee of Experts on the Application of Conventions and Recommendations and promised by the Government for over 30 years, and again announced in the Government's observations on the complaint. This should be done without further delay and completed at the very latest by 1 May 1999;
- (b) that in actual practice, no more forced or compulsory labour be imposed by the authorities, in particular the military. This is all the more important since the powers to impose compulsory labour appear to be taken for granted, without any reference to the Village Act or Towns Act. Thus, besides amending the legislation, concrete action needs to be taken immediately for each and every of the many fields of forced labour examined in Chapters 12 and 13 above to stop the present practice. This must not be done by secret directives, which are against the rule of law and have been ineffective, but through public acts of the Executive promulgated and made known to all levels of the military and to the whole population. Also, action must not be limited to the issue of wage payment; it must ensure that nobody is compelled to work against his or her will. Nonetheless, the budgeting of adequate means to hire free wage labour for the public activities which are today based on forced and unpaid labour is also required;
- (c) that the penalties which may be imposed under section 374 of the Penal Code for the exaction of forced or compulsory labour be strictly enforced, in conformity with Article 25 of the Convention. This requires thorough investigation, prosecution and adequate punishment of those found guilty. As pointed out in 1994 by the Governing Body committee set up to consider the representation made by the ICFTU under article 24 of the ILO Constitution, alleging non-observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), the penal prosecution of those resorting to coercion appeared all the more important since the blurring of the borderline between compulsory and voluntary labour, recurrent throughout the Government's statements to the committee, was all the more likely to occur in actual recruitment by local or military officials. The power to impose compulsory labour will not cease to be taken for granted unless those used to exercising it are actually brought to face criminal responsibility.

540. The recommendations made by the Commission require action to be taken by the Government of Myanmar without delay. The task of the Commission of Inquiry is completed by the signature of its report, but it is desirable that the International Labour Organization should be kept informed of the progress made in giving effect to the recommendations of the Commission. The Commission therefore recommends that the

¹ Forced labour in Myanmar (Burma), report of the Commission of Inquiry appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), Geneva, 2 July 1998, GB.273/5.

Government of Myanmar should indicate regularly in its reports under article 22 of the Constitution of the International Labour Organization concerning the measures taken by it to give effect to the provisions of the Forced Labour Convention, 1930 (No. 29), the action taken during the period under review to give effect to the recommendations contained in the present report. In addition, the Government may wish to include in its reports information on the state of national law and practice with regard to compulsory military service.

Appendix IV

Resolution concerning the measures recommended by the Governing Body under article 33 of the ILO Constitution on the subject of Myanmar, adopted by the International Labour Conference at its 88th Session (June 2000)

The International Labour Conference,

Meeting at its 88th Session in Geneva from 30 May to 15 June 2000,

Considering the proposals by the Governing Body which are before it, under the eighth item of its agenda (*Provisional Record* No. 4), with a view to the adoption, under article 33 of the ILO Constitution, of action to secure compliance with the recommendations of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29),

Having taken note of the additional information contained in the report of the ILO technical cooperation mission sent to Yangon from 23 to 27 May 2000 (*Provisional Record* No. 8) and, in particular, of the letter dated 27 May 2000 from the Minister of Labour to the Director-General, which resulted from the mission,

Considering that, while this letter contains aspects which seem to reflect a welcome intention on the part of the Myanmar authorities to take measures to give effect to the recommendations of the Commission of Inquiry, the factual situation on which the recommendations of the Governing Body were based has nevertheless remained unchanged to date,

Believing that the Conference cannot, without failing in its responsibilities to the workers subjected to various forms of forced or compulsory labour, abstain from the immediate application of the measures recommended by the Governing Body unless the Myanmar authorities promptly take concrete action to adopt the necessary framework for implementing the Commission of Inquiry's recommendations, thereby ensuring that the situation of the said workers will be remedied more expeditiously and under more satisfactory conditions for all concerned;

1. Approves in principle, subject to the conditions stated in paragraph 2 below, the actions recommended by the Governing Body, namely:

- (a) to decide that the question of the implementation of the Commission of Inquiry's recommendations and of the application of Convention No. 29 by Myanmar should be discussed at future sessions of the International Labour Conference, at a sitting of the Committee on the Application of Standards specially set aside for the purpose, so long as this Member has not been shown to have fulfilled its obligations;
- (b) to recommend to the Organization's constituents as a whole – governments, employers and workers – that they: (i) review, in the light of the conclusions of the Commission of Inquiry, the relations that they may have with the member State concerned and take appropriate measures to ensure that the said Member cannot take advantage of such relations to perpetuate or extend the system of forced or compulsory labour referred to by the Commission of Inquiry, and to contribute as far as possible to the implementation of its recommendations; and (ii) report back in due course and at appropriate intervals to the Governing Body;
- (c) as regards international organizations, to invite the Director-General: (i) to inform the international organizations referred to in article 12, paragraph 1, of the Constitution of the Member's failure to comply; (ii) to call on the relevant bodies of these organizations to reconsider, within their terms of reference and in the light of the

conclusions of the Commission of Inquiry, any cooperation they may be engaged in with the Member concerned and, if appropriate, to cease as soon as possible any activity that could have the effect of directly or indirectly abetting the practice of forced or compulsory labour;

- (d) regarding the United Nations specifically, to invite the Director-General to request the Economic and Social Council (ECOSOC) to place an item on the agenda of its July 2001 session concerning the failure of Myanmar to implement the recommendations contained in the report of the Commission of Inquiry and seeking the adoption of recommendations directed by ECOSOC or by the General Assembly, or by both, to governments and to other specialized agencies and including requests similar to those proposed in paragraphs (b) and (c) above;
- (e) to invite the Director-General to submit to the Governing Body, in the appropriate manner and at suitable intervals, a periodic report on the outcome of the measures set out in paragraphs (c) and (d) above, and to inform the international organizations concerned of any developments in the implementation by Myanmar of the recommendations of the Commission of Inquiry;

2. Decides that those measures will take effect on 30 November 2000 unless, before that date, the Governing Body is satisfied that the intentions expressed by the Minister of Labour of Myanmar in his letter dated 27 May have been translated into a framework of legislative, executive and administrative measures that are sufficiently concrete and detailed to demonstrate that the recommendations of the Commission of Inquiry have been fulfilled and therefore render the implementation of one or more of these measures inappropriate;

3. Authorizes the Director-General to respond positively to all requests by Myanmar that are made with the sole purpose of establishing, before the above deadline, the framework mentioned in the conclusions of the ILO technical cooperation mission (points (i), (ii) and (iii), page 8/11 of *Provisional Record* No. 8), supported by a sustained ILO presence on the spot if the Governing Body confirms that the conditions are met for such presence to be truly useful and effective.



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6(Add.)

Institutional Section

INS

Date: 19 March 2012

Original: English

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Addendum

1. As stated in paragraph 2 of document GB.313/INS/6, the Supplementary Understanding was extended for an additional one-year trial period until 25 February 2013. The text of this Agreement for Extension is reproduced in Appendix I.
2. In paragraph 27 of document GB.313/INS/6, the Office announced the signature of a Memorandum of Understanding regarding the development of a comprehensive, joint and benchmarked strategy for the elimination of all forms of forced labour in Myanmar by 2015. The Memorandum of Understanding was signed by both the ILO and the Government of Myanmar on 16 March 2012. Its text is reproduced in Appendix II.

Appendix I

An Agreement for Extension of the Supplementary Understanding and its Minutes of the Meeting dated 26 February 2007, for an additional one year trial period from 26 February 2012 to 25 February 2013

This Agreement is hereby concluded between the Government of the Republic of the Union of Myanmar and the International Labour Organization represented by the undersigned authorized representatives.

Noting clause 10 of the "Supplementary Understanding" (hereinafter SU), the "Minutes of the Meeting" dated 26 February 2007 being an integral part of the SU (hereinafter Minutes of the Meeting),

Noting the four preceding Extensions of the SU and its Minutes of the Meeting, of 26 February 2008, 26 February 2009, 26 February 2010 and 26 February 2011,

It is herewith agreed as follows:

1. Both parties agree to extend, on the same trial basis, the SU and the Minutes of the Meeting, for one year with the extension period commencing on 26 February 2012, to the day one year thereafter being 25 February 2013.
2. The spirit and letters of the SU and the Minutes of the Meeting remain *in toto* unchanged.
3. The SU and the Minutes of the Meeting shall continuously remain in legal effect upon signing by the authorized representatives of the parties mentioned below.
4. This agreement will be submitted to the forthcoming session of the Governing Body of the International Labour Office.

This Agreement is done at Nay Pyi Taw, the Republic of the Union of Myanmar on the 23rd day of January 2012.



(U Myint Thein)
Deputy Minister
Ministry of Labour
The Government of the Republic
of the Union of Myanmar



(Mr. Guy Ryder)
Executive Director
International Labour Office

Appendix II

MEMORANDUM OF UNDERSTANDING

This understanding is reached between:

The Government of the Republic of the Union of Myanmar (Hereinafter referred to as 'the Government'),

and

The International Labour Organization (Hereinafter referred to as 'the ILO')

Jointly referred to as 'the Parties',

The Memorandum of Understanding records the Parties agreement to develop, by no later than 31 May 2012, a comprehensive, joint, benchmarked strategy for the elimination of all forms of forced labour in Myanmar by 2015.

In so agreeing the Parties recall:

- the obligation placed on the Government through its ratification in 1955 of the Forced Labour Convention, 1930 (No. 29);
- the 1998 recommendations of the Commission of Inquiry appointed under article 26 of the ILO Constitution and the subsequent decisions of the International Labour Conference and the conclusions of the Governing Body;
- the commitment of the Government and the ILO for the elimination of forced labour as contained in the Understanding between them dated 19 March 2002; and
- the progress made through the co-operative, joint application of the Supplementary Understanding dated 26 February 2007.

The joint strategy will be administered by a Joint Working Group consisting of the members of the current Government Working Group for the elimination of forced labour supplemented by up to three nominated representatives from each of the Ministry of Defence and the ILO. The Deputy Minister of Labour, a senior nominee of the Ministry of Defence and the ILO Liaison Officer shall act as joint secretaries and the operational focal points of this new body.

It is agreed that the joint strategy shall encompass all necessary activities for the total elimination of forced labour by 2015 including:

- An enhanced awareness raising/training project targeting all sectors of society including the civilian authorities, defence services personnel, the police, justice system personnel, civil society (UN, INGO's, NGO's and CBO's), employers and employers' Organizations, workers and workers' organizations, ceasefire groups and national races organizations, and the general public, towards full understanding of their respective rights and responsibilities under the law.
- Continued and increased co-operation and co-ordination in the operation of the Supplementary Understanding including in the strengthening of the existing capacity of the defence services, Ministry of labour and ILO liaison office to receive, assess, investigate and resolve forced labour complaints and to undertake necessary follow up and monitoring.



- Undertaking investigations and taking necessary remedial action in response to all, as yet, unanswered allegations of the use of forced labour as documented in the comments of the ILO supervisory bodies.
- Jointly agreed and prioritized, time-bound action plans designed to stop forced labour practices nationwide and to, where appropriate, identify alternative operational solutions to each identified element of forced labour including but not limited to the following:
 - a. Forced labour directly or indirectly associated with Public Works and major construction projects.
 - b. Forced labour directly or indirectly associated with energy projects.
 - c. Forced labour resulting from the absence of necessary funding at local level for local authority services and infrastructure requirements.
 - d. Forced recruitment into the defence services and militia.
 - e. Underage (under 18 years) recruitment into the defence services and militia.
 - f. Human trafficking for forced labour.
 - g. Forced/bonded child labour.
 - h. Forced labour in the private sector including in domestic work.
 - i. The use, by the defence services, of civilian (and convict) porters particularly in combat zones.
 - j. The forced use, by the defence services and civilian authorities, of civilians on guard and/or sentry duty.
 - k. Forced labour imposed through land acquisition/confiscation activities.
 - l. Forced labour associated with the Ministry of Defence self-sufficiency policy.
 - m. Forced labour in association with the construction and/or maintenance of military camps.
- Supporting the final agreement of a joint action plan in respect of children in armed conflict (Security Council Resolution 1612) and collaborating in its implementation.
- Supporting the justice system (civilian and military) and other institutions such as parliamentary committees/commissions and the human rights commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of forced labour.
- Supporting, in cooperation with the appropriate authorities and other International organizations, the peace process including in such areas as the social and economic reintegration of member of ceasefire groups, small and medium enterprise development and the provision of necessary infrastructure and community facilities with particular focus on the prevention of the use of forced labour.

Any differences between the parties shall, to the extent possible, be settled through consultation amicably.

In reaching this agreement the parties demonstrate their commitment to the objective – namely the elimination of all forms of forced labour by 2015 – in the context of the reform agenda of the Government, and their intent to work together to that end.

This Memorandum of Understanding shall enter into force on the date of signing and shall remain in force up to the 31st day of December 2015.




In WITNESS WHEREOF, the undersigned representatives being duly authorized thereto by their respective parties, done at Nay Pyi Taw on the 16th day of March 2012.

For and on behalf of
The Government of the Republic of
the Union of Myanmar



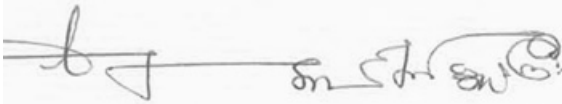
U Myint Thein
Deputy Minister
Ministry of Labour

For and on behalf of
the International Labour Organization



Mr. Steve Marshall
ILO Liaison Officer
International Labour Organization

WITNESSES



Captain (Navy) Aung Thaw
Deputy Minister
Ministry of Defence



Ms. Piyamal Pichaiwongse
Deputy ILO Liaison Officer
International Labour Organization



U Chit Shein
Director General
Department of Labour



Governing Body

313th Session, Geneva, 15–30 March 2012

GB.313/INS/6(Add.2)

Institutional Section

INS

Date: 26 March 2012

Original: English

SIXTH ITEM ON THE AGENDA

Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Addendum



THE GOVERNMENT OF THE REPUBLIC
OF THE UNION OF MYANMAR
MINISTRY OF LABOUR
OFFICE OF THE UNION MINISTER

Ref: 91-Ah La/Div (1)2012(1879)
Date: 23 March 2012

Dear Mr. Marshall,

First of all, I would like to mention, it is regrettable that the ILO High Level Mission's recommendations provided in the consultations undertaken during the January 2012 were unable to be included in the Ward or Village Tract Administration Law as the concerned Ministry has submitted the Draft of the said Law to the Hluttaw (Parliament) already at that time. I deeply regrets for it.

In this regard, although we make every possible effort and find the approach how could the recommendations made by the ILO experts be amended in the Ward or Village Tract Administration Law before the Union Hluttaw (Parliament) session concludes with determination, because of the limitation of the time available, it was fail to be included all the intended facts.

However Ministry of Home Affairs submitted the Draft Amending Ward or Village Tract Administration Law to the Union Hluttaw (Parliament) on 21st March 2012 and fortunately the most crucial two essence points are approved by the Parliament in the last day of the third session of the Parliament. In the amended Ward or Village Tract Administration Law, Article 27 A, the definition of Forced Labour and the Penalty which is equivalent to the power of the Penal Code Article 374 are unambiguously legislated. It is also clearly seen that although maximum prison sentence in this law is 6 months, forced labour penalty is one year in order to be matched with the penal code.

In this context, your report to the 313th Session Governing Body in Part III, under the title of "Developments in respect of the elimination of Forced Labour", further developments of Conclusion (2) is to be updated since what you mentioned "the previous recommendations of the ILO supervisory body regarding the need for specific provision in law expressly prohibiting forced labour in order to remove any ambiguity arising from Article 359 of the Constitution and to ensure the applicability of Section 374 of the Penal Code" is already solved out.

You would recognize, this is a remarkable accomplishment that forced labour could be defined as a legislation clearly and to be recorded in Myanmar's history for the very first time.

Since this law has been approved by the Parliament, it will be enforced immediately throughout the country within (14) days. I also believe that we could set up the very first basic foundation to implement the Joint Strategy together with other concerned Ministries in future effectively and efficiently.

Therefore, I am much obliged to request you to support for lifting the long lasting Sanctions on Myanmar which cause Myanmar people suffer a lot.

- Attachment:** (1) Unofficial translation of amended Ward or Village Tract Administration Law
(2) Amended Ward or Village Tract Administration Law (Myanmar Version)

With regards,

Yours sincerely,



U Aung Kyi
Union Minister

Cc:

- Office copy

Unofficial translation (Ministry of Labour, Myanmar)

The Law Amending the Ward or Village Tract Administration Law

(The Pyidaungsu Hluttaw Law No. /2012)

The ---- waning Day of Tabaung, 1373 M.E.

(March 2012)

The Pyidaungsu Hluttaw hereby enacts the following law

1. This Law shall be called the Law Amending the Ward or Village Tract Administration Law.
 2. In the Article 27 of the Ward or Village Tract Administration Law,
Article 27 A shall be supplemented as follows:
27 A - Anyone who exacts work or service from any person under the menace of any penalty and for which the said person has not offered himself voluntarily shall be punished with imprisonment for a term not exceeding one year or with a fine not more than one hundred thousand Kyats or with both by the relevant Court."
-

313th Session of the Governing Body of the International Labour Office (March 2012)

Decision on the sixth item on the agenda: Developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29)

Governing Body conclusions

The Governing Body took note of the report of the Liaison Officer, the statement made by the Permanent Representative of the Republic of the Union of Myanmar and the subsequent discussion. In light of the debate, the Governing Body:

1. Welcomes the important and positive developments in Myanmar since the 312th Session of the Governing Body (November 2011) and in particular the further extension of the Supplementary Understanding (SU) and the adoption of legislation repealing the Village and Towns Acts of 1907 defining forced labour and providing for the criminal prosecution of perpetrators.
2. Further welcomes the initiative of the Government, including the defence services, in formalizing its commitment to develop a comprehensive, proactive, joint strategy with the ILO for the full elimination of all forms of forced labour by 2015. In so doing, it is emphasized that immediate effective measures are required and that every effort should be made to meet that objective earlier. The intention to maintain ongoing direct cooperation between the defence services and the ILO in this regard is an important part of the process as all sectors of the Government must respect the new legislation.
3. Whilst recognizing that these represent major steps towards meeting the recommendations of the Commission of Inquiry, notes that both the strict application of the new law and the prosecution and appropriate punishment of those who may violate it are critical to achieving the objective and as such should be built into the proposed strategy. This new strategy should be accompanied by a high-level public commitment to its implementation and to full compliance with Convention No. 29.
4. Notes the importance of ensuring that policy coverage and application encompasses the entire territory of Myanmar including border areas in context of achieving sustainable peace agreements.
5. Notes the information concerning the prosecution of some perpetrators and encourages the Government to maintain a process based on preventative education/awareness, the full application of the law and accountability by way of criminal prosecution of perpetrators as a means for combating impunity.
6. Welcomes the expansion of awareness-raising activities including the availability of the joint Government/ILO brochure in the Myanmar language and four other national languages and looks forward to further translations and their wide distribution.
7. Welcomes also the recent release from prison of a further number of labour activists and seeks the immediate unconditional release of all remaining imprisoned labour activists and prisoners of conscience.

8. Urges the Government to avail itself of the technical assistance of the Office including in further consultation in the drafting of relevant legislation.
9. Expresses its appreciation for the work of the Office and especially of the Liaison Officer and his small dedicated team and re-emphasizes the need to strengthen and expand the Liaison Office capacities including through the provision of adequate resources, the Government's expeditious approval of necessary visas on request and the engagement of local focal points for the strengthening and support of community networks.
10. Strongly encourages the Government and the people of Myanmar to continue their ongoing democratization efforts and emphasizes in that regard the need for full respect of human rights and international standards.
11. Decides to place on the agenda of the 101st Session of the International Labour Conference (June 2012) an additional item enabling a review of measures previously adopted by the Conference to secure compliance by Myanmar with the recommendations of the Commission of Inquiry.
12. Finally it requests the Officers of the Governing Body to undertake a mission to Myanmar and to report to the Conference on all relevant issues with a view to assisting its consideration of that review.
13. The total cost of the above mission, estimated at US\$58,000, will be financed in the first instance from savings in Part I of the budget or, failing that, through Part II of the budget.

(Documents GB.313/INS/6, GB.313/INS/6(Add.) and GB.313/INS/6(Add.2).)

Document D.5(Add.1)

H. Draft Action Plan concluded for the implementation of the Memorandum of Understanding on the Elimination of Forced Labour In Myanmar

Final draft – [Subject to approval by the Cabinet of the Government of the Republic of the Union of Myanmar]

Joint Government of the Republic of the Union of Myanmar/International Labour Organization Strategy for the Elimination of Forced Labour

This strategy is based on the Memorandum of Understanding (MOU) signed by the parties on 16 March 2012. That MOU provides the framework under which the parties will work together for the successful achievement of the objective.

The objective

The elimination of all forms of forced labour by 31 December 2015.

The approach

The strategy will be overviewed by a joint working group chaired by the Minister of Labour, with the Deputy Minister of Labour, the Deputy Minister of Defence and the ILO Liaison Officer acting as joint secretaries. Membership shall consist of the members of the Government Working Group for the elimination of forced labour (membership of which is determined by the Government) supplemented by two further representatives of the Ministry of Defence and two further representatives nominated by the ILO.

It is the hope and intention of the parties that the above objective can be attained at an earlier date – 31 December 2014. Action plans (attached) will therefore be front loaded and will address identified priorities. They will be applied in a coordinated manner so as to maximize impact. The joint working group shall undertake four monthly reviews of progress against benchmarks and will adjust geographic and sector targeting with corresponding resource reallocation being made as appropriate.

In the application of the strategy a proactive stance will be adopted – each of the seven identified MOU elements will be addressed in a separate action plan with causes identified, challenges to progress addressed and positive action steps proposed to put in place policies and practices which are compliant with both Myanmar law and the Forced Labour Convention, 1930 (No. 29).

During the implementation of this strategy the operation of the complaints mechanism under the Supplementary Understanding concluded by the ILO and the Government will

continue. The ILO, Ministry of Labour and Ministry of Defence will, subject only to the availability of necessary funds, deploy appropriate human resources for the efficient receipt, assessment and investigation of complaints and their move to closure with, as appropriate, the provision of justice, with restitution as appropriate, to complainants and the criminal prosecution of perpetrators.

Common practices, developing patterns and/or geographic priorities will be identified from analysis of complaints received. The media will be monitored for the same purpose. Both will serve to inform strategy reviews.

The MOU identifies three elements for parallel attention in this strategy – these are consistent with the recommendations of the 1998 Commission of Inquiry:

- (1) ensuring that the laws, policy, rules, regulations and instructions making forced labour illegal are in place, are consistent with each other and comply with both the constitutional right to freedom from forced labour and the Government's obligations under the Forced Labour Convention, 1930 (No. 29);
- (2) ensuring that the above laws, policy, rules, regulations and instructions are known, understood and applied for the ending of remaining practice of the use of forced labour; and
- (3) ensuring that the rule of law is applied, through justice systems (civilian and military), which deal with breaches of the law against forced labour under formal criminal proceedings, administering appropriate penalties to perpetrators and providing justice to the victims.

The previous efforts of the Government in these respects are recognized, particularly in respect of extensive awareness-raising activities undertaken. This strategy will build on that positive foundation through a broader and more targeted educational activity, the addressing of identified causes and the provision of specific support to the justice system.

Action Plan 1. Awareness raising

Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate

Index	Activity	Date	Responsibility	Funding
1. 1. Brochures: Further development and distribution	1.1.1. Complete translations into Karen (Sakaw), Rakhine and Mon languages	30 June 2012	MOL and Ministry of Culture	GoRUM
	1.1.2. Print national language translations	31 July 2012	ILO	ILO donor funding
	1.1.3. Distribution through ILO awareness-raising seminars	Ongoing	ILO	
	1.1.4. Distribution through joint ILO/GoRUM awareness-raising seminars	Ongoing	GoRUM/ILO	ILO donor funding
	1.1.5. Targeted distribution of national language translations	30 September 2012 and ongoing	GoRUM/ILO through national race organizations, NGOs and CBOs	ILO donor funding
1.2. Awareness through the media	1.1.6. Distribution through General Administration Department to township, ward and village tract administrators	30 September 2012	MOL/MoHA/regional/state governments	GoRUM
	1.1.7. Distribution through Ministry of Defence to military units	30 September 2012	MOL/MOD	GoRUM
	1.2.1. Brochure in appropriate languages reproduced in full in local newspapers	30 November 2012	MOL/M of INFO	GoRUM
	1.2.2. Feature articles in national newspapers/journals	Ongoing	MOL/M of INFO	GoRUM
	1.2.3. Series of 60-second radio ads in Myanmar and agreed national languages as per brochures	Commencing 1 December 2012 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
	1.2.4. Series of TV ads	Commencing 1 February 2013 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
	1.2.5. Key message billboards commissioned at strategic points at township level nationwide	Commencing 1 December 2012 and ongoing	ILO/MOL/MIN of INFO	Subject to ILO obtaining donor funding
	1.3.1. New round of joint state/division seminars for all government authorities, UN agencies, INGOs and local NGOs in the region	One per month commencing 1 July 2012	MOL/ILO/MoHA/regional/state government	Each party carries own costs
1.3. Targeted joint seminars	1.3.2. One-off targeted joint seminars for all stakeholders in locations identified by the SWG as hot spots from complaints analysis	Commencing 1 October 2012 and ongoing	MOL/ILO and other authorities as relevant to the issues	Each party carries own costs
	1.3.3. Joint presentations to police new recruit and officer in-service training sessions	Commencing 1 July 2012 and ongoing	MOL/ILO/MoHA	MoHA

Action Plan 1. Awareness raising				
Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate				
Index	Activity	Date	Responsibility	Funding
	1.3.4. Joint presentations to registered national NGOs	Commencing 1 September 2012 and ongoing	MOL/ILO	Each party carries own costs
	1.3.5. Joint presentations with prior permission to each new military academy intake	Commencing 1 January 2013 and ongoing	MOL/ILO/MOD	Each party carries own costs
	1.3.6. Joint presentations with prior permission to Tatmadaw commanding officers and other officer and NCO in-service training sessions	Commencing 1 January 2013 and ongoing	MOL/ILO/MOD	Each party carries own costs
	1.3.7. Continuation of joint presentations to judges and trainee judges in-service training sessions	Ongoing	MOL/ILO/Supreme Court	Each party carries own costs
	1.3.8. Joint presentations facilitated by SWG to relevant universities, faculties for use in appropriate courses of study	Commencing 1 March 2013 and ongoing	MOL/ILO/Min. of Ed.	Each party carries own costs
	1.3.9. Joint presentations to national, state and regional parliamentarians and parliamentary commissions/committees in agreement with the appropriate parliamentary authorities	Commencing 1 January 2013 and ongoing	MOL/ILO	Each party carries own costs
	1.3.10. Joint presentations/workshops at planned trainings for labour inspectorate and other labour department staff	Commencing 1 October 2012 and ongoing	MOL/ILO	MOL
	1.3.11. Joint presentations/workshops/TOT training to teachers	Commencing 1 April 2013 and ongoing	MOL/ILO/Min. of Ed.	Each party carries own costs
	1.3.12. Joint presentations to fire service officers and NCO in-service training sessions	Commencing 1 January 2013 and ongoing	MOL/ILO/Fire Service	Each party carries own costs
1.4. ILO workshops (with MOL support, as required)	1.4.1. Continuation of ILO one-day workshops and TOT programmes for private citizens and CBO rep.	Ongoing, 1–2 per month in Yangon or the field subject to demand	ILO	Subject to continuation of funding
	1.4.2. Half-day workshops for journalists	Commencing 1 September 2012 and ongoing, as required	ILO	Subject to continuation of funding
	1.4.3. Presentations to INGO forums	Ongoing	ILO	ILO
	1.4.4. Training workshops for UN agencies, INGO and NGO staff	Ongoing	ILO	ILO/UN agencies/INGOs

Action Plan 1. Awareness raising				
Objective – To ensure that all Myanmar citizens are aware of what constitutes forced labour, have access to information as to their rights and responsibilities under the law and have the ability to exercise those rights as appropriate				
Index	Activity	Date	Responsibility	Funding
1.5. GoRUM awareness raising (with ILO support, as required)	1.5.1. Issuance in consultation with the SWG of new (SWG-approved instructions) practical guidelines to all government departments and authorities in follow-up to the introduction of the Ward and Village Tract Administration Act and its Rules	Within 60 days of the Act and Rules coming into force	SWG	MoHA
	1.5.2. Issuance of practical guidelines to all military personnel on the application of the Ward and Village Tract Administration Act and its Rules	Within 60 days of the Act and Rules coming into force	MOD/SWG	MOD
	1.5.3. TOT for selected military personnel for delivery of extended awareness activities	Commencing 1 April 2013 and ongoing	MOD/MOL with ILO support, as required	MOD
	1.5.4. The register of forced labour prosecutions (refer to 6.4 below) be published for public information on a quarterly basis	1 June 2012 and ongoing	SWG and Min. of INFO	Subject to ILO donor funding
	1.5.5. Other activities to be determined			

Action Plan 2. Continued activities under the Supplementary Understanding				
Objective – To support the overall strategy for the elimination of forced labour through the effective operation and use of the complaints mechanism				
Index	Activity	Date	Responsibility	Funding
2.1	Establish focal point group for the day-by-day management of cases with representatives from MOL, MOD, MoHA, ILO with initial membership being the four persons who attended the Turin training course, April 2012	1 July 2012	SWG	Each party carries own costs
2.2	To support the operation of the voluntary facilitators network and to work in collaboration with the local Department of Labour Office, ILO appoint four local focal points one each in Kalay, Mandalay, Bago and Mawlamyaing townships	All to be in place by 1 August 2012	ILO/MOL	Donor funding in place
2.3	Review cases submitted, four months and older, towards their movement to satisfactory closure	ILO list submitted by 1 August 2012 to the SWG to review progress no later than 1 December 2012	ILO/MOL/SWG	Each party carries own costs
2.4	Analysis of complaint patterns to inform awareness-raising/special intervention activities	First list submitted to SWG by 1 August 2012 and thereafter to each formal SWG review	ILO/MOL/SWG	ILO
2.5	Introduce a forced labour public hotline	Target launch 1 March 2013	MOL/ILO	Subject to ILO donor funding

Action Plan 3. Undertake investigation and take necessary remedial action in respect of unanswered allegations as documented in the comments of the ILO supervisory bodies				
Objective – To satisfactorily fulfil legal requirements under the ILO supervisory mechanism				
Index	Activity	Date	Responsibility	Funding
3.1	Schedule of as yet unanswered allegations contained in Committee of Experts' comments to be developed by category, geographic location and alleged perpetrators	By 1 November 2012	ILO HQ Standards Department	ILO
3.2	SWG subcommittee/focal point group to review schedule and propose a joint investigation procedure and timetable	By 1 January 2013	SWG subcommittee	Each party carries own costs
3.3	SWG to adopt procedure and timetable and initiate commencement	By 1 February 2013	SWG	Investigation costs covered by party under investigation possibly supplemented by donor funding
3.4	SWG to receive investigation reports as each investigation completed and initiate remedial action as appropriate	Ongoing	SWG	Each party carries own costs
3.5	Reports on process and outcomes to be submitted to responsible ILO supervisory body	As requested and ongoing	MOL	MOL

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4.A. Forced labour directly or indirectly associated with public works and major construction projects including SEZs				
4 A 1	List of major public works and construction projects to be developed	By 1 November 2012	SWG	Each carries their own cost
4 A 2	Government focal point (project labour officer) to be appointed in Kyaukphyu SEZ as is the case in Dawei and Thilawa SEZs)	On project commencement	MOL	MOL
4 A 3	Special awareness-raising seminars to be held for management and supervisory staff of project principal, contractors and subcontractors, associated government authorities (military and civilian) and local communities	Within 90 days of government focal point appointment	ILO/SWG	Costs covered by project principal
4 A 4	Local community groups to be established for liaison and consultation throughout the length of each identified project	Within 60 days of government focal point appointment	Project principal/state/regional government/MOL	Costs covered by project principal
4 A 5	In each SEZs and major construction project a tripartite consultative committee will be formed with equal representation of the project principal and the workers and/or their registered organization(s), chaired by the government focal point which, in addition to working together on labour related issues for the effective undertaking of project activities, shall monitor labour practices in and associated with the project to ensure an absence of forced labour	Within 60 days of government focal point appointment	SEZ's management committee/MOL/project principal/	Costs covered by project principal
4 A 6	Each SEZ's project focal point and responsible township labour officers shall report to the SWG through the MOL on their activities for review and appropriate responses	For each meeting of the SWG	SWG/MOL/government project focal point	MOL
4.B. Forced labour directly or indirectly associated with energy projects				
4 B 1	List of major energy projects including pipelines to be developed	By 1 November 2012	SWG	Each carries their own cost
4 B 2	SEZ project officers and/or township labour officers shall be responsible for major project liaison activities	At the commencement of the project	MOL	MOL
4 B 3	Special awareness-raising seminars to be held for management and supervisory staff of project principal, contractors and subcontractors and associated government authorities (military and civilian)	Within 30 days of the confirmation of 4 B 2	SWG/MOL/ILO/Min. of Energy	Costs covered by project principal

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4 B 4	Special joint awareness-raising seminars to be held for residents (village community committees) affected by and/or in proximity to the project activities	To be commenced within 60 days of the completion of 4 B 2	MOL/ILO/project principal	Costs covered by project principal
4 B 5	Each project government focal point shall report to the SWG on their activities for review and appropriate responses	For each meeting of the SWG	SWG/MOL/Gov. focal point	MOL
4.C. Forced labour resulting from the absence of local level funding				
4 C 1	Specific guidelines for township, ward and village tract administrators developed for their understanding of the forced labour definition, procedure for funding and the engagement of workers for necessary local project activities	For distribution: In parallel with the rules on the Ward and Village Tract Administration Act or 1 September 2012, whichever is the earliest	Drafting: MOL/MoHA/ILO Distribution: MoHA	Each party carries own costs
4 C 2	Joint MOL/ILO presentations to any planned in-service training sessions for district, township, ward and/or village tract administrators with reference to the previously issued instructions/guidelines (refer to action plan 1.5.1)	Ongoing	MOL/MoHA/ILO	MoHA
4 C 3	Reporting requirement for township administrators in respect of complaints received alleging forced labour for submission to SWG through the appropriate channel	1 November 2012	MoHA/state/regional government	MoHA
4 C 4	State or regional audit offices to undertake random audits of local project activity, funds utilization and employment practices with those reports together with advice as to any remedial action taken provided to the SWG on request and on a case-by-case basis	Procedure to be in place by 1 March 2013	SWG/National Audit Office/MOD Audit Office	Regional Audit Offices
4.D. Forced recruitment into the defence services and militia				
4 D 1	Instructions to be issued to all defence services units reconfirming military regulation that recruitment into the military is voluntary and that any breach of this regulation will be the subject of criminal prosecution	By 1 July 2012	MOD	MOD

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4 D 2	All recruits to sign a declaration that their recruitment is voluntary in the presence of the commanding officer of their basic training camp prior to commencement of training. the commanding officer to co-sign verifying that the recruit understood the declaration he is making	Policy introduced by 1 July 2012	MOD	MOD
4 D 3	Investigation to be undertaken in respect of any recruit declaring his recruitment involuntary with a summary report of the outcome of each such investigation submitted to the SWG	Ongoing	MOD	MOD
4 D 4	In the event that any declaration of voluntary recruitment is proven to have been gained by application of threat or physical assault or by trick, all responsible personnel will be the subject of criminal prosecution	Ongoing	MOD	MOD
4 D 5	Militia group leaders to be included in general and targeted awareness-raising seminars under Action Plan 1 with the approval of the government peace negotiating authorities	Ongoing	MOL/MOD/ILO	Each party covers own costs
4.E. Under-age (under 18 years) recruitment into defence services and militia				
See separate Action Plan 5				
4.F. Human trafficking for forced labour				
4 F 1	ILO representative to be appointed to the COMMIT Task Force	By 1 July 2012	MoHA	Each party covers own costs
4 F 2	Trafficking for forced labour complaints received under the SU to be received by the government WG for the elimination of forced labour and referred to the anti-human trafficking WG for investigation with outcomes being reported back	By 1 July 2012	SWG/AHTTF	Each party covers own costs
4 F 3	Activities under this strategy related or connected to human trafficking for forced labour and under-age recruitment to be integrated into the anti-human trafficking action plan	By 1 November 2012	AHTTF/MOL/ILO	Each party covers own costs
4.G. Forced/bonded child labour				
4 G 1	Announcement of Government's consideration for the ratification of Convention No. 182 on the worst forms of child labour	By 1 September 2012	MOL/GoRUM/MOL/ Attorney-General's Office/ MoSW	

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4 G 2	Consideration be given to the introduction of an International Programme for the Elimination of Child Labour (IPEC) project in Myanmar based on IPEC-provided concept documentation to support the Government in addressing the worst forms of child labour	Concept document provided by IPEC by 31 December 2012	MOL/ILO–IPEC	Subject to agreed position and availability of finance
4 G 3	Awareness-raising activity and media activity under Action Plan 1 to include specific information on forced child and bonded labour	Ongoing	MOL/ILO/Min. of INFO	As per general awareness raising
4.H. Forced labour in the private sector including in domestic work				
4 H 1	Workshops with RUMFCCI and registered employer organizations nationally and regionally	Commencing 1 October 2012 and ongoing as required	ILO/MOL	Each party covers own costs
4 H 2	Workshops with registered workers' organizations nationally and regionally	Commencing 1 January 2013 and ongoing as required	ILO/MOL	Each party covers own costs
4 H 3	Awareness-raising activity and media activity under Action Plan 1 to include specific information on forced labour in the domestic sector	Ongoing	MOL/ILO/Min. of INFO	As per general awareness raising
4.I. The use, by the defence service, of civilian (or convict) porters particularly in conflict zones				
4 I 1	The policy for the non-use of civilians as porters in conflict zones be confirmed with all operational units, publicized and strictly enforced	Immediate and ongoing	MOD	MOD
4 I 2	Practical guidance for the voluntary contracting of civilian porters and/or civilian modes of transport for the transportation of supplies and equipment in non-conflict environments provided to operational units	By 1 October 2012	MOD	MOD/GoRUM
4 I 3	The policy for the non-use of convicted convicts as porters in both conflict and non-conflict zones be confirmed and applied	Immediate and ongoing	MOD	MOD
4 I 4	The draft Prisons Act incorporating the proposals out of consultation undertaken with ILO experts to ensure compliance with Convention No. 29 and incorporating inputs from other international organizations to ensure compliance with international standards be enacted	As soon as possible and after appropriate consultation.	MoHA/GoRUM	Each party covers own costs

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4.J. The forced use by the defence services and civilian authorities of civilians on guard and/or sentry duty				
4 J 1	The principle that civilians shall not be forced to undertake work in support of military activity be formally confirmed with appropriate instructions issued and publicized noting the definition of forced labour contained in the Ward and Village Tract Administration Act and the exemptions thereto	By 1 October 2012	MOD/Min. of INFO	Each party covers own costs
4 J 2	Practical guidance be available to operational units and local authorities for the voluntary contracting of civilians to undertake military and community support activities including sentry or guard duty in non-conflict environments	By 1 October 2012	MOD/MoHA	Each party covers own costs
4 J 3	Persons accused of breach of the above principle to be the subject of criminal forced labour prosecution	Ongoing	MOD/police	Each party covers own costs
4 J 4	SWG guidelines on the difference between forced labour and voluntary community work be developed and distributed to all township, ward and village tract administrators	By 1 December 2012	ILO/SWG/MoHA	GoRUM – supported by donor funding as available
4.K. Forced labour imposed through land acquisition/confiscation activity				
4 K 1	Support to be provided for the ongoing development and application of the Agricultural Land Law and Fallow Land and Waste Land Management Law providing enhanced security of land users' rights	Immediate and ongoing	SWG	Each party covers own costs
4 K 2	Policy for the payment of realistic compensation or provision of alternative land use rights in cases of authorized land acquisition be confirmed, with instructions issued and publicized	1 August 2012	Relevant government authorities with the support of the SWG	Each party covers own costs
4 K 3	Policy confirmation and distribution of publicized instructions recognizing that the acquisition of land by and for any party with the subsequent imposition of rent, in cash or kind, on the traditional occupier under threat of losing traditional land usage rights constitutes forced labour	1 August 2012	Relevant government authorities with the support of the SWG	Each party covers own costs

Action Plan 4. Specific activities in policy areas and categories of work identified as actual or potential causes of the use of forced labour				
Objective – To provide for sustainable policy and sound practice without recourse to forced labour				
Index	Activity	Date	Responsibility	Funding
4.L. Forced labour associated with the Ministry of Defence self-sufficiency policy				
Operational modality – In addressing this issue the agreed objective of the parties is to facilitate the provision of the necessary practical support and assistance required for the efficient operation of Government/Ministry of Defence policy within the framework of Myanmar law, fully recognizing the legitimacy of the self-sufficiency principle				
4 L 1	Procedures ensuring ongoing efficient operations which comply with both Myanmar law and international obligations under Convention No. 29 developed with necessary implementation support	By 1 March 2013 and ongoing	MOD/ILO/MOL	GoRUM – supported by donor funding as available
4.M. Forced labour in association with the construction and/or maintenance of military camps				
4 M 1	Specific instructions to be issued on recruitment process for camp construction/maintenance activity incorporating definition of forced labour and confirming its use as a criminal offence subject to prosecution	By 1 September 2012	MOD/ILO/MOL	MOD
4 M 2	Promulgation of policy that civilians not to be engaged for any duties including camp construction, maintenance or fortification in conflict zones in association with instruction under 4 I 1 above	Immediate and ongoing	MOD	MOD
4 M 3	The contracting of civilian workers for camp construction, maintenance or fortification work shall be contingent on sufficient funds being available for their engagement	By 1 October 2012	MOD	MOD/GoRUM

Action Plan 5. Forced labour by way of under-age (under 18) recruitment into the defence services and militia including support for the final agreement and implementation of a joint action plan in respect of children in armed conflict (Security Council Res 1612)

Operational modality – Under-age recruitment by definition is forced labour in the context of Convention No. 29 – as such complaints received under the SU alleging under-age recruitment are and continue to be receivable. Child soldiers in the context of Res 1612 includes the recruitment and/or use of children under 18 years of age in the military. The GoRUM is negotiating a joint action plan with the Country Task Force for Monitoring and Reporting (CTFMR) under Res 1612 towards ensuring compliance with international obligations and subsequent delisting. The ILO is a member of the CTFMR. On this basis the operation of the SU will serve to inform the CTFMR activities and support the implementation of the 1612 Joint Action Plan with both procedures operating in parallel on an added value basis. Such an approach will support enhanced awareness-raising programmes, support consistent application of Government policy and provide necessary accountability responses towards both the stopping of the practice of under-age recruitment and the Tatmadaw subsequent delisting

Index	Activity	Date	Responsibility	Funding
5.1	Support the early conclusion of a comprehensive Res 1612 Joint Action Plan (JAP)	(Target date for signing 30 June 2012)	SWG	Each party covers own costs
5.2	Modality for communication/coordination/cooperation between SWG and 1612 JAP Structure developed	Within 60 days of signing of 1612 JAP	SWG/JAP Mgt. Body	Each party covers own costs
5.3	Analysis of ILO case register identifying recruitment practices and procedures associated with under-age recruitment completed	By 1 September 2012	ILO	ILO
5.4	Consultation on findings from analysis (see 5.3 above) undertaken towards development and promulgation of alternative practices and procedures	By 1 December 2012	SWG	Each party covers own costs
5.5	Analysis of ILO case register identifying practices and procedures associated with the arrest and prosecution of under-age recruits completed	By 1 September 2012	ILO	ILO
5.6	Consultation on findings from analysis (see 5.5 above) undertaken towards development and promulgation of alternative practices and procedures	By 1 December 2012	SWG	Each party covers own costs
5.7	Identify current or ex-military personnel serving prison sentences for the production of a schedule listing those recruited under age	By 1 December 2012	MOD/MoHA/SWG	MOD
5.8	Consultation on findings from review (see 5.7 above) undertaken, including schedule verification as required, towards initiating individual review of prosecution validity	By 1 February 2013	SWG	Each party covers own costs
5.9	As part of the review under 2.3 above, review cases submitted, four months and older, towards their movement to satisfactory closure	ILO list submitted by 1 August 2012 to the SWG to review progress no later than 1 December 2012	ILO/MOD/SWG	Each party carries own costs

Action Plan 5. Forced labour by way of under-age (under 18) recruitment into the defence services and militia including support for the final agreement and implementation of a joint action plan in respect of children in armed conflict (Security Council Res 1612)

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Index	Activity	Date	Responsibility	Funding
5.10	On-site meetings held and troop inspections undertaken with listed militias for awareness and intervention purposes with the approval of the Government's peace negotiating authorities	By 1 October 2012 and ongoing	MOD/ILO/MOL	Each party carries own costs

Action Plan 6. Support for the justice system (civilian and military) and other institutions such as parliamentary commissions/committees and the National Human Rights Commission in the evolution of their roles particularly in the context of the continued development and enforcement of legislation and policy against the use of forced labour

Objective – To ensure that policy and legislation continues to comply with the constitution, Convention No. 29 and other relevant international instruments and to support citizens rights through rule of law

Index	Activity	Date	Responsibility	Funding
6.1	Continuation of joint presentations to judges and trainee judges in-service training sessions (see 1.3.7 above)	Ongoing	Supreme Court/MOL/ILO	Each party carries own costs
6.2	In conjunction with 1.3.6 above, introduce joint presentations to military officers in respect of their responsibilities in conducting summary trials	1 September 2012 and ongoing	Judge Advocates Office/MOL/ILO	Each party carries own costs
6.3	Modality for consultation between the responsible drafting authority/body and the SWG to support the development of policy and drafting of legislation/regulation with direct or indirect forced labour implications be established	1 February 2013	GoRUM/SWG	Each party carries own costs
6.4	A register of forced labour prosecutions, both military and civil, be developed, maintained and reviewed on a quarterly basis to identify areas of further training needs and/or necessary intervention	1 July 2012 and ongoing	MOL/ILO supported by Supreme Court and Advocate-General's Office	Each party carries own costs
6.5	Modality for cooperation, information sharing and process knowledge transfer in respect to the operation of their parallel complaints mechanisms be established between the SWG and the National Human Rights Commission	1 December 2012 and ongoing	SWG/National Human Rights Commission	Each party carries own costs

Action Plan 7. Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modelling

Objective – To ensure that the parties to ceasefire and/or peace agreements respect the laws against the use of forced labour, and through community led labour-intensive infrastructure programming support post-conflict rural community development encompassing ex-combatant reintegration, job creation, small and medium enterprise development, vocational skills transfer and access to markets whilst providing good practice modelling against the use of forced labour. The activities below being subject of approval by the Government's peace negotiating authorities

Index	Activity	Date	Responsibility	Funding
7.1	Location of potential pilot project locations in Karen State to be identified	By 1 August 2012	ILO, in consultation with SWG, the parties to ceasefire/peace agreements, and other relevant national and international stakeholders with approval of the Government's peace negotiating authorities	ILO subject to donor fund
7.2	Location of potential pilot project locations in Shan State to be identified	By 1 August 2012	ILO and United Nations Office on Drugs and Crime (UNODC) in consultation with SWG, parties to peace agreements, and other relevant national and international stakeholders with approval of the Government's peace negotiating authorities	ILO subject to donor fund
7.3	Consultation with local communities in respect of 7.1 and 7.2 above undertaken to identify project parameters	By 1 September 2012	ILO in Karen and ILO/UNODC in Shan in consultation with other parties planning any parallel projects so as to maximize added value	ILO subject to donor fund
7.4	Project proposals for funding support developed and submitted to potential donors	By 1 October 2012	ILO in respect of Karen and UNODC/ILO in Shan	Each party carries own costs
7.5	Preparation, planning and initial orientation/training of selected local communities undertaken	Between 1 October 2012 and 30 November 2012	ILO in respect of Karen and ODC/ILO in Shan	Each party carries own costs

Action Plan 7. Providing assistance in poverty reduction and employment creation in the border areas where peace agreements have been achieved through good employment practice modelling				
Objective – To ensure that the parties to ceasefire and/or peace agreements respect the laws against the use of forced labour, and through community led labour-intensive infrastructure programming support post-conflict rural community development encompassing ex-combatant reintegration, job creation, small and medium enterprise development, vocational skills transfer and access to markets whilst providing good practice modelling against the use of forced labour. The activities below being subject of approval by the Government's peace negotiating authorities				
Index	Activity	Date	Responsibility	Funding
7.6	Project work commences	1 December 2012 or as soon as possible thereafter	ILO in respect of Karen and UNODC/ILO in Shan	Subject to project approval and availability of donor funds
7.7	Schedule for joint workshops with parties to ceasefire groups/parties to peace agreements agreed and commenced – beginning with those related to project areas identified in the context of 7.1 and 7.2 above	1 August 2012 and ongoing	MOL/ILO	Subject to donor funding support

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS

SUBMISSION, DISCUSSION AND APPROVAL



Twenty-first sitting

Thursday, 14 June 2012, 10.10 a.m.

President: Mr Alburquerque de Castro

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION, AND APPROVAL

Original Spanish: The PRESIDENT

We will now proceed to examine the report of the Committee on the Application of Standards, which is contained in three parts in *Provisional Record* No. 19. I invite the Officers of the Committee to come up to the rostrum: Mr Paixão Pardo, Chairperson; Mr Syder, Employer Vice-Chairperson; Mr Leemans, Worker Vice-Chairperson; and Mr Katjaimo, Reporter.

I now give the floor to Mr Katjaimo to present the report.

Mr KATJAIMO (Government, Namibia; Reporter of the Committee on the Application of Standards)

It is a pleasure and an honour to present to the plenary the report of the Committee on the Application of Standards.

The Committee is a standing body of the Conference, empowered under article 7 of its Standing Orders to examine measures taken by Members to give effect to the provision of the Convention to which they are parties, as well as the information in reports concerning Conventions communicated by Members in accordance with article 19 of the Constitution.

The Committee provides a unique forum at the international level. It gathers actors in the real economy, drawn from all the regions of the world, who have sat alongside one another during times of economic booms and busts. Bringing together this diverse group allows for robust tripartite dialogue, but can also, at times, present challenges. The Committee has been faced, this year, with a unique situation. It was not able to examine individual cases of violations of labour rights. While it was not able to fully fulfil its mandate, the Committee held numerous discussions, the content of which is reflected in this report before you.

The report is divided into two parts corresponding to the principal questions dealt with by the Committee. The first part addresses the Committee's discussion on general questions relating to standards and the General Survey of the Committee of Experts, which concerns, this year, the eight fundamental Conventions. The second part concerns the Committee's special sitting on the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29).

I will recall the salient features of the Committee discussions in respect of each of these questions. The Committee had the pleasure of welcoming the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, who attended the first week of its session as an observer with the opportunity to address the Committee. It also examined the General Survey of the Committee of Experts on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization.

The Committee held in-depth discussions on the General Survey, highlighting the interrelationship and mutually reinforcing nature of the eight fundamental Conventions. The Committee noted that these Conventions remain relevant and well equipped to deal with existing and emerging issues related to fundamental principles and rights at work. The Committee observed that significant progress has been made in the implementation of these Conventions, and underlined the importance of technical assistance in both improving the application of the fundamental Conventions and removing obstacles to their ratification. Unfortunately, the Committee was not able to present an outcome to the Committee for the Recurrent Discussion on Fundamental Principles and Rights at work due to an absence of consensus between the social partners on the content of such an outcome. A brief summary of the discussion of the General Survey was nevertheless presented to the Recurrent Discussion Committee.

Pursuant to the resolution adopted by the Conference in 2000, the Committee held a special sitting to examine developments concerning the question of the observance by the Government of Myanmar of the Forced Labour Convention, 1930 (No. 29). The Committee welcomed the progress achieved towards complying with the 1998 recommendations of the Commission of Inquiry and observed that many important steps had been taken by the Government of Myanmar since its meeting last year. The Committee also welcomed the elaborate and detailed Action Plan developed between the Government and the ILO. It emphasized that all the social partners and civil society organizations must be able to play an active role in prioritizing and assisting in the accelerated application of the elements in the Plan most relevant to the immediate implementation of the recommendations of the Commission of Inquiry.

The Committee encouraged the Government and the ILO to monitor closely the progress made in the

implementation of this Action Plan. Moreover, the Committee considered that the action taken to prosecute forced labour should continue to be reinforced and the newly adopted legislation effectively applied so as to ensure complete accountability under the law and trusted that effective and dissuasive sanctions would be imposed to punish the use of forced labour in all sectors.

The Committee renewed its call for continuing collaboration of all agencies in the United Nations system in the efforts for the effective elimination of forced labour in Myanmar. It once again called on all investors to ensure that the activity in Myanmar was not used to perpetuate or extend the use of forced labour but rather made a positive contribution to its complete eradication, in full respect for international labour standards.

Lastly, the Committee called for the strengthening of the capacity of the ILO Liaison Office to assist the Government, the social partners and all other relevant stakeholders to play a full and constructive role in the efforts made to eliminate forced labour, including through the empowerment of communities in the knowledge and exercise of their rights and responsibilities.

Turning to the Committee's general discussion, one issue of common interest which has been broadly emphasized by the Committee is the fulfilment of reporting obligations by member States. The work of the Committee on the Application of Standards, as well as that of the Committee of Experts, hinges primarily on the information contained in the reports submitted by governments. This year, again, the Committee noted that, although the strengthened follow-up put in place by the Committees had achieved some positive results, serious difficulties remained. Further progress is still necessary and indeed crucial for the effectiveness of the ILO supervisory system. The Committee reiterated its call on the Office to pursue its technical assistance to member States to enable them to fulfil their constitutional reporting obligations. In this regard, the Committee noted that the Office was implementing technical assistance programmes specifically targeted to those member States hampered by persistent reporting or implementation gaps in their international labour standards obligations.

As mentioned earlier, the Committee was unable to examine individual cases but decided, to avoid any further disruption to the functioning of the ILO supervisory mechanisms, to request the governments included in the preliminary list of cases that had been drawn up to send a report to the Committee of Experts to be examined at its next session.

The Committee also devoted several sittings to a broader discussion on the possible ways forward to ensure that this situation was avoided in the future. In this regard, following tripartite consultation, a decision was adopted which reads as follows.

The Committee noted that different views were expressed on the functioning of the Committee in relation to the reports of the Committee of Experts which were submitted for its consideration as found in paragraphs 21, 54, 81–89, 99–103 and 133–244 of this report.

The Committee recommended that the Conference: (1) request the Director-General to communicate those views to the Governing Body; and (2) invite the Governing Body to take appropriate follow-up as a matter of urgency, including through

informal tripartite consultations prior to its November 2012 session.

This year's meeting highlighted the importance of seeking constructive solutions in spite of a divergence of views. Many members of the Committee expressed their strong commitment to the work of the Committee, and it is hoped that positive steps would be taken to ensure that the work of the Committee can function smoothly next year.

I would like to thank the Chairperson, Mr Sérgio Paixão Pardo, along with the Employer and Worker Vice-Chairpersons, Mr Chris Syder and Mr Marc Leemans, for the work they carried out this year.

I would like to recommend that the Conference approve the report of the Committee on the Application of Standards.

Mr SYDER (*Employer, United Kingdom; Employer Vice-Chairperson of the Committee on the Application of Standards*)

On behalf of the Employers' group I commend to this plenary the detailed Report of the Committee on Application of Standards. You have it before you, and I confirm that it is well described by the Reporter.

Traditionally, the Employers' group report is divided into two parts: first, our views on certain elements of the Committee's work and, second, a look to the future given our reflections arising from the 101st Session of the International Labour Conference. However, this year I think we can all agree that we have had a challenging experience. In the past few days several people have congratulated the Employers in a humorous, often sarcastic way saying that the Employers have won.

Much has been written in external media, much of it is incorrect. Let me be clear, the Employers are firmly of the view that no one has won anything from this year's experience because no cases were supervised, and our Committee did not fulfil its constitutional mandate. Accordingly, we will depart from our tradition, because this year we wish to be transparent to everyone about how we see, firstly, tripartism within the Committee, and secondly, the future supervision of labour standards.

I will start by highlighting that we support the majority of this year's General Survey, which was the first Survey of all eight fundamental Conventions. The General Survey showed that progress had been made in the implementation of the fundamental Conventions in many respects, which is encouraging. However, much remains to be done.

Regretfully, I must now turn to more contentious issues. I must emphasize what I said on the record to this plenary on behalf of the Employers' group last year. I said that "the ultimate responsibility for ILO standards supervision lies with the ILO's tripartite constituency", that is our Committee, the Conference Committee on Application of Standards. Article 23, paragraph 1, of the Constitution stipulates clearly that summaries of the reports that member States have to provide under articles 19 and 22 be submitted to the tripartite Conference for examination and assessment. I said that ILO standards supervision had to be at the service of the ILO's tripartite constituents; its results should duly take into account their needs, which include the needs of Employers. I said that the Committee of Experts is not, and should never be, a policy committee. We fundamentally believe that the purpose of the General Survey is to help the tripartite constituents better understand the application of the provisions of a

given instrument, how to be in compliance, or what steps need to be taken to be in compliance with ILO standards. The increasing policy orientation of the General Survey jeopardizes the technical value of the analysis and thus changes the purpose of the constitutional obligations under article 19.

These comments regretfully are more relevant and pertinent this year. These comments are not new; these comments have been made consistently for decades by my predecessors, Ed Potter and Alfred Wisskirchen.

I turn now to some concerns regarding the status of the experts and the General Survey. The facts of the matter are that the General Survey is a guide to the Conference Committee on the Application of Standards to assist it with its work when supervised in the application of ratified labour standards by member States of the ILO. The General Survey, like the Report of the Experts on the Application of Conventions and Recommendations is not an agreed or authoritative text of the ILO tripartite constituents, namely the Governments, Employers and Workers. Both the General Survey and the Report of the Committee of Experts on the Application of Conventions and Recommendations are created with the assistance of the International Labour Office. The Governments, Employers and Workers are not involved in their creation or publication. The first opportunity for governments, employers and workers to consider these publications as groups is at the International Labour Conference, not at the Governing Body. Our Committee is the apex of the supervisory system and this must be respected. Outside of the ILO, this important distinction is either misunderstood or forgotten, and General Surveys are seen as being the position of the Organization which they are not. It would be damaging if the experts' views were taken as the views of the Organization in other United Nations or international forums. It undermines tripartite relationships and weakens the ILO supervisory machinery. This is an issue we are calling to be discussed at the Governing Body.

The situation is exacerbated by the fact that the General Survey has been published and distributed worldwide without any approval of the Committee first. We are conscious that the fundamental ILO Conventions are already embedded into the United Nations Global Compact, OECD guidelines for multinational enterprises, the UN Human Rights Council's Ruggie Framework, ISO 26000, and the MNE Declaration.

Our Members are asking us how they should respect human rights instruments that reference the fundamental Conventions. The ILO supervisory machinery relates to member States only, not to businesses, so it is vital that when other international institutions use the fundamental Conventions, that such use is correct. A correct understanding of fundamental Conventions is imperative for businesses because they are used in international framework agreements, transnational company agreements and in European framework agreements with global trade unions, where they are often not defined. In our view, the Employer and Worker spokespersons should meet with the experts before they start their work each year, and experts should have far greater interaction with employer and worker bureaux within the ILO in order to strengthen cooperation and governance. The experts

should have a tripartite agreed framework in which to do its work.

In past years, the Employers have proposed changes to the format of reports of the experts with a view to have tripartite views better reflected. More precisely, the Employers propose that there should be possibilities for employers, workers and governments to set out in the reports of the experts their views on standard supervision related issues, including on the application and interpretation of particular Conventions.

Tripartism, which is integral to a democracy, is an essential ingredient to creating a global consensus on the meaning, scope and implementation of ILO standards.

Moving forward, for the standard supervision to have credibility in the real world of work, ACT/EMP and ACTRAV must have equal resources and be fully engaged with the Standards Department to help prepare the Office work in the supervision of standards.

This year, regretfully, matters became a lot worse from our perspective because in advance of this Conference the Committee of Experts published a General Survey on the eight fundamental Conventions of the ILO which set out their highly contentious views on the right to strike within Convention No. 87. In addition, I highlight that this year the experts made 73 observations on Convention No. 87; 63 out of those 73 observations, around 86 per cent deal, at least partly, with various aspects of the right to strike. It is important to recall again that last year in this plenary I said: "a number of the individual cases examined dealt with various aspects of the disputed right to strike". As is well known, we have continuously and strongly objected to the expert's interpretations on the right to strike, and the fact that it has no legal basis whatsoever in Convention No. 87.

We have put forward in detail the legally correct arguments for many years and, in particular, in the context of the 1994 General Survey on Convention No. 87, as well as in many discussions on individual cases in plenary and in the *International Labour Review*.

Regretfully, our longstanding concerns were not addressed in this year's General Survey.

The Employers' position is that Convention No. 87 is silent on the right to strike because there was no agreement at the time of its negotiation to include it in the Convention and, in the view of the Employers, it is therefore not an issue upon which the experts should express any opinion. In doing so, the experts are effectively making policy, which is the exclusive domain of the Governments, Worker, and Employer representatives of the Organization. The mandate of the experts is to comment on the application of Convention No. 87 and not to interpret a right to strike into Convention No. 87.

When the Committee of Experts was created, it was defined by the International Labour Conference at its Eighth Session in 1926 as having, and I quote, "no judicial capacity, nor would it be competent to give interpretations of the provisions of a Convention, nor to decide in favour of one interpretation rather than of another". This mandate has not changed. While the experts can advise on application, they may not determine application on behalf of the constituents, nor can they determine new rights and obligations regarding the right to strike. It may be argued that the experts derived their inter-

pretation of the right to strike from the tripartite Committee on Freedom of Association. However, the Employers have also objected for many years about the use of such cases by the experts when examining Convention No. 87, as the Committee on Freedom of Association creates non-binding recommendations on a case-by-case basis, based on constitutional obligations regarding freedom of association, not the freedom of association Conventions.

While acknowledging the importance of both the Committee on Freedom of Association and the experts, the Employers, regretfully, are critical of the confusion and lack of certainty regarding the relationship between the supervisory bodies. The Employers have always objected to any view that the experts' interpretations of the right to strike are legal jurisprudence or even soft law. As the experts do not have a judicial mandate within the ILO, referring their interpretations of the right to strike within Convention No. 87 to the International Court of Justice is therefore inappropriate.

Further, neither the Committee on Freedom of Association nor the Governing Body, to which it refers its recommendations, produce jurisprudence or supervised labour standards. For the same reason, referring the Committee on Freedom of Association Recommendations to the International Court of Justice is also inappropriate.

It is important, again, to be clear that the Office is not the Organization. The Organization is its Government, Worker, and Employer constituents. This means that the Office has to be very careful when it refers to the views of the experts and the promotion of them, lest the experts' views be taken as the views of the Organization in other United Nations or international forums.

Let me be clear. The Employers' group acknowledges that a right to strike exists at the national level in many jurisdictions, but we fundamentally do not recognize that the meaning of a right to strike should be the one being developed by the experts. The determinative body to decide any rules for a right to strike recognized by the ILO is the Conference. Otherwise, it is up to national legal systems to do so. The experts do not have a mandate to interpret Convention No. 87. An ILO right to strike standard would need to be politically agreed on a tripartite basis by the Conference. For instance, the following issues concerning the right to strike should be discussed on a tripartite basis, rather than left to the experts to develop on their own: lawful strikes, including sympathy strikes and political strikes; essential services, especially if on a narrow basis; legality of workplace occupations during strikes; legality of picketing; dissuasive sanctions for illegal strikes.

Now, when we consider the future supervision of labour standards, it is important to be transparent about what actually happened this year. In summary, given the Employers' long-standing objections to the experts' interpretation of the right to strike, the Employers sought to clarify the mandate of the experts with regard to the General Survey. The Employers brought this important issue to the attention of the Workers and their spokespersons together negotiated and formulated the following draft clarification: "The General Survey is part of the regular supervisory process and is the result of the Committee of Experts' analysis. It is not an

agreed or determinative text of the ILO tripartite constituents."

The Employers' proposal was that the International Labour Office would be instructed to immediately insert the clarification in future hard copy and ILO website publications of this year's General Survey and the Report of the Committee of Experts on the Application of Conventions and Recommendations. It is not possible to simply remove the experts' interpretations as the International Labour Office has already published a General Survey containing the experts' interpretation of the right to strike.

The Employers made it clear that without the abovementioned clarification in respect to the General Survey, they could not accept the supervision of Convention No. 87 cases that included interpretation by the experts regarding the right to strike. Otherwise, their position would not be logical or coherent. All other cases on the provisional long list could be considered, which included the most serious double footnoted cases. After much confidential negotiation with the Workers, regrettably, these negotiations irretrievably broke down, principally because of the request for the clarification and the linkage to the right to strike cases. If the clarification could have been agreed, then the Employers' view is that the list of cases could have been successfully negotiated by the latest on Friday morning of the first week of our Committee.

The Employers' position is that the proposed clarification is fact and should not have been a contentious issue. We subsequently proposed a way forward within the Committee that referenced the agreed position of the experts in 1926, as affirmed in 1947. But it was not possible to reach a consensus on the correct approach.

So, in closing, the Employers remain frustrated that the factually and legally correct arguments we put forward concerning the experts' mandate met with a reaction that had nothing to do with the content of our position, and on occasions clearly misrepresented our position. The risks associated with the General Survey being misused and misconstrued remain. Important communication and committee management issues have arisen this year, which we will all learn from. We must do better in the future.

One of the main tasks of our Committee is to supervise the cases of member States that allegedly violated international labour standards. Let there be no confusion about the fact that Employers wanted to hear cases too. The ones that come to my mind are Serbia and Uruguay. The Employers would have heard the case of Uzbekistan.

We now have a way forward that will involve the Governing Body and tripartite informal consultations. The Employers look forward to reaffirming that the mandate agreed upon in 1926 and affirmed in 1947 is still correct. We look forward to doing so in an environment free of external interference, which exacerbates this situation.

Neutrality and the ability to listen to the constituents will help create mature and respectful international industrial relations between governments, employers, and workers. We look forward to working together with our social partners to resolve these issues before this time next year as we cannot be faced with a situation where the right to strike prevents a list of cases being agreed between the Employers and the Workers.

Once again this year our Chairperson, Sérgio Paixão Pardo, deserves special thanks for the firm, but fair, parliamentary running of the meeting this year. He has been the epitome of calm in the storm and we must not ever forget that it was his optimism and spirit that helped pave the way to the agreed way forward.

Thanks must also go to the Office for bearing with all of us in this unusual and difficult year. We must also thank the Governments. As I said in our Committee, it was never our intent to distress or inconvenience them this year.

We thank our Reporter, David Katjaimo, for keeping us all on balance. Please allow me to thank the Employers' group and especially my colleagues, John Kloosterman, Paul MacKay, Sonia Regenbogen, Juan Mailhos, Jorge de Regil, Peter Ander-

son, Alberto Echavarría and Zodwa Mabuza for the help they gave me. I would like to express my immense gratitude and admiration for the support given by Alessandra Assenza, Haymel Brito of the International Organisation of Employers and Christian Hess and Jennifer Bernardo of ACT/EMP. We would be lost without their support. I must thank Marc Leemans, Worker spokesperson, and his team. Simply put, we have been through an experience this year that none of us will ever forget. And lastly, but certainly not least, thanks to the interpreters who have done their usual excellent job this year.

In conclusion, I affirm again, on behalf of the Employers' group, their continued support for an effective and relevant ILO supervisory system.

(The Conference adjourned at 10.55 a.m.)

Twenty-second sitting

Thursday, 14 June 2012, 11.50 a.m.

President: Mr Alburquerque de Castro

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND APPROVAL (*CONT.*)

Original Spanish: The PRESIDENT

We will now resume the discussion of the report of the Committee on the Application of Standards. I give the floor to Mr Leemans, Workers' delegate from Belgium and Worker Vice-Chairperson of the Committee.

Original French: Mr LEEMANS (Worker, Belgium; Worker Vice-Chairperson of the Committee on the Application of Standards)

During this session of the Conference, the Committee on the Application of Standards was not in a position to conclude its work. I would like to explain this failure as best I can, in the sincere hope that it will not be detrimental to the ILO.

The Committee on the Application of Standards is a standing committee, it is part of the regular machinery for the supervision of ILO standards. The General Survey based on the experts' report is within the purview of our Committee. The 2012 General Survey was concerned with the eight fundamental Conventions.

It was expected that our Committee should present joint conclusions with the Committee for the Recurrent Discussion but the concerted attack led by the Employers' group against the General Survey unfortunately prevented this. The Workers' group insisted once more on tripartism, which is the basis for the functioning of the ILO and is unique within the United Nations system.

This tripartism is essential and it should not be endangered in any way. In my capacity as spokesperson of the Workers' group I recalled the originality of the whole supervisory machinery of the ILO. Since it cannot impose any criminal or financial penalties, it can only be effective using regular and special supervisory mechanisms. Here the role of the Committee of Experts is fundamental. Its work is an essential and constant tool for ensuring a better application of standards and this role consists of preparing, with rigour, independence and objectivity, the work which will then be taken up and used as a basis by the Committee on the Application of Standards, and we must make sure that standards are applied properly in law and in practice.

The role of the experts is also to establish a dialogue with governments through direct requests. The experts have a pedagogical role both through the General Surveys and through the identification

of cases of progress. On the basis of the report of the Committee of Experts, the workers' and employers' organizations can find legal and practical ways of advancing and promoting the application of ILO standards.

The work of this Committee and its examination of individual cases is another key aspect of the supervisory machinery. It draws on the work of the Committee of Experts, but the tripartite examination of individual cases also confers exemplary authority on the work of our Committee. Thanks to this collective tripartite examination of individual cases, our Committee, through the conclusions which it adopts, puts clear pressure on States who have simply failed to meet their obligations or are perhaps totally uncooperative.

Despite this and without any warning, from the first week of this session of the Conference we were brutally confronted with the fact that the Employers' group was challenging the mandate of the experts, particularly with regard to their interpretation both of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and of the right to strike. Brutally was the word I used. Why?

As in the past, considerable preparatory work had been done within the Workers' group since March 2012, and also in April and May. This preparatory work is taken very seriously because, as far as the Workers are concerned, the discussion of individual cases, the most serious cases, at the Conference is a unique element in our work. It is the only time when the Workers can, without fear, describe the many violations of their rights, the rights which are recognized by the ILO standards.

The experts' report was published on 28 February 2012, and the General Survey was published on the same date. The electronic version of these documents were published on the website on 2 March 2012. At no point during the 313th Session of the Governing Body in March 2012 did the Employers give any sign of any criticism concerning the role of the Committee of Experts or any indication that the latter were exceeding their powers concerning their interpretation of the right to strike.

It was only on Friday, 1 June 2012, that the Employers, in the context of the meeting of the Committee, explained how they regarded this divergence of views. The direct consequence of this was that an explicit veto was expressed concerning any possible examination of individual cases where the right to strike might be involved in the discussion. It was at this point in time that it became absolutely clear

that, as far as the Employers were concerned, the experts' interpretation of the right to strike was totally unacceptable because it did not fit in with the Employers' viewpoint.

Since I had no further possibility to say any more on the right to strike in view of how events unfolded, I will now come back to this matter, since it needs to be clarified for the Employers and the Governments present in this room.

Whether we like it or not, the right to strike is not just a national issue to be judged and dealt with in the light of temporal or economic circumstances. We might suppose that, in response to this analysis, the Employers may suggest that national jurisdictions would be more inclined to take account of economic realities and the needs of business in their decisions rather than the interests of the Workers.

The Employers' group no doubt think that courts and tribunals will be less conservative or less partial than the supervisory machinery of the ILO, particularly the experts. This is insulting to the independence of judges and disregards the supremacy of international law in general with respect to ratified treaties. National courts and tribunals, in their decisions on this subject, must respect a hierarchy of sources of law which, beyond any shadow of doubt, place international treaties above national law and above ratifications.

Apart from Convention No. 87 and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), I could take as an example the International Covenant on Economic, Social and Cultural Rights. Or there are texts that apply regionally, such as the Charter of Fundamental Rights of the European Union, the European Social Charter, the European Convention for the Protection of Human Rights and Fundamental Freedoms, or the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights ("Protocol of San Salvador").

There are further examples. The Committee of Experts recognizes, in its General Survey of 1959, the right to strike and considers it a fundamental tool for workers' organizations in defending their economic and social rights. The right to strike is an inalienable corollary to the right to organize. It is also set out in the opinion of the Committee on Freedom of Association recognizing such a right in 1952. It is true that the right to strike is not mentioned explicitly in the ILO Constitution, in the Declaration of Philadelphia or in the Conventions specifically relating to trade union freedoms. Nevertheless, there is an indirect reference to it in the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), and in a number of resolutions adopted by the International Labour Conference.

The Committee of Experts considers that this right has been established since the very first report was drawn up in the context of the first discussion following the adoption of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Committee of Experts infers the existence of the right to strike from a joint reading of Articles 3 and 10 of Convention No. 87. Article 3 refers to the right of workers' and employers' organizations to organize their administration and activities and to formulate their programmes. Article 10 defines as an organization any organization of workers or em-

ployers for furthering and defending the interests of workers and employers.

The Committee of Experts considers that, in order for workers to be able to further and defend their interests, they must have available to them means of action which can apply pressure so that their claims are successful. The common meaning of the term programme includes going on strike. Going on strike is a collective right and is considered to be an activity, in the sense of Article 3.

On 5 June 2012, after long and difficult negotiations, a draft agreement was submitted by our Chairperson, Mr Sérgio Paixão Pardo, for approval by the Committee, and it was too late at that stage to draw up a list of individual cases, to the great displeasure of the Governments. Under this agreement, the divergence of views between Workers and Employers concerning the report of the Committee of Experts must be resolved as a matter of urgency.

The Workers accepted this text and the procedures it entailed, but our distress at the events that have taken place is immense. This statement is no way makes up for the fact that, at the end of the day, none of the cases were discussed. We will never be able to take a positive view of the events that have blemished our activities. The negotiations were trying and will leave their mark. The way things unfolded will scar the memory of the Workers' group, the experts and the staff of the ILO, whose impartiality has been called into question in an unacceptable manner.

As my colleagues go back to their own homes around the world, they will be upset and in some cases afraid. They came here in order to denounce violations of the rights guaranteed to them by ILO Conventions. They are going home empty-handed, with no conclusions from our Committee and without support from the international community to revive their courage to tackle cases of harassment, assault, murder and violations of their basic rights by governments and by national or international enterprises.

Should I request a minute of silence for the 25 cases that we will never deal with?

We should tell you that, on its own initiative, the Workers' group organized its own examination of some of the cases during this session, which other groups were free to join. This way of proceeding made it possible to ensure that the work already done by our colleagues since the publication of the report of the Committee of Experts on 28 February 2012 did not go to waste.

I would like to add that the 49 countries that appeared on the preliminary list are expected to report to the Committee of Experts by 1 September 2012 at the latest. Their reports must include replies to the comments of the Committee of Experts contained in its report. In this way we would avoid any interruption to the functioning of the supervisory mechanisms. Many governments have indicated their agreement with this request.

These last two weeks have been dark days indeed for the Committee on the Application of Standards. They have been two disastrous weeks for the supervisory mechanisms as a whole. We have the impression that, as far as the Employers are concerned, the 2012 session of the Committee on the Application of Standards is over, that everything will be all right tomorrow and that, in 2013, it will take up its work again as if nothing had happened. Had we been aware of the difficulties well before the Con-

ference, we could have taken immediate action in the framework of a social dialogue in good faith, which would have enabled us to make better progress more quickly here in our monitoring role, instead of creating a crisis situation which is damaging to everyone.

We, more than anyone, want to weather this storm. The Employers need the Workers and their representatives. They should not forget this. Without social peace, without interlocutors, it will be the law of the jungle and there will be no more talk of productivity or growth.

I would like to now thank everybody. Firstly, I would like to thank the Workers' group, especially the Officers of the Workers' group in our Committee, who have worked incredibly hard. I would also like to thank Mr Paixão Pardo, our Chairperson, and Ms Doumbia-Henry and Ms Curtis and their colleagues in the Office for the legal and technical assistance they have given us.

A big thank you also to our Reporter, Mr Katjaimo, for his excellent report. I would also like to thank the Government members for their constructive contributions, and I also thank the Employer spokesperson for his involvement in our work. I thank the ILO staff for being so available and friendly, and of course the interpreters. I would like to thank the International Trade Union Confederation, particularly Stephen Benedict, and our colleagues in ACTRAV, Beatriz Vacotto and Enrico Cairola.

Mr President, I request that the report of the Committee be approved.

Original Spanish: The PRESIDENT

I now give the floor to Mr Paixão Pardo, the Government delegate of Brazil and Chairperson of the Committee on the Application of Standards.

Original Spanish: Mr PAIXÃO PARDO (Government, Brazil; Chairperson of the Committee on the Application of Standards)

It is an honour for me to have this opportunity to share with the all delegates our impressions on the meeting of the Committee on the Application of Standards this year.

We said it in the Committee and I am repeating it now: I consider this year to be a sabbatical, which will help us think about and propose alternatives to break the deadlock we have got ourselves into.

We now have a full year to test our creativity and problem-solving skills for the first time since 1926.

This year, we have seen the Chairperson of the Committee of Experts, Mr Yokota, who will convey our concerns to the other members of his Committee.

We have seen the President of the Conference, Mr Alburquerque, who brought us a message of encouragement and hope, for which we are grateful.

We met with the Director-General to express our concerns and received a wise piece of advice: that we listen carefully to everyone on our Committee and find out what each of us wants for this Committee. To that end, we will be holding informal tripartite consultations so that, in November, we have a diagnosis and possible solutions.

This year, there are no winners or losers. We were always winners, but now we are all responsible for carrying out one of the most important reforms of this Conference, one of which is on the working methods of our Committee, and looking at the role of the regular supervisory mechanisms, and here I

am quoting from the 2008 Declaration when it referred to regular, independent, inseparable, and interrelated supervisory mechanisms. The Governing Body will have to work hard to ensure that next year we can return hope to the world of labour.

This year, we have not had special paragraphs, offers or acceptance of technical cooperation. There have been no dramatic debates. There were no speeches of hope in the conclusions of the Committee.

The eyes of the world are looking to this Committee as a strong defender of the ideals of freedom and democracy. We have not forgotten those ideals and will pick them up again after this sabbatical year.

Freedom of association, the fight against forced and child labour, health and safety at work, the creation of sustainable enterprise and the defence of the right to private initiatives, as well as equality between men and women, an end to discrimination, the rights of indigenous and tribal peoples, the protection of wages, all these are very important issues, but we are going to have to take a pause for the moment from discussing them. In so doing, I must convey my apologies to all those who hoped for a more substantial response to these matters from our Committee and are going to have to return home empty handed.

However, a note of hope: I do believe, that our Committee will emerge from this situation strengthened.

Mr President, we have not wasted our time either – we did hold a special sitting on Myanmar and I am delighted to have had the opportunity today to see and hear a Nobel Peace Prize winner, Ms Aung San Suu Kyi, here addressing us. Our Committee fought for her freedom for many, many years and it was wonderful to see her here today as result of our debates.

Speaking on behalf of the Committee, I would like to say that we hope that very soon freedom of association, the complete elimination of forced labour, and full democracy will become a reality in Myanmar. The Committee on the Application of Standards shall continue to work as it has done in the past to help to bring that about.

Before concluding, I should like to thank our Reporter, Mr Katjaimo, who had a different account to give this year – but it was nonetheless interesting.

My thanks also go to Christopher Syder, for the Employers, and Marc Leemans, for the Workers. They both have a considerable potential for management and an ability for dialogue and conciliation.

I also thank Mr Kloosterman, who accompanied us this week alongside the Employers, for his charisma.

I should also like to thank the spokespersons for the Governing Body groups, Daniel Funes de Rioja and Luc Cortebeek.

My thanks also go to Mr Greg Vines, Chairperson of the Governing Body, for his efforts to help us overcome this impasse.

I would also like to thank the regional groups and Governments because this year we saw that Governments have a great deal to contribute to the work of the Committee. The Governments were excellent as they never shied away from any debate or discussion about the cases. They urged that the rules be complied with and duly observed. My thanks to GRULAC, the European Union, IMEC, the Africa

group and the Asia and Pacific group, thank you for your willingness to contribute.

I would like to extend a special word of gratitude to the Secretariat of the Committee, Ms Cleopatra Doumbia-Henry, who embodies the ILO's values of integrity, impartiality, and neutrality, and to Ms Karen Curtis and the support team who produced excellent quality documents in record time.

I also give my thanks to the interpreters for our Committee, who were always ready to convey our message and facilitate communication.

I invite you to carefully read and approve our report.

(The Conference adjourned at 12.15 p.m.)

Twenty-third sitting

Thursday, 14 June 2012, 2.50 p.m.

Presidents: Mr Sukayri and Mr Alburquerque de Castro

REPORT OF THE COMMITTEE ON THE APPLICATION OF STANDARDS: SUBMISSION, DISCUSSION AND APPROVAL (*CONT.*)

The PRESIDENT

We will now proceed to the general discussion of the report of the Committee on the Application of Standards.

Original Spanish: Mr BRENTA (Minister of Labour and Social Security, Uruguay)

We would like to refer to what we heard this morning, with astonishment and a certain amount of regret, when Mr Syder, the Employer spokesperson, analysing the situation that had arisen in the Committee on the Application of Standards, rightly mentioned the Employers' aspirations to examine the cases of Serbia and Uruguay.

What surprised us was the assessment that these two countries - and here of course we will refer to Uruguay - showed serious violations of international labour standards. That is what we heard said here, and we want to make it clear, firstly, that in our country, the Eastern Republic of Uruguay, there is full freedom of association in the context of full freedom of expression and democracy.

Employers' and workers' organizations enjoy full freedom of association and of expression. Collective bargaining, historically defended by the International Labour Organization, covers 100 per cent of the workers, including public employees, who engage in bargaining in over 220 occupational groups, over 85 per cent of which have led to the signing of tripartite collective agreements.

Councils have been set up in the Ministry of Industry, Energy and Mining, in which workers, employers and the Government discuss occupational safety and health policies, which have served as the basis of the innumerable decrees issued by the Executive branch based on the agreements reached.

In this regard, this level of tripartite agreement achieved and complemented last year, which was directly witnessed by Ms Doumbia-Henry, Director of the International Labour Standards Department, and Mr Guido, who were specially invited by the President of the Eastern Republic of Uruguay, to visit the country. An agreement was reached, which formed the basis for dialogue and negotiation between the Government, the workers and the employers in order to find a solution based on the recommendations of the Committee on Freedom of Association.

We would like to refer in this context to the ILO/ECLAC report, which states in regard to Uruguay that participatory labour relations which involve workers' organizations and collective bargaining can contribute to improving productivity, bringing about virtuous circles between increased productivity and distribution of profits.

Uruguay has enjoyed economic growth for more than eight years, and this growth has benefited both workers and employers. There has been a tenfold increase in foreign direct investment - which does not happen in a country where serious violations of international standards occur, such as those alluded to by the Employers.

Uruguay is a democratic country; however, during the period 1973-85, our country unfortunately lived under a military dictatorship. Today we have heard an address from someone who has also suffered from this situation. Throughout this period, Uruguayan workers were denied the most basic labour relations. During all those years we did not hear any criticism on the part of the Employers of the serious violations, murders, deaths, forced disappearance and torture to which the Uruguayan workers were subjected.

There are no serious violations. We refute the assertion that there are serious violations of international labour standards in Uruguay. On the contrary, in Uruguay we respect the fundamental rights fully, and we are therefore pained to hear this unfair description of the reality of our country, which is refuted by the very documents of the International Labour Organization.

Ms ROBINSON (*Government, Canada*)

I am speaking on behalf of the 38 members of the IMEC group. IMEC regrets the difficulties which arose in the Committee on the Application of Standards this year, which resulted in an impasse on the list of individual country cases. That said, we welcome the tripartite consensus achieved to move past the deadlock. While not ideal, the consensus addresses, as best as possible in the circumstances, the concerns expressed by the Employers', Workers' and Government groups and allow us to move forward.

Moving forward will depend on the success of the informal tripartite consultations that were agreed to as part of the Committee's recommendations to the Conference. We urge the Governing Body to initiate these consultations without delay to ensure that the Committee on the Application of Standards is able to resume its proper functioning in 2013.

For the first time in the 85-year history of the Committee, the Employers' and Workers' groups failed to agree to a final list of cases. As a result, no individual cases were examined by the Committee. This unprecedented outcome is both disappointing and distressing. The examination of cases is a critically important element of the ILO's supervisory system. These discussions serve to bring international attention to abuses of labour and human rights and to support efforts to promote the full application of ratified ILO Conventions. With no examination of cases this year the true victims are the most vulnerable workers in the world who have been left without a voice at this year's Conference.

The events which arose in the Committee this year also put governments in an extremely difficult position. Not only was there great uncertainty about the status of the list, there were also troubling allegations concerning government involvement in the negotiation of the list. It is important to reiterate once again, for the record, that there was no interference by Governments in the negotiation of the list of individual country cases, nor did Governments at any time request to be part of the negotiations. The impasse in the Committee was not caused by the Governments.

IMEC firmly maintains its long-standing position that it is the prerogative of the social partners to agree to a final list of individual country cases and Governments do not, and should not play any role in the determination of the list. IMEC also firmly reiterates our stated position that it is not appropriate for either the Employers' or the Workers' group to make agreements on the list, conditional upon external issues, on which governments have a role in the discussion and the decision-making process. We fully expect that the social partners will keep this in mind during the negotiation of the list of countries in future years.

The ILO supervisory system is a unique and essential element of the Organization's mandate and mission, and is often cited as the most advanced and best functioning of the international system. IMEC deeply regrets the situation this year that prevented the Committee from fulfilling its mandate under the ILO Constitution and the Standing Orders of the International Labour Conference. This reflected poorly on the functioning of the Committee and also risked irreparable damage to the ILO supervisory system and the Organization as a whole. This cannot be allowed to happen again.

As we move forward, it is important to reflect on some lessons learned. Firstly, open and continuous communication among employers, workers and governments and the International Labour Office is essential to ensure that concerns are addressed in a timely and constructive manner. Secondly, nothing good is achieved when we publicly call into question the professionalism and integrity of our colleagues. Thirdly, notwithstanding the difficulties which arose in the Committee this year, throughout the impasse the Employers', Workers' and Government groups continuously expressed their belief in, and support for the ILO supervisory system. IMEC is encouraged by this unanimous support. There is no doubt that the situation in the Committee placed a great strain on the relationship between the Employers', Workers' and Government groups. However, it is important to recognize that despite the strain we maintained an open dialogue, which allowed us to reach the tripartite consensus for a

way forward. It is often said that out of times of crisis we emerge stronger and better equipped to respond to future challenges. IMEC sincerely hopes that this will be true of the recent events in the Committee on the Application of Standards.

In conclusion, IMEC reiterates once again its strong and enduring support for the ILO supervisory system as well as its firm commitment to moving forward in a positive, constructive manner in the spirit of tripartism.

Mr SHEPARD (*Government, United States*)

The United States Government wholeheartedly supports the statement of the IMEC group. We felt it was important, however, to take this opportunity to give particular emphasis to some of the points in that statement.

First, the United States profoundly regrets that the Committee on the Application of Standards was not able to discuss any individual country cases this year. Not only was this unprecedented, but there were situations of labour rights' violations that badly needed to be heard in an international forum. The failure of the Committee to fulfil its mandate risks serious damage to the credibility of the Committee, the ILO supervisory system and the Organization as a whole.

Second, we want to note for the record the United States' appreciation and strong support for the International Labour Standards Department. As the Director-General told this Conference, the staff of the Standards Department consists of dedicated, competent and high quality professionals, and their impartiality, neutrality and balance are without question. We trust that the new Director-General will ensure that the Department has sufficient resources to keep pace with the ever-increasing demand for its critically important services.

Third, we recall the complementary roles of the Conference Committee and the Committee of Experts. These two Committees, one with a tripartite composition and the other composed of independent experts, constitute the heart of the ILO supervisory system. Neither can operate effectively without the other. Together, they promote, protect and enhance the rights and quality of life of workers around the world. We therefore strongly support and thank the Committee of Experts for their continuing efforts to promote a better understanding of the meaning and scope of ILO Conventions.

We respect the principles of independence, objectivity and impartiality upon which their work is grounded, and while we understand that their decisions are not binding, we recognize that their observations carry enormous moral authority.

Finally, we note that the underlying question that prevented the adoption of a list of cases was not one that could, or should, be decided in the Committee on the Application of Standards. Although the issues to be resolved are complex, we stress the absolute urgency of moving forward in the context of the Governing Body, and beginning with informal tripartite consultations, to ensure that the Conference Committee is able to resume its normal functioning as from next year. We have faith that the ILO can indeed move forward in a positive and constructive manner, and that tripartite dialogue, the ILO's essence and its strength will prevail.

What was stated earlier by the Government delegate of my country has obliged me to take the floor to make a brief statement.

The Uruguayan Employers' sector, in conjunction with the International Organisation of Employers, presented a complaint to the ILO about a case which went before the Committee on Freedom of Association and was analysed by the Committee on the Application of Standards in 2011.

Given that the situation remains unchanged, the case is still before the ILO. We need to stress that the Uruguayan Employers' sector is not seeking preferential legislation; we simply want the guidelines that the ILO tripartite bodies have issued, which include both legislative and practical aspects, to be respected.

We are asking for no more and no less than what the ILO has already proposed, and which we fully endorse. Unfortunately, our efforts to date have not borne fruit beyond the various different tripartite statements that have been made at the ILO.

Negotiations are still under way in our country.

Mr SAHA (Worker, India)

I am Sankar Saha, representing Indian workers. While we talk about standards, the Indian workers' family believes that under globalization the world has been facing the deepest crisis it has ever faced – deeper than the crisis of the 1930s that culminated in world war once again for the division of markets. We are all pained by the admission of the United Nations family that states: "About 5.1 billion people – 75 per cent of the world's population – are not covered by adequate social security and 1.4 billion people live on less than US\$1.25 per day. Thirty-eight per cent of the global population, that is 2.6 billion people, do not have access to adequate sanitation, 884 million people lack access to adequate sources of drinking water, 925 million people suffer from chronic hunger, and nearly 9 million children – I said 9 million children! – under the age of 5 die every year from preventable diseases."

Capitalist globalization has gifted us with acute joblessness, job insecurity, job cuts and youth unemployment which stands at more than 50 per cent, the systematic withdrawal of existing rights and benefits, which include the right to minimum wages, a pension, health services, housing, education, drinking water, etc. It is reducing them to commodities in the present market; you have to buy them if you have the means to do so, otherwise you are destined to live a life of or die a death of an animal. The society you are born into will hardly care.

Again the ILO Committee of Experts has rightly submitted its report showing violations of the core Conventions; in many of these cases, workers are the only victims. At present, workers of all countries, including the United States, are on the streets, not only in Wall Street, but in all the streets of the world to secure human life and livelihood with dignity and honour. However the employers in the present Session have raised their voice to deny the right to strike – the fundamental and basic human right of workers who have unanimously refused to barter their right for anything else in the world, and have even contemplated a global strike to retain their right to strike.

Friends, ILO Conventions were once aimed at imparting social justice to the working people but the present social order of the state machine only produces injustice and exploitation. The system, which is already suffering from multi-organ failure in the intensive care unit and heading towards the ventilator, is no longer capable of supporting the right to speak up and the right to strike. Different people have different approaches to the problems of injustice and exploitation. Some advocate a change of hearts and minds, while some appeal to the innate goodness of man and his compassion and love for the least privileged. But a great thinker and philosopher of the modern era showed, for the first time, through scientific and rational analysis, where the root of injustice lies. In all the different stages of class divided society, the root of social injustice is in the social and economic conditions of that particular phase for society. He further showed that the emergence of private property with the emergence of class division lies at the root of social injustice. The accumulation of wealth in the hands of a few is caused by the private appropriation of the surplus value that stems from the capitalist mode of production and production relations. It is a reality and we must have the courage to accept it.

Friends, I believe that we should not allow ourselves to be deceived by the slogan of human peace or fairness of globalization. Let us join forces to bring about a poverty-free world where working people have full access to what their labour produces for sustenance of the entire society. This alone can ensure social justice in the real sense and protect the real value of ILO standards.

Original Spanish: Mr PEREIRA (Worker, Uruguay)

I come from a small country of 3.5 million inhabitants. We have one single central union, PIT-CNT, that has faced such serious situations as the coup d'état of 1973. When we faced this situation, we did not come complaining to the ILO – we held a two-week general strike and occupied workplaces in Uruguay. This cost the workers of Uruguay hundreds of victims – murdered, tortured, disappeared, exiled and in deep trouble if they returned to Uruguay. But I know that our trade union would do exactly the same again.

In Uruguay, there are probably differences between employers, governments and workers. There are, in fact, differences as regards the Private Sector Collective Bargaining Act. This Act has allowed workers to bargain for salaries and working conditions in almost all cases, on a bipartite basis. Granted, the Act is not perfect but, in the words of Pablo Milanés, it is close to what I could only dream of – the right to bargain collectively.

Between 1990 and 2005, there were no practically wage councils in Uruguay. As a result of this policy, wages hardly rose at all. From 2005 to 2012, average wages increased by 35 per cent and the minimum wage almost tripled. We therefore fail to understand Mr Syder's statements today and yesterday in the Committee on the Application of Standards, where he said that the case of Uruguay was serious, and can only attribute them to lack of study and rigour. This error is unacceptable to Uruguay's trade union.

First, it is unacceptable because I must insist that the real serious case was the fact that, before the Collective Bargaining Act, rural workers worked a 12-hour day. In 2007, this was restricted to eight

hours. Imagine how many decades went by before these rights for rural workers – workers in the fields – were won. Today, the Government of Uruguay will submit the first agreement on domestic work for official approval, although domestic workers in Uruguay have already signed their second labour agreement. This information is corroborated by reports of the United Nations Economic Commission for Latin America and the Caribbean on human rights and human development and by successive speeches given by Mr Somavia at various conferences, where Uruguay has been held up as an example of solving crises through social dialogue.

The Uruguayan workers will make every effort to resolve our differences with the Ministry of Labour and the employers over the Collective Bargaining Act, and have in fact already submitted two proposals to them to this end. But we believe that the Act has improved the life of Uruguayan workers and goes a long way to bridging the gap that existed between income levels.

We would like our statement to be included in the record, purely so that natural differences between Uruguayan entrepreneurs and workers should not be classified as a serious case. Our complaint here is not against the statement by the Uruguayan employers, which was respectful, but against the Employer spokesperson, who described as serious something that is actually a routine difference of opinion – on an important matter, but nonetheless routine.

*Original Spanish: Mr ECHAVERRÍA SALDARRIAGA
(Employer, Colombia)*

I would like to express my full support, as an Employers' delegate of Colombia, to the statement made by Mr Chris Syder, on behalf of the Employers.

I would also like to say, as a member of the Employers' group, which is a member of the Committee on the Application of Standards, that at no point have we questioned the honour or respectability of the experts or of the staff members who work in the standards supervisory system.

Hence our astonishment at the mistaken interpretation reached by the Director-General himself in this regard at the beginning of the discussion of his Report, on Wednesday 6 June, in the plenary of the Conference.

We have said that the experts do not have the authority to interpret Conventions; disagreeing on the authority of a supervisory body is not the same as calling into question the members of that body.

We have always recognized the right to strike and we examine it in the Committee on Freedom of Association in cases when, because this or other rights enshrined in domestic legislation have been exercised, freedom of association is affected in terms of legislation or in practice. We do not share the view, indicated by the experts in paragraph 118 of this year's General Survey, that the right to strike exists because it is included in the objectives of Convention No. 87.

The Employers disagree with that interpretation, firstly because, under the Constitution of the ILO, it is not within the mandate of the experts to interpret Conventions and, secondly, because there is no reference whatsoever to that right in Convention No. 87.

We have said that, by its very nature, the Office should be at the service of the supervisory bodies.

Giving an opinion on the support role the Office plays in the supervision of standards does not mean that we have doubts about its staff; it clarifies a perception of its meaning and guidance.

We regret that the discussions in the Committee on the Application of Standards have meant that, this year, we do not have a list of individual cases to be dealt with by the Committee.

We are not seeking to apportion blame; the time is ripe to think, as the Chairperson of the Committee, Mr Paixão Pardo, invited us to do, about the mechanisms we should implement so that this does not happen again in the future.

None of this should upset the Director-General or the Office staff. What we need now is the tranquillity and calm that is fitting to this house in order to overcome our differences, which is nothing more than the exercise of social dialogue, the standard for resolving differences and the means with which we have always shown the world that we can achieve concord and social cohesion between peoples.

The PRESIDENT

As the list of speakers is exhausted, we will now proceed to the approval of the report of the Committee on the Application of Standards.

If there are no objections, may I take it that the Conference approves the report of the Committee on the Application of Standards as a whole, that is, parts 1 to 3?

(The report, as a whole, is approved.)

Ms KELLY (Worker, New Zealand)

On behalf of the Workers' group, I want to put on the record the details of a letter to the Director-General by the Workers on the Governing Body in relation to a complaint under article 26 of the ILO Constitution against the Government of Guatemala for the non-observance of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).

The Worker delegates that have signed this letter begin, "We, the undersigned Worker delegates to the 101st Session of the International Labour Conference, request the establishment without delay of a Commission of Inquiry against the Government of Guatemala for its egregious non-observance of Convention No. 87, which it ratified on 13 February 1952."

Guatemala has been under the near constant scrutiny of the supervisory machinery of the International Labour Organization for the last roughly 25 years. Since 1989, the Committee of Experts on the Application of the Convention and Recommendations has published observances on Guatemala's application of Convention No. 87 19 times, noting with growing concern the serious violations and calling upon the Government to adopt urgent measures to comply with the Convention.

There are now 13 active cases before the Committee of Freedom of Association and two cases designated for follow-up. These cases are in addition to the 73 cases that have been filed and subsequently closed. The violations alleged in these many cases include, among other things, anti-union discipline and dismissals, the refusal to bargain collectively or the violation of collective agreements, and death threats and the assassination of trade union leaders.

The Conference Committee on the Application of Standards has reviewed Guatemala 14 times on the

extent to which it was giving effect to Convention No. 87, and we list the dates on which these reviews occurred. Guatemala was again designated a double footnoted case in 2012.

In 2011, a high-level delegation visited the country. This delegation is in addition to the numerous previous technical missions. Together the ILO supervisory machinery has detailed extremely serious and systematic violations of the right to freedom of association in law and in practice, up to and including murder.

The undersigned, the signatures to the letter, note the following deeply troubling issues which have been reported by the Committee of Experts: (i) numerous acts of violence have been committed against trade union leaders and union members in recent years, including murders, death threats, abductions, torture, armed assaults and break-ins. The rate of impunity for these crimes stands at roughly 98 per cent, which is primarily due to the lack of political will by the Government to address this extremely serious problem through effective preventative measures or competent investigations and prosecutions; (ii) the Government has consistently failed to bring its national legislation into conformity with Convention No. 87 despite repeated requests and numerous technical missions. The Committee of Experts concluded in 2012 that there has not been significant progress in the legislative reforms requested and it considers that much more effort will need to be made; (iii) significant obstacles remain to the registration of trade unions, with numerous applications pending, without action, for lengthy periods of time; (iv) the Maquila sector remains nearly union-free due to the dismissal of workers for exercising their right to freedom of association and to organize; and (v) the labour justice system remains extremely slow, subject to serious procedural abuses and incapable of enforcing its own orders when they favour workers or trade unions, and these systematic failures deny workers subject to anti-union dismissals and other violations an effective remedy.

The numerous attempts to impel Guatemala to fulfil its obligations under the Convention have ob-

viously failed, due in large part to the Government's lack of political will. Any further use of these mechanisms, which have been employed patiently and persistently over two decades without results, would be futile. By any objective measure, this case represents exactly the kind of situation for which the establishment of a Commission of Inquiry is warranted.

Taking into account all of the above, we, those that signed this letter, feel obliged to lodge a complaint under article 26 of the Constitution and call upon the Governing Body to establish thereafter a Commission of Inquiry for the non-observance of Convention No. 87 in law and in practice. The complainants reserve the right to submit additional information at the appropriate time.

The undersigned also wish to dedicate this complaint to the memory of the at least 63 trade unionists who have been assassinated in Guatemala since 2007. The most recent assassination occurred on 1 June 2012, the commencement of the 101st Session of the International Labour Conference, and it goes on to list the signatures: the Worker representatives from Belgium, Brazil, Canada, Chile, China, Fiji, New Zealand, the United Kingdom, South Africa and the United States.

(Mr Alburquerque de Castro takes the Chair.)

Original Spanish: The PRESIDENT

I would like to inform you that the Officers have taken note of the complaint presented by Ms Kelly on behalf of several workers' organizations from different countries. This complaint will be transmitted to the Governing Body, in accordance with article 26 of the Constitution.

I give the floor to the Clerk of the Conference for an announcement.

Original Spanish: The CLERK OF THE CONFERENCE

Owing to a technical problem with the voting system, we will proceed to the approval of the report of the Committee on Youth Employment to allow time for the technicians to deal with the problem.